



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

FOURTH SECTION

CASE OF MALINOWSKA v. POLAND

(Application no. 35843/97)

JUDGMENT

STRASBOURG

14 December 2000

FINAL

14/03/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Malinowska v. Poland,

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

Mr G. RESS, *President*,

Mr A. PASTOR RIDRUEJO,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr V. BUTKEVYCH,

Mr J. HEDIGAN,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 21 November 2000,

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

PROCEDURE

1. The case originated in an application (no. 35843/97) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mrs Krystyna Malinowska (“the applicant”), on 16 November 1996.

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

3. The applicant alleged that the civil proceedings in her case were not concluded within a reasonable time in breach of Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 20 January 2000 the Chamber declared the application admissible.

THE FACTS

7. The applicant is a Polish national, born in 1932 and living in Złotokłos, Poland.
8. On 4 March 1982 the applicant filed with the Warsaw District Court (*Sąd Rejonowy*) a civil action against certain Messrs A.B and W.I. claiming 116,000 old zlotys (PLZ) in compensation. The applicant submitted that in 1979 the defendants had leased from her a greenhouse and borrowed 16 tonnes of coal, which they subsequently used to heat it. Since they had failed to either return the coal or pay for it before the agreed deadline of 31 October 1981, the applicant commenced litigation seeking payment for the coal.
9. On 29 February 1984 the Warsaw District Court delivered a judgment in which it awarded to the applicant PLZ 101,600. Both A.B. and W.I. appealed against that judgment to the Warsaw Regional Court (*Sąd Wojewódzki*). On 18 December 1984 the Regional Court quashed the judgment and ordered that the case be joined with another action, which had been lodged by the applicant on 29 November 1983 and in which she sought from the same defendants damages in relation to their breach of the lease agreement which required them to make investments in a greenhouse, the subject of the said lease.
10. On 16 October 1985 the Warsaw District Court joined the two cases in which the proceedings had been initiated by the applicant on 4 March 1982 and 29 November 1983. There had been nine hearings held in the latter proceedings before the cases were joined.
11. During the next hearing held on 4 December 1985 one of the defendants was not present. The applicant informed the court about the increase in the amount of her claim. The counsel for the applicant's son, who had joined the proceedings as an intervenor, asked the court to conclude the proceedings on that date.
12. On 3 February 1986 the case-file was transmitted to a court expert.
13. On 26 August 1986 the applicant asked the District Court to fix the date of the next hearing, pointing out that the case lay dormant since 4 December 1985.
14. During the hearing held on 4 December 1986 the counsel for one of the defendants informed the court that he had not received a copy of an expert opinion mailed on 28 October 1986 and requested that the hearing be adjourned. The court decided that an additional expert opinion should be prepared and adjourned the hearing after the parties had failed to reach a friendly settlement.
15. On 30 December 1986 the expert opinion requested on 4 December 1986 reached the court.
16. The next hearing took place on 29 January 1987. The counsel for the defendants and a court expert failed to attend.

17. During the hearing held on 28 April 1987 the court took evidence from an expert.
18. The next hearing was held on 19 May 1987. The applicant and the counsel for the intervenor did not appear. The court allowed the intervenor's request that the hearing be adjourned.
19. During the hearing held on 24 June 1987 the court took evidence from an expert. The next hearing was fixed for 18 August 1987. On that date the applicant and the defendant A.B. were not present although they had received the summonses. The court allowed the request submitted by the applicant's son that the minutes of the hearing held on 24 June 1987 be corrected.
20. The next hearing was held on 10 September 1987. On that occasion the applicant, the counsel for the intervenor, a court expert and a witness did not appear.
21. During the hearing held on 7 October 1987 the defendants were not present. The court examined one witness and a court expert.
22. On 26 November 1987 the applicant, the defendants and a court expert failed to attend a hearing.
23. The next hearing was held on 17 December 1987. The court examined the applicant, the intervenor and one of the defendants. It also requested the Piaseczno Municipal Office (*Urząd Miasta i Gminy*) to submit a file concerning the leaseholders of the greenhouse.
24. In a letter of 15 January 1988 the court inquired of the Piaseczno Municipal Office the reasons for delay in submitting a file requested on 17 December 1987. It appears that on 25 May 1988 the court again requested the Piaseczno Municipal Office to submit the file. On 10 June 1988 the Piaseczno Municipal Office informed the court that the file included only two documents which had already been sent to it on 4 March 1988 and again submitted them.
25. On 20 June 1988 the case-file was transferred to an expert who subsequently submitted his opinion on 18 January 1989.
26. During the hearings held on 14 April and 23 June 1989 the defendant A.B. was not present. On 22 September 1989 both defendants were present but the applicant and her son failed to appear before the court.
27. On 29 November 1989 the hearing was adjourned until 31 January 1990, as none of the two lay judges sitting on the case was present.
28. On 5 February 1990 the applicant filed with the court a request to re-hear two experts.
29. The next hearing was held on 29 March 1990. Both defendants and a court expert failed to appear. The lawyer who was considered to act as counsel for both defendants informed the court that he in fact never represented the defendant W.I.

