



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

FOURTH SECTION

CASE OF KRYSTYNA MISIAK AND JAN MISIAK v. POLAND

(Application no. 31193/04)

JUDGMENT

STRASBOURG

9 November 2010

FINAL

11/04/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Krystyna Misiak and Jan Misiak v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić,

Vincent Anthony de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 October 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 31193/04) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Polish nationals, Mrs Krystyna Misiak and Mr Jan Misiak (“the applicants”), on 29 July 2004.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 30 March 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was further decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The President also gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants, Mrs Krystyna Misiak (“the first applicant”) and Jan Misiak (“the second applicant”) were a married couple. They were born in 1925 and 1923 respectively and lived in Staszów. The second applicant died on 1 March 2006. By letters of 14 September and 19 November 2007 the first applicant informed the Court of the identity of the second applicant's heirs, Ms Marta Misiak, Ms Teresa Macias,

Ms Anna Wójcikowska and Mr Stanisław Misiak. They expressed a wish to continue the application in the second applicant's stead.

A. Civil proceedings for the division of inheritance and dissolution of co-ownership (“the first set of civil proceedings”)

1. Facts before 1 May 1993

5. On 20 January 1980 the applicants brought an action for the division of an inheritance with the Staszów District Court (*Sąd Rejonowy*).

6. Between 12 September 1981 and 7 January 1983 the court held ten hearings in the proceedings.

7. On 31 August 1983 the Staszów District Court stayed the proceedings. They were resumed on an unknown date in 1984.

8. On 17 October 1986 the applicants challenged the impartiality of the judge dealing with the case. The challenge was dismissed as unfounded by the Staszów District Court on 3 February 1987.

9. On 14 January 1992 the court stayed the proceedings.

10. On 22 March 1992 an expert who had been called to give an opinion informed the court that he had not been admitted to the applicant's property. On 1 October 1992 another expert submitted his opinion.

2. Facts after 1 May 1993

11. On 22 April 1997 the applicants asked the court to resume the proceedings.

12. On 30 June 1997 the proceedings were resumed.

13. By a decision of 11 July 1997 the Staszów District Court discontinued the proceedings because no motion for the resumption of the proceedings had been lodged within a period of three years. On 5 February 2000 the applicants lodged an interlocutory appeal against this decision.

14. By a decision of 25 April 2000 the District Court rejected the interlocutory appeal, as lodged outside the prescribed time-limit.

15. On 16 August 2000 the Tarnobrzeg Regional Court (*Sąd Okręgowy*) quashed the above-mentioned decision and remitted the case.

16. On 25 October 2000 the Regional Court quashed the decision of 11 July 1997.

17. On 13 February 2001 the proceedings were stayed because the applicants had failed to comply with a court order to submit necessary documents.

18. On 6 March 2001 the court dismissed the applicants' motion to resume the proceedings.

19. On 27 May 2001 the applicants complained to the President of the District Court about the delay in the proceedings. On 29 June 2001 the President of the District Court informed them that he had already instructed the judge dealing with the case to proceed promptly with the trial.

20. The proceedings were resumed on an unspecified date in August 2001.

21. Between 12 October 2001 and 6 March 2002 the court scheduled five hearings, two of which were adjourned.

22. On 8 April 2002 the Staszów District Court gave a preliminary decision (*postanowienie wstępne*) by which it declared that the applicants had acquired the ownership of the real estate at issue by positive prescription as of 2 June 1978.

23. A further hearing was held on 18 June 2002.

24. On 22 November 2002 the proceedings were stayed due to the death of one of the parties.

25. In the meantime the case file was referred to the Kielce Regional Court and later to the Kraków Court of Appeal (*Sąd Apelacyjny*), before which the applicants' claim for damages has been examined (see paragraphs 45-63 below).

26. The proceedings are still pending.

B. Proceedings under the 2004 Act

27. On 13 July 2005 the applicants lodged a complaint about a breach of the right to a trial within a reasonable time in respect of the first set of civil proceedings and sought damages. They relied on 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”).

