EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 2210/10
Grażyna RYSIEW
against Poland

The European Court of Human Rights (Fourth Section), sitting on 10 September 2013 as a Committee composed of:

David Thór Björgvinsson, *President,*
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 23 December 2009,

Having regard to the declaration submitted by the respondent Government on 15 November 2012 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Grażyna Rysiew, is a Polish national, who was born in 1955 and lives in Uciechów.

The Polish Government ("the Government") were represented by their Agent, Mr Jakub Wołąsiewicz succeeded by Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Main proceedings

On 15 May 2001 the applicant instituted the civil proceedings for distribution of marital assets.

On 23 January 2008 the Wrocław District Court (*Sąd Rejonowy*) delivered the first-instance judgment. The applicant appealed against this judgment.

On 17 July 2008 the Wrocław Regional Court (*Sąd Okręgowy*) delivered the second-instance judgment.

On 21 May 2009 the Supreme Court refused to examine the cassation appeal.

2. Proceedings under the 2004 Act

On an unspecified date the applicant lodged a complaint under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time *(ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki* – "the 2004 Act"). She sought a finding that the length of the proceedings had been excessive and claimed 5,000 PLN in compensation.

By a decision of 30 March 2007 the Wrocław Regional Court dismissed the applicant's complaint. The court found no delay in the proceedings after the 2004 Act came into force.

B. Relevant domestic law and practice

The relevant domestic law and practice concerning remedies for the excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the 2004 Act, are set out in the Courts decisions in the cases of *Charzyński v. Poland*, no. 15212/03 (dec.), §§ 1223, ECHR 2005-V, and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII, and in its judgments in the cases of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V and *Krzysztofiak v. Poland*, no. 38018/07, §§2331, 20 April 2010.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the civil proceedings.

Without invoking any particular provision, the applicant also complained about the outcome of the proceedings. She complained about the alleged unfairness of the domestic courts in the distribution of the marital assets.

THE LAW

A. Length of proceedings

The applicant complained about the length of the proceedings and that she had no effective remedy at her disposal. She relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

By letter dated 15 November 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

"(...) the Government hereby wish to express – by way of a unilateral declaration – their acknowledgment that the length of civil proceedings for distribution of marital assets violated Article 6 § 1 of the Convention.

Consequently, the Government are prepared to pay the applicant the sum of PLN 9,500 (nine thousand five hundred) which they consider to be reasonable in the light of the Court's case-law. The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

The Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention...."

In a letter of 26 December 2012 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low and did not correspond to the non-pecuniary damage and the health loss which she had suffered as a result of the excessive length of the impugned proceedings.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example,

Frydlender v. France [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-....; *Majewski v. Poland*, no. 52690/99, 11 October 2005; and *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

B. Remaining complaint

The applicant further complained about the outcome of the proceedings concerning the distribution of martial assets.

However, the Court considers that this complaint discloses no appearance of any violation of the provisions of the Convention. It follows that the remainder of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention as being of fourth-instance character.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President