30. During the hearing held on 20 June 1990 the defendant A.B. was absent. The next hearing was held on 25 June 1990 and was attended by all the parties. On that occasion the court proposed to the parties the conclusion of a friendly settlement.
31. On 12 October 1990 the defendant A.B. failed to appear before the court. The next hearing, fixed for 11 January 1991, was not attended by the applicant's son and both defendants. On 20 March 1991 the defendant A.B. again failed to appear before the court.
32. On 7 May 1991 the court revoked the applicant's partial exemption from the payment of court fees. On 23 May 1991 the applicant appealed against that decision.
33. The hearing held on 29 May 1991 was adjourned because of the absence of both lay judges.
34. The next hearing was held on 4 September 1991. The court examined the applicant.
35. During the hearing held on 6 November 1991, which was not attended by the defendant A.B., the court took evidence from the defendant W.I. It also instructed the counsel for the intervenor to submit documents concerning the construction of the greenhouse and instructed the expert to update his opinion.
36. On 10 December 1991 the applicant asked the court to take evidence from a witness K.O.
37. The next hearing was held on 8 January 1992.
38. On 4 March 1992 the hearing was adjourned until 29 April 1992 as one of the lay judges was absent due to his illness. The court decided that one of the witnesses, who was not present on that date, should be requested to submit an explanation of his failure to attend. In default thereof he would be fined. It also decided to advise the witness that another absence at the hearing could result in the execution of a warrant authorising police to bring him before the court.
39. The next two hearings were held on 29 April and 17 June 1992.
40. During the hearing held on 7 September 1992 the applicant's son explained that her illness prevented her from attending the hearing and asked the court to adjourn it. After proposing a friendly settlement to the parties the court adjourned the hearing until 2 November 1992.
41. On 2 November 1992 the hearing was adjourned until 14 December 1992 as none of the lay judges was present. On the latter date the absence of one of the lay judges led to a further adjournment until 11 January 1993.
42. During the hearing held on 11 January 1993 the Warsaw District Court decided that the case would be transferred to the Warsaw Regional Court as the applicant had increased the amount of her claim.
43. In a letter of 3 March 1993 the applicant asked the Regional Court to expedite the proceedings pointing to the fact that they had already taken

more than eleven years and that during that time she had retired and her health had deteriorated.

44. During the hearing held on 12 April 1993 both defendants, one of the lawyers and a witness failed to appear.

45. On 21 June 1993 the Regional Court adjourned the hearing as both defendants, the counsel for one of the defendants and the applicant and a witness were not present. The defendant A.B. had been notified about the service of the summons but failed to collect it, whereas the defendant W.I. had been served with the summons. The next hearing was fixed for 7 October 1993. On that date none of the defendants was present although they had been served with the summonses. The counsel for A.B. attended the hearing. The court heard one of the witnesses and adjourned the hearing until 17 January 1994.

46. On 24 November 1993 the applicant asked the court to serve the defendants with the summonses requiring their compulsory presence at the hearing on 17 January 1994, as their persistent failures to attend hearings had contributed to the excessive length of the proceedings.

47. On 17 January 1994 none of the defendants was present although they had been informed about the date of the hearing. The counsel for A.B. attended the hearing. The court further adjourned the case until 12 May 1994.