28. On 7 October 2005 the Kielce Regional Court (*Sąd Okręgowy*) dismissed the complaint. The court acknowledged the excessive length of the proceedings as a whole. However, it held that the 2004 Act only produced legal effects as from the date of its entry into force (17 September 2004). Consequently, it examined the applicants' claim only in respect of the last two years of the proceedings. The court found that during the relevant part of the proceedings, there had been no inactivity or undue delay on the part of the domestic court. It was emphasised that the proceedings were stayed because of the death of one of the parties and that they could not have been continued due to events beyond the trial court's control.

C. Civil proceedings for delivery of property (“the second set of civil proceedings”)

29. On 12 January 1994 the applicants lodged a claim with the Staszów District Court, requesting delivery of a property.

30. Hearings were held on 23 February and 23 March 1994.

31. On 13 April 1994 the proceedings were stayed.

32. By a decision of 28 September 1998 the court discontinued the proceedings. It held that a period of three years had elapsed and that the parties had not lodged a motion for the resumption of the proceedings in the interim.

33. On 6 October 1998 the applicants appealed. They argued that they had lodged a motion for the resumption of the proceedings on 22 December 1997.

34. On 20 October 1998 the court quashed the decision of 28 September and resumed the proceedings.

35. On 12 November 1998 a hearing was held.

36. On 22 April 1999 the proceedings were stayed upon the applicants' motion.

37. On 18 April 2002 the applicants lodged a motion for the proceedings to be resumed. It was dismissed on 10 May 2002.

38. On 3 September 2002 the applicants again sought the resumption of the proceedings. They were resumed on 24 September 2002.

39. On 16 October 2002 a further hearing was held in the case.

40. On 7 November 2002 the court ordered that an expert's opinion was to be obtained.

41. On 4 December 2002 the expert submitted his opinion.

42. On 27 February 2003 the Staszów District Court delivered a judgment, allowing the applicants' claim.

43. On 17 June 2003 the defendant lodged his appeal together with a motion for retrospective leave to appeal. On 27 August 2003 the Staszów District Court dismissed the motion and rejected the appeal.

44. The defendant lodged an interlocutory appeal which was dismissed by the Kielce Regional Court on 9 March 2004.

D. Claim for damages under the 2004 Act

45. On 11 July 2005 the applicants lodged a claim for damages under section 16 of the 2004 Act read in conjunction with Article 417 of the Polish Civil Code.

46. On 13 September 2005 the Kielce Regional Court found itself not competent to deal with the case and referred it to the Staszów District Court.

47. On 24 October 2005 the case was transferred back to the Regional Court, as all the judges from the District Court had requested to be disqualified from dealing with the case.

48. On an unspecified date the case was referred to the Opatów District Court.

49. By letter of 14 December 2005 the applicants specified that their claim for damages concerned the length of both sets of civil proceedings – the proceedings for division of inheritance and the proceedings for delivery of property.

50. By a decision of 28 December 2005 the Opatów District Court exempted the applicants from payment of the court fees.

51. On 1 February 2006 the President of the Staszów District Court lodged his reply to the applicants' statement of claim.

52. On 17 February 2006 a hearing was held. It was adjourned in order to appoint a legal aid lawyer.

53. On 28 April 2006 the court stayed the proceedings as the second applicant had died. On 15 May 2006 the proceedings were resumed with the participation of the second applicant's heirs.

54. On 13 June 2006 and 3 August 2006 the court held further hearings.

55. On 31 August 2006 the value of the statement of claim was further extended and a claim for non-pecuniary damage was introduced. The applicants thereafter claimed damages in respect of the first set of civil proceedings only.

56. At the hearing held on 17 October 2006 the Opatów District Court found that it no longer had competence to deal with the case, as the value of the claim had been increased. The case was referred to the Kielce Regional Court.

57. On 13 December 2006 a hearing was held.

58. On 27 February 2007 the first applicant's legal aid counsel further extended the value of her claim in respect of the first set of civil proceedings.

59. Two hearings in the case were held on 28 February and 4 April 2007.

60. On 18 April 2007 the Kielce Regional Court gave its judgment and dismissed the claim for damages sustained due to the unreasonable length of the first set of proceedings. On 29 May 2007 the first applicant and the second applicant's heirs lodged an appeal.