48. On 12 May 1994 the defendant A.B., his counsel and witnesses were not present. As the case-file did not contain any confirmation of the service of the summonses, the hearing was adjourned until 19 September 1994.

49. In a letter of 30 May 1994 the press spokesman for the Ministry of Justice informed the applicant that, since the case was still pending before the Regional Court, he could not comment on it and was not in a position to respond to her inquiry concerning the date of the next hearing. He also expressed the opinion that the proceedings were approaching their conclusion.

50. On 2 August 1994 the applicant complained to the Warsaw Regional Court about the length of the proceedings and asked it to deliver a speedy decision on her claim.

51. On 19 September 1994 none of the defendants appeared before the court although they had been served with the summonses. The counsel for A.B. attended the hearing. The court further adjourned the case until 30 November 1994 and decided that both defendants would be served with the summonses informing them that should they fail to attend the hearing the court would not take evidence from them.

52. On 30 November 1994 the court heard the parties. The defendant A.B. accepted in part the applicant's claim. The court adjourned the delivery of a judgment until 14 December 1994. On 13 December 1994 the applicant submitted to the court a letter supporting her claim. On 14 December 1994 the defendants filed with the registry of the Warsaw Regional Court a letter

dated 12 December 1994 in which they requested that the investments they had made in the greenhouse be set off against any awards to be made by the court to the applicant. In view of those submissions the court decided to postpone the delivery of a judgment until 28 December 1994. However, no hearing was held on that date as the court decided to re-open the proceedings and scheduled the next hearing for 28 February 1995.

53. In response to the applicant's complaint about the postponement of the delivery of the judgment, the President of the Warsaw Regional Court informed her on 30 January 1995 that it was justified by the fact that the defendants had raised a new claim in their letter of 12 December 1994. He also pointed out that he could not question the decision of an independent court.

54. On 28 February 1995 the court adjourned the hearing until 14 March 1995 since both defendants and the counsel for the defendant A. B. were not present and there was no confirmation of the service of the summonses. On 14 March 1995 the court further adjourned the case until 20 April 1995.

55. On 20 April 1995 the court adjourned the hearing until 18 May 1995 as one of the defendants was absent due to his illness. During the hearing held on 18 May 1995, at which the counsel for the defendant A.B. represented her client in his absence, all the parties declared that they did not intend to submit any further evidence. The court adjourned the delivery of a judgment until 25 May 1995 when it again postponed delivery until 1 June 1995.

56. On 1 June 1995 the Warsaw Regional Court delivered a judgment in which it awarded to the applicant 28,600 new zlotys (PLN) in damages together with costs incurred in the proceedings. The court considered that the evidence before it showed that the defendants had breached the lease agreement by not making investments in the renovation and upkeep of the greenhouse provided for by the terms of the agreement. It also pointed out that one of the defendants accepted in part the applicant's claim during the hearing held on 30 November 1994. On 5 September and 3 November 1995 the defendants A. B. and W. I., respectively, appealed against that judgment.

57. During the hearing held on 25 January 1996 before the Warsaw Regional Court the defendant W.I. asked the court to extend the time-limit for the payment of the court fee for lodging an appeal.

58. On 29 January and 1 February 1996 the Warsaw Regional Court issued decisions concerning the payment of court fees by the defendants.

59. In a letter of 1 March 1996 the applicant complained to the Minister of Justice about the length of the proceedings in her case.

60. On 27 March 1996 the case-file was transmitted to the Warsaw Court of Appeal (*Sąd Apelacyjny*).

61. The hearing held on 30 April 1996 before the Warsaw Court of Appeal was adjourned due to the justified absence of the defendant W.I. and the illness of the counsel for A.B.

62. On 12 June 1996 the Warsaw Court of Appeal quashed the judgment of 1 June 1995 and remitted the case to the Warsaw Regional Court. The appellate court pointed out that the court of first instance had failed to assess properly the evidence before it. In particular, it had not taken into account the evidence taken from several witnesses and experts. Furthermore, the Regional Court had not explained why it had based its award of damages to the applicant on her calculations while ignoring other relevant evidence in the case-file. The appeal court also observed that since it could not on its own consider the matters of fact but was obliged to follow the findings of the first-instance court, the erroneous assessment of the evidence by the Regional Court made it impossible for it to properly examine the reasoning of the court of first instance. Finally, the appellate court instructed the Regional Court to take additional expert evidence.

63. On 20 August 1996 the case-file was returned to the Warsaw Regional Court.

64. On 3 October 1996 the applicant asked the Minister of Justice to expedite the proceedings. In response to her request, the President of the Warsaw Regional Court informed the applicant on 12 November 1996 that a judge rapporteur had been appointed in the case on 4 November 1996. He also advised her that the next hearing would be fixed at the beginning of 1997 as no free sessions were available in the court's calendar before the end of 1996.

65. On 15 November 1996 the Regional Court requested the parties to submit their written pleadings concerning the appeal court's decision of 12 June 1996 together with any requests concerning evidence. On 17 January 1997 the applicant submitted her observations to the registry of the Regional Court and informed it that she had not been notified about the court's request for such observations. It appears that the applicant learned about the request by inspecting the case-file in the registry.

66. On 3 March 1997 the applicant lodged a request for exemption from the court fees.

67. On 15 May 1997 the Warsaw Regional Court held a hearing. On that occasion the applicant increased her claim to PLN 39,208. In addition, the defendant W.I. declared that he contested the applicant's claims, whereas A.B. requested the court to adjourn the hearing since his counsel was absent. The court fixed a time-limit until 25 July 1997 for the submission by the counsel for A.B. of pleadings concerning the decision of the Warsaw Court of Appeal of 12 June 1996 and written submissions made by the applicant on 15 January and 15 May 1997.

68. On 30 July 1997 the applicant requested the court that the time-limit of 25 July 1997 be considered as final since any extensions would provide the defendants with opportunities to further delay the proceedings. She also asked the court to deliver a partial judgment in relation to her claim concerning the coal as she considered that it was ready for decision.

69. On 16 September and 30 October 1997 the court again requested the counsel for A.B. to submit her observations. On 30 October 1997 the applicant complained to the court about the failure of the counsel for A.B. to submit written observations and asked it to expedite the proceedings. On 15 December 1997 the counsel for A.B. submitted her observations to the Regional Court. On 9 January 1998 the applicant filed her response to those observations. On 23 January 1998 the applicant again lodged a request for a partial judgment.

70. The next hearing was held on 11 May 1998. The counsel for the intervenor was not present because of her illness. The court dismissed the applicant's request for a partial judgment on her claim concerning the coal and the adjournment of the examination of other claims. During the hearing the applicant submitted her written observations on the state of the greenhouse at the beginning of the lease. The hearing was adjourned at the request of the applicant and the intervenor. The date of the next hearing was fixed for 27 October 1998 as no hearing room was available before that date.

71. On 27 October 1998 none of the defendants appeared before the court. The applicant submitted her written observations on an expert opinion prepared by the court expert S.W. The counsel for the defendants asked the court to adjourn the hearing so that further evidence could be taken from the parties.

72. On 24 March 1999 the court fixed the next hearing for 6 June 1999. On 25 March 1999 the court transmitted the case-file to a court expert. On 28 April 1999 the court expert requested the court that he be exempted from preparing an opinion as he was not qualified to do it. On 5 May 1999 the court transmitted the case-file to another expert.

73. In a letter of 21 May 1999 the Ministry of Justice informed the applicant that it had inspected the progress in the court proceedings concerning her case. It showed that the proceedings should be expedited. The Ministry therefore requested the President of the Warsaw Court of Appeal to supervise the course of the proceedings. The Ministry also expressed an opinion that this would help to avoid in the future any unreasonable length of proceedings.

74. On 12 July 1999 the court expert returned the case-file to the Warsaw Regional Court.

75. During the hearing held on 22 October 1999 the defendants requested the court to take evidence from witnesses and to allow them to submit a written calculation of expenses incurred by them in 1979. The applicant asked the court to reject this request pointing out that it would result in a further delay in the proceedings. The court rejected the defendants' request to take evidence from witnesses and granted them a time-limit for the submission of a written calculation of their expenses.

76. Subsequently, the Warsaw Regional Court fixed delivery of a judgment for 30 December 1999. However, on that date it postponed delivery until 13 January 2000.