61. On 10 October 2008 the applicants complained to the President of the Krakow Court of Appeal about the delay in the proceedings.

62. On 27 October 2008 the applicants were informed that the proceedings would be progressed as soon as an expert report was obtained.

63. On 20 April 2009 the Kraków Court of Appeal amended the first-instance court's judgment and awarded 70,000 Polish zlotys (PLN) (equivalent to 16,400 euros (EUR) at that time) to the first applicant

in respect of non-pecuniary damage suffered as a result of the excessive length of the first set of civil proceedings. It dismissed the appeal lodged by the second applicant's heirs. The court underlined that under the Polish system of civil law, claims for non-pecuniary damage could only be inherited when a claim was introduced in the testator's lifetime or when the testator had acknowledged the claim. It further noted that in the present case the claims for non-pecuniary damage had been introduced on 31 March 2006 – that is after the death of the second applicant. Moreover, no particular sum of claimed damages had ever been specified.

64. On 8 August 2009 the second applicant's heirs lodged a cassation appeal with the Supreme Court.

65. On 3 December 2009 the Supreme Court refused to entertain their cassation appeal.

E. Civil proceedings for the registration of title to property in the land register (“the third set of civil proceedings”)

66. On an unknown date the first and second applicants lodged an application asking the District Court to enter their title to the property in the land register. On 30 December 1995 Staszów the District Court gave a decision. The applicants appealed.

67. By a decision of 25 April 1996 the Tarnobrzeg Regional Court rejected the applicants' appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Remedies for the excessive length of proceedings

68. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the provisions of the 2004 Act as applicable at the material time, are set out in the Court's decisions in cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

B. Succession to claims for non-pecuniary damage

69. Article 445 § 3 of the Polish Civil Code reads as follows:

“A claim for non-pecuniary damage can be inherited only when a claim had been acknowledged by the testator, or when a claim had been introduced in the testator's lifetime.”

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

70. On 30 October 2007 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicants' rights under Articles 6 § 1 and 13 of the Convention as a result of the unreasonable length of the first set of civil proceedings in which the applicants had been involved. In respect of non-pecuniary damage, the Government proposed to award the first applicant PLN 20,000 (the equivalent of approx. EUR 4,400). The Government invited the Court to strike out this part of the application in accordance with Article 37 of the Convention.

71. The first applicant and the second applicant's heirs did not agree with the Government's proposal and requested the Court to continue the examination of the case. They maintained that the amount offered was too low.

72. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government – even if the applicant wishes the examination of the case to be continued.

73. However, in a letter of 20 July 2009 the Government expressed the opinion that the first applicant could no longer claim to be a victim, as a violation of her rights guaranteed by Article 6 of the Convention had been recognised and remedied at the national level. In this respect they referred to the Kraków Court of Appeal's judgment (see paragraph 62 above) by which the first applicant was awarded PLN 70,000 in damages. The Government requested the Court to declare this part of the application incompatible *ratione personae* with the Convention.

74. In the light of the above, the Court is of the opinion that it is no longer necessary to examine the Government's unilateral declaration, as it has been implicitly withdrawn. This being so, the Court will accordingly pursue its examination of the admissibility and merits of the case.

II. THE STANDING OF THE APPLICANTS

A. As to the second applicant's standing

75. The Government submitted that it had not been clear to them whether the application in the present case had also been lodged on behalf of Mr Jan Misiak. They noted that the application form of 18 October 2004 had been signed by both Mrs Krystyna Misiak and Mr Jan Misiak. However, on 23 April 2007 the Court had communicated to the Government only the application lodged by Mrs Krystyna Misiak, whereas the observations and claims which the Government had received on 28 September 2007 had been submitted by both applicants. Likewise, the names of both applicants had been mentioned in the Court's letter enclosing the observations on the application.