77. On 13 January 2000 the Warsaw Regional Court delivered a judgment in which it, *inter alia*, awarded to the applicant PLN 28,000. The defendants appealed against that judgment to the Warsaw Court of Appeal.

78. On 20 March 2000 the applicant submitted to the Warsaw Court of Appeal her written observations in reply to the defendants' pleadings filed with their appeal.

79. On 25 May 2000 the defendants were exempted from the court fees for lodging their appeal. On 10 July 2000 the Warsaw Regional Court transmitted the case-file to the Warsaw Court of Appeal.

80. The proceedings are still pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

81. The applicant asserted that the civil proceedings in her case were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which in so far as relevant provides:

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

82. The Government contended that the facts of the case disclosed no breach of that provision.

A. Period to be taken into consideration

83. The Court notes that the period to be taken into consideration began not on 4 March 1982, when the applicant initiated the proceedings, but on 1 May 1993, when Poland's declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect. Furthermore, it observes that the proceedings in the applicant's case are still pending. Accordingly, the proceedings have lasted so far over eighteen years and eight months, out of which seven years, six months and twenty-one days are taken into consideration by the Court (see paragraphs 8 and 80 above).

84. In order to determine the reasonableness of the length of time in question the Court will have regard to the state of the case on 1 May 1993 (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, 15.10.99, § 59).

B. Reasonableness of the length of the proceedings

85. The Court, with reference to its settled case-law on this matter, will assess the reasonableness of the length of the impugned proceedings in the light of the particular circumstances of the case having regard to its complexity, to the conduct of the applicant and to that of the authorities dealing with the case (see, among other authorities, the *Mavronichis v. Cyprus* judgment of 24 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 956, § 38).

1. Complexity of the case

86. The applicant submitted that the case was not very complex. She averred that most of the changes in the amount of her claim, which eventually led to the transfer of the case to the Warsaw Regional Court, resulted from the high rate of inflation prevailing in Poland. She also considered that the fact that approximately seventeen persons were involved in the proceedings did not explain their overall length.

87. The Government contended that the case involved both factual and legal complexity. In particular, they pointed out the following factors which in their view contributed to the complexity: difficulties in collecting evidence on account of the lapse of time since the facts contested by the parties had taken place, the number of participants involved in the proceedings, necessity to take expert evidence, frequent changes in the amounts of the claim and the court experts' fees caused by inflation, an appeal against the first-instance court's judgment and the appellate court's decision to quash the judgment and remit it to the trial court. The Government also referred to "a number of other reasons".

88. The Court firstly observes that the Government argued that the complexity of the case resulted in part from the fact that the courts experienced difficulties in collecting evidence because of the lapse of time since the facts contested by the parties had taken place. This argument attempts to justify the length of the proceedings by their complexity caused by the length of the proceedings and as such does not convince the Court. It further considers that also the remaining grounds invoked by the Government in support of their submission that the case was complex cannot justify the length of the proceedings.

As the length of the proceedings cannot be explained in terms of the complexity of the issues involved, the Court will examine it in the light of

the conduct of the applicant and of the national authorities (see paragraph 85 above).

2. Conduct of the applicant

89. The applicant submitted that her conduct during the proceedings did not contribute to the delay. She denied the Government's claim that on numerous occasions she had failed to attend hearings. The applicant averred that she and her son, who acted as an intervenor in the proceedings, had failed to attend only a small number of hearings and that their absence on those few occasions had always resulted from either an illness or other serious reasons. They had always advised the courts in good time about their inability to attend the hearings.

90. The Government contended that the behaviour of the applicant contributed to the delay as on numerous occasions she had failed to attend hearings and had asked for adjournments. In particular, the Government submitted that after 30 April 1993 the applicant had failed to attend eleven hearings, which resulted in thirteen months of delay.

91. The Court notes that there is disagreement about whether in fact the applicant failed to attend eleven hearings after 30 April 1993. Nevertheless, the Court considers that, having regard to the state of the case on 1 May 1993 and the length of the proceedings since that date, even such a failure on the part of the applicant would not explain the overall delay in deciding her case (see paragraphs 83 and 84 above). Furthermore, the Court sees no other reasons for which the conduct of the applicant could be blamed for the length of the proceedings.

3. Conduct of the national authorities

92. The applicant claimed that the national authorities were responsible for the unreasonable length of the proceedings. In this connection, she submitted that the courts allowed the defendants to delay the proceedings, appointed incompetent experts, mailed summonses to incorrect addresses and examined many times the same witnesses and court experts. In addition, she pointed out that the fact that at least eight judges presided over the case contributed to the delay.

93. The Government asserted that the conduct of the national authorities did not contribute to the delay. They contended that domestic courts showed diligence in the conduct of the proceedings. In particular, the courts adjourned several hearings at the request of the parties and followed the principles of Polish law allowing the parties to take an active approach in the course of the proceedings.

94. The Court notes that the civil action initiated by the applicant on 4 March 1982 has still not been the subject of a final judgment (see paragraphs 8 and 80 above). It observes that after 30 April 1993 the

defendants on numerous occasions failed to attend hearings. However, the trial court reacted to that behaviour only on 19 September 1994, when it warned the defendants that should they fail to attend the next hearing fixed for 30 November 1994, it would not take evidence from them (see paragraphs 45-51 above). Furthermore, the first hearing before the Warsaw Regional Court after the case had been remitted to it on 12 June 1996 took place on 15 May 1997. According to the information obtained by the applicant from the President of the Regional Court, that delay had been caused in part by the workload of the court (see paragraphs 62-67 above).

The Court also notes that the trial court waited one year and one month for the submission by the counsel for one of the defendants of written observations requested by it on 15 November 1996. The observations were filed with the court on 15 December 1997, after extensions of a time-limit granted despite the applicant's objection to their allowing the defendants to further delay the proceedings (see paragraphs 65-69 above). Moreover, a hearing held on 11 May 1998 was adjourned until 27 October 1998 as no hearing room was available before that date (see paragraph 70 above). The Court is of the view that these delays must be attributed to the national authorities.

4. Conclusion

95. The Court considers that a period of over eighteen years and eight months, out of which seven years, six months and twenty-one days are taken into consideration by the Court, without any final decision having been reached yet, exceeds a reasonable time.

There has therefore been a violation of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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. Pecuniary damage

97. The applicant asked the Court to award her PLN 84,718. She submitted that this amount comprised PLN 28,000 awarded to her by the Warsaw Regional Court on 13 January 2000 together with interest. In addition, she claimed PLN 20,000, which in her opinion represented the sum that should have been awarded to her by the Warsaw Regional Court to take into account a decrease in the real value of her claim caused by

inflation. The applicant averred that the Court should award to her the above amounts because in view of the way in which the work of domestic courts was organised she might not live long enough to receive them.

98. The Government submitted that the applicant's claim was exorbitant.

99. The Court notes that in her claim submitted under the head of pecuniary damage the applicant requested it to award to her the amounts she seeks in the domestic civil court proceedings. However, it is not for the Court to decide her case pending before domestic courts. The Court accordingly dismisses the claim.

B. Non-pecuniary damage

100. The applicant also sought an award of PLN 50,000 to compensate her for the ill-health and moral damage suffered as a result of protracted proceedings. In particular, she referred to numerous illnesses and problems in her family life, which in her view resulted from the delay in deciding her case.

101. The Government submitted that the applicant's claim was exorbitant.

102. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant PLN 25,000.

C. Costs and expenses

103. The applicant also claimed PLN 52,000 by way of legal costs and expenses incurred in the domestic court proceedings. In particular, she submitted specifications of fees charged by court experts and counsel.

104. The Government submitted that the applicant's claim was exorbitant.

105. The Court recalls that to be entitled to an award of costs and expenses under Article 41, the injured party must have incurred them in order to seek, through the domestic legal order, prevention or redress of a violation, to have the same established by the Court or to obtain reparation therefor (see the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, p. 14, § 36). However, it considers that the applicant has not shown that the legal costs and expenses claimed by her were incurred in order to prompt domestic courts to comply with the requirements of Article 6 § 1 (*cf.* the above *Zimmermann and Steiner* judgment, pp. 14-15, § 37). The Court accordingly dismisses the claim.

D. Default interest

106. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 30% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 25,000 (twenty-five thousand) Polish zlotys in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 30% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President