76. The Court notes that the present application had indeed been erroneously communicated in the name of Mrs Krystyna Misiak only. The application form of 18 October 2004 was lodged and signed by both Krystyna Misiak and Jan Misiak, and both of them were parties to the impugned proceedings before the domestic courts. It was clear from the facts of the case as presented in the application form signed by both applicants, as well as from their observations on the admissibility and merits, that the present application concerned both Mrs Krystyna Misiak and Mr Jan Misiak. Further, in the letter dated 28 September 2007 sent to the Government, the Court likewise referred to the "applicants' observations on the above application, together with their claims for just satisfaction." Having regard to the foregoing, the Court is of the opinion that the letter of 23 April 2007, communicating the present application to the Government in the name of Mrs Krystyna Misiak only, simply contained a technical error, which has been rectified in the interim.

B. As to the standing of the second applicant's heirs

77. The Government further submitted that, if the application in the present case had been lodged on behalf of both Mrs Krystyna and Mr Jan Misiak, they had not been informed of the wish of any of Mr Jan Misiak's heirs to pursue his application. They further noted that Mrs Krystyna Misiak did not have legal title to pursue Mr Jan Misiak's application before the Court, in particular as regards claims for just satisfaction, as she had inherited only one quarter of her late husband's estate.

78. The Court reiterates that when an applicant dies during the proceedings, the applicant's next-of-kin have a legitimate interest

in pursuing the continuation of the examination of the case (see, for example, *Goc v. Poland (dec.)*, no. 48001/99, 23 October 2001).

79. The Court notes that in her letter of 14 September 2007 the first applicant set out a list of the second applicant's heirs. In addition, in reply to the Government's unilateral declaration (see paragraph 70 above), the first applicant requested that the just satisfaction claimed by the second applicant be awarded jointly to his heirs. Lastly, the Court notes that in a letter of 11 December 2007, addressing the Government's observations, the second applicant's heirs explicitly pronounced their wish to continue the proceedings before the Court in their late father's stead. The letter was signed by the first applicant and by all four heirs of the second applicant. The Government did not submit any comments in reply to those statements.

In the light of the foregoing, the Court is of the opinion that the Government had in fact been informed about the wish of the second applicant's heirs to pursue his application before the Court.

80. The Court observes that in the present case the proceedings concerned the second applicant's pecuniary rights. It further acknowledges that the second applicant's children have a legitimate interest to pursue the application on their father's behalf.

81. Moreover, noting that the second applicant's heirs participated in the proceedings for damages under the 2004 Act (see paragraph 53 above) and that they entered the first set of proceedings after their father's death, the Court considers that they are entitled to obtain a ruling as to whether in those proceedings the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was complied with and whether there was an "effective remedy" in respect of their allegedly undue length, as required by Article 13 of the Convention (see, for example, *Serafin and Others v. Poland*, no. 36980/04, §§ 67-68, 21 April 2009; *X v. France*, judgment of 31 March 1992, § 26, Series A no 234-C, p. 89; and *Goc v. Poland (dec.)*, cited above).

82. Accordingly, Ms. Marta Misiak, Ms Teresa Macias, Ms Anna Wójcikowska and Mr Stanisław Misiak – the second applicant's children – have standing to continue the proceedings before the Court in his stead. Accordingly, the Government's objection should be dismissed.

83. In view of the above, the Court does not consider it necessary to examine whether the first applicant has legal title to pursue the application on her late husband's behalf.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE FIRST SET OF CIVIL PROCEEDINGS

84. The applicants complained that the length of the proceedings for division of inheritance and dissolution of co-ownership had been

incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

85. The Government contested that argument.

86. The Court notes that the proceedings for division of inheritance and dissolution of co-ownership commenced on 20 January 1980. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted seventeen years and some five months at one level of jurisdiction.

A. Admissibility

1. *Compatibility ratione personae*

(a) as regards the first applicant

87. In their letter of 20 July 2009 the Government informed the Court that, by a judgment of 20 April 2009, the Kraków Court of Appeal recognised that there had been an interference with the first applicant's right to have her case examined within a “reasonable time”, and that she had been awarded a sum of PLN 70,000 in respect of non-pecuniary damage (see paragraph 63 above). In view of the above, the Government had been of the opinion that she could no longer claim to be a victim, as a violation of her rights guaranteed by Articles 6 and 13 of the Convention in respect of the first set of proceedings had been recognised and remedied at the national level. The Government requested that the Court declare this part of the application incompatible *ratione personae* with the Convention.

88. The Court reiterates that it falls first to the national authorities to redress any violation of the Convention. In this regard, the question of whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see, *inter alia*, *Siliadin v. France*, no. 73316/01, § 61, ECHR 2005-VII). A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *inter alia*, *Eckle v. Germany*, judgment of 15 July 1982, § 66, Series A no. 51, p. 30; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Siliadin*, cited above, § 62).

89. As to the redress which has to be afforded to an applicant in order to remedy a breach of a Convention right at the national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard to, in particular, the nature of the Convention violation found. The issue of whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails an *ex post facto* examination of his or her situation on the part of the Court. As it has already held in other length of proceedings cases, the question of whether he or she has received reparation for the damage caused – comparable to just satisfaction as provided for under Article 41 of the Convention – is an important issue. It is the Court's settled case-law that where the national authorities have found a violation and their decision constitutes appropriate and sufficient redress, the party concerned can no longer claim to be a victim within the meaning of Article 34 of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-V, and *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-107, ECHR 2006-V).

90. The Court notes that, by the judgment of the Kraków Court of Appeal (see paragraph 63 above), the first applicant was awarded PLN 70,000 in respect of non-pecuniary damage. The court further acknowledged that the proceedings in her case had been unreasonably lengthy and that her right to a trial within a reasonable time, as guaranteed by Article 6 of the Convention, had been breached.

91. In this connection and on the basis established in the Court's case-law, the Court is satisfied that the domestic courts acknowledged the violation and afforded the first applicant sufficient redress for a breach of her right to a trial within a “reasonable time” in respect of the first set of civil proceedings.

92. It follows that the first applicant may no longer claim to be a victim of a violation of her Article 6 rights with regards the first set of civil proceedings (see *Cocchiarella v. Italy* [GC], cited above, §§ 69-107, and *Scordino v. Italy (no. 1)* [GC], cited above, §§ 178-213).

(b) as regards the second applicant's heirs

93. The Court notes that, by the above-mentioned judgment of the Kraków Court of Appeal, the heirs of the second applicant were refused just satisfaction, as their father's claim for non-pecuniary damage, which they had pursued after his death, was dismissed.

According to the Court of Appeal's opinion expressed in that judgment, due to the fact that a precise claim for non-pecuniary damage had only been stated in the proceedings on 31 March 2006, i.e. after the death of the second applicant, such a claim could not have been inherited by the second applicant's heirs (see paragraph 63 above).

94. The Court notes that, under Polish civil law, claims for non-pecuniary damage can only be inherited when they have been acknowledged by a testator, or when they have been introduced in the testator's lifetime (see paragraph 69 above).

The Court further notes that it has already decided on the standing of the second applicant's heirs (see paragraphs 77-83 above) and it is not bound, in this respect, by the limitations inherent in the domestic legal system.

Having regard to the criteria for determining victim status in respect of length of proceedings complaints, as set out in the judgment of *Scordino v. Italy (no.1)* ([GC], cited above, §§ 193-215), and particularly in view of the fact that the second applicant's heirs did not receive any reparation for the damage caused to the second applicant, the Court concludes that their complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

95. Accordingly, the second applicant's heirs can still claim to be victims, within the meaning of Article 34 of the Convention, of a violation of their right to a trial within a reasonable time in respect of the first set of civil proceedings.

2. Exhaustion of domestic remedies

96. The Government submitted that, with regard to the first set of civil proceedings, the applicants had not exhausted the remedies available to them under Polish law, as the proceedings for damages against the State Treasury had still been pending.

97. The applicants contested the Government's argument.

98. Having regard to the fact that the proceedings for non-pecuniary damage against the State Treasury in respect of the first set of civil proceedings have been terminated in the interim (see paragraphs 63-65 above), the Court, given the change of circumstances at the root of the objections, does not consider it necessary to rule on the matter.

99. In any event, having noted that the applicants made use of the remedy provided by the 2004 Act, the Court is of the opinion that they were not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Cichla v. Poland* no. 18036/03, § 26, 10 October 2006).

3. Conclusion as to admissibility

100. The Court further notes that the second applicant's heirs' complaint is not manifestly ill-founded within the meaning of Article 35 § 1 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The Government's submissions*

101. The Government refrained from taking a position on the merits of the complaint. They did, however, stress that the applicants themselves had contributed greatly to the length of the first set of civil proceedings, by modifying their claim and by disobeying court orders.

2. *The second applicant's heirs' submissions*

102. The second applicant's heirs submitted in general terms that the proceedings have been unreasonably lengthy.

3. *The Court's assessment*

103. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities, and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

104. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above). Furthermore, the Court considers that, in dismissing the applicants' complaint under the 2004 Act (see paragraphs 27-28 above), the Kielce Regional Court failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005). In particular, the Regional Court did not take into consideration the overall period of the proceedings.

105. In the present case the overall length of the proceedings has amounted to over thirty years, of which seventeen years and some five months fall within the Court's jurisdiction *ratione temporis*.

Having examined all the material submitted to it, the Court considers that the Government have not put forward any facts or arguments capable of persuading it to reach a different conclusion in the present case. In particular, the Court notes that even if some delays were caused by the applicants themselves (see paragraph 17 above), they have not significantly contributed to the overall length of the proceedings. Moreover, it was the domestic court's responsibility to discipline the parties.

Furthermore, in respect to the unreasonable length of the impugned proceedings, the Court does not see any reason to differ, in its findings, from those of the Kraków Court of Appeal (see paragraph 63 above).

106. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE SECOND SET OF CIVIL PROCEEDINGS

107. The applicants complained that the length of the second set of civil proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

108. The Government contested that argument.

109. The Court notes that the second set of civil proceedings for delivery of property began on 12 January 1994 and ended on 9 March 2004.

Thus, they lasted ten years, one month and twenty-eight days at two levels of jurisdiction.

110. With regard to the second set of civil proceedings, the Government submitted that the applicants had not in fact pursued any concrete claims for the damage caused by the length of the impugned proceedings. Hence, their complaint in this respect was inadmissible for non-exhaustion of domestic remedies.

111. The first applicant and the second applicant's heirs did not comment on the above submission.

112. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

113. In addition, Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The Court has recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically: for the purpose of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate,

as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, § 69, and *Aksoy v. Turkey*, judgment of 18 December 1996, §§ 53 and 54, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76).

114. The 2004 Act, as it stood at the time, provided the applicants with two remedies for the excessive length of the proceedings: an action under Section 5 of the Act and a claim for damages under Section 16 of the Act in conjunction with Article 417 of the Polish Civil Code.

The Court notes that at the time the applicants lodged their application with the Court, the second set of civil proceedings had already been terminated. Hence, the applicants could not have made use of the transitional provision of Section 18 of the 2004 Act and were therefore barred from lodging a claim under Section 5 of the Act.

115. As to the second remedy available to the applicants, the Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Krasuski v. Poland*, cited above, §§ 65–72). In the light of the foregoing, the applicants were required by Article 35 § 1 of the Convention to lodge a claim for damages under Section 16 of the Act in conjunction with Article 417 of the Polish Civil Code.

116. The Court notes that the initial claim for damages lodged by the applicants concerned both the first and second sets of civil proceedings (see paragraph 49 above). However, it appears from the documents submitted by the applicants that their claim for damages in respect of the second set of proceedings has subsequently been withdrawn, as, when asked to further specify their claim in the course of the proceedings, the applicants raised issues concerning only the first set of the proceedings. This is also supported by the fact that in its judgment of 20 April 2009 the Kraków Court of Appeal did not, at all, address the applicants' claim for damages in respect of the second set of civil proceedings (see paragraph 63 above).

117. It follows that the applicants failed to make use of the available remedy for the unreasonable length of the proceedings. Hence, their complaint concerning the excessive length of the second set of proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

118. The Court raised of its own motion an issue under Article 13 of the Convention, in that the applicants had no effective domestic remedy

in respect of the protracted length of proceedings in their case. Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

119. The Government contested that there was an issue, but refrained from submitting observations on the admissibility and merits of this complaint.

120. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. However, the “effectiveness” of a “remedy” within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, §§ 154 et seq., ECHR 2000-XI).

121. While the subsidiarity principle underlying the Convention system requires the Contracting States to introduce a mechanism addressing complaints about the excessive length of proceedings within the national legal system, they are afforded – subject to compliance with the requirements of the Convention – some discretion as to the manner in which they provide individuals with the relief required by Article 13 and thus conform to their Convention obligations under that provision.

122. The Court further reiterates that the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, for example, *Figiel v. Poland* (no. 2), no. 38206/05, § 33, 16 September 2008, and *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006). In the light of this principle the Court finds that the fact that in the context of the examination of the applicants' length of proceedings complaint, the court did not take into account the entirety of the period to be considered under Article 6 of the Convention (see paragraph 28 above and *Majewski*, cited above, § 36) does not render the remedy under the 2004 Act incompatible with Article 13 of the Convention in the circumstances of the present case. The same applies to a civil action under Article 417 of the Civil Code in conjunction with section 16 of the 2004 Act. The mere fact that the second applicants' heirs' claim for damages failed and that they did not obtain any redress from the domestic court does not in itself render this remedy ineffective – particularly so in a situation where the first applicant's action in this respect was successful (see paragraph 63 above).

123. The Court further notes in this connection that it has found both a claim under section 5 of the 2004 Act and an action for damages under section 16 of the 2004 Act in conjunction with Article 417 of the Civil Code to be effective remedies (see, respectively, *Michalak v. Poland*,

no. 16864/02, § 43, 18 September 2007 and *Krasuski v. Poland*, cited above, § 70).

124. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS FOR REGISTRATION OF A TITLE IN THE LAND REGISTER

125. The applicants complained that the third set of civil proceedings were unfair. In particular, they alleged errors of fact and law committed by the courts. They did not rely on any specific provision of the Convention. This complaint falls to be examined under Article 6 § 1 of the Convention which, in its relevant part, reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

126. However, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

127. In the present case the applicants did not allege any particular failure to respect their right to a fair hearing on the part of the relevant courts. Instead, their complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VII. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

128. Lastly, the applicants complained that the length of the proceedings complained of had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. That Article reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

129. Having regard to its finding under Article 6 § 1 (see paragraphs 90-91 and 106 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Kroenitz v. Poland*, no. 77746/01, § 37, 25 February 2003).

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

131. The second applicant's heirs claimed PLN 46,915.42 in respect of pecuniary damage suffered as a result of the loss of the second applicant's retirement pension.

132. In addition, they claimed PLN 75,000 in respect of non-pecuniary damage.

133. The Government contested these claims.

134. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

135. As regards the non-pecuniary damage, the Court considers that the second applicant undeniably suffered non-pecuniary damage – such as distress and frustration resulting from the protracted length of the proceedings – which is not sufficiently compensated by a finding of a violation of the Convention. Taking into account the circumstances of the case, and making an assessment on an equitable basis, the Court awards the second applicant's heirs EUR 10,000 in respect of non-pecuniary damage sustained by the second applicant.

B. Costs and expenses

136. The applicants requested reimbursement of translation expenses, presenting two bills amounting to PLN 385.22 and PLN 600 respectively.

137. The Government refrained from commenting on the expenses claimed.

138. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 250 for expenses incurred in relation to the proceedings before the Court.

C. Default interest

139. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the second applicant's heirs have standing to continue the present proceedings in his stead;
2. *Declares* the second applicant's heirs' complaint concerning the excessive length of the first set of civil proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the second applicant's heirs with regard to the first set of civil proceedings;
4. *Holds*
 - (a) that the respondent State is to pay the second applicant's heirs, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 250 (two hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the second applicant's heirs' claim for just satisfaction.

Done in English, and notified in writing on 9 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President