



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

SECOND SECTION

**CASE OF MAĆZYŃSKI v. POLAND**

*(Application no. 43779/98)*

JUDGMENT

STRASBOURG

15 January 2002

**FINAL**

*15/04/2002*

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



**In the case of *Maćzyński v. Poland*,**

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr J. MAKARCZYK,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 21 June and 11 December 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case originated in an application (no. 43779/98) 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, Zygmunt Maćzyński (“the applicant”), on 6 April 1998.

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

3. The applicant alleged that the civil proceedings in his 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. On 1 November 2001 the Court effected a change in the composition of its Sections and the present case was re-allocated to the new Second Section.

6. In the meantime, by a decision of 21 June 2001, the Chamber of the former Fourth Section had declared the application admissible.

## THE FACTS

7. The applicant was born in 1921 and lives in Michałowice, Poland.

8. In 1976 the applicant's former wife lodged with the Pruszków District Court (*Sąd Rejonowy*) an action against the applicant in which she sought the distribution of the common property of their marriage.

9. Up to 30 April 1993, the Pruszków District Court held eighty-four hearings in the case.

10. Between 9 July 1993 and 7 April 1995 six hearings took place. During that period the parties filed pleadings with the trial court on eighteen occasions.

11. During the hearing held on 17 May 1995 the applicant made threats against the plaintiff's counsel.

12. Between 11 June and 7 September 1995 the District Court held four hearings and received seven memorials from the parties. One of the memorials submitted by the applicant included a list of forty-one questions to the plaintiff.

13. On 14 September 1995 the applicant made a request to the Ombudsman that the case be transferred to another court. He also threatened that he would blow himself up with a grenade in the courtroom if his case were not decided in 1996.

14. On 12 March 1996 the President of the Pruszków District Court decided that, in view of the threats made by the applicant against the court and the plaintiff's counsel, police officers should be present in the courtroom during the hearing scheduled for the next day. However, on 13 March 1996 the hearing was postponed because counsel for the plaintiff failed to attend.

15. According to the Government, the hearing fixed for 24 April 1996 was cancelled because on 27 March 1996 the applicant had challenged the presiding judge. The challenge was subsequently dismissed. The applicant submitted that the hearing had been adjourned because the plaintiff's counsel had been absent.

16. On 2 July 1996 the applicant challenged all the judges of the Pruszków District Court, but subsequently he withdrew the challenge.

17. On 8 January 1997 the applicant asked the Vice-President of the Warsaw Regional Court (*Sąd Wojewódzki*) to transfer the case-file to the Pruszków District Court immediately. He pointed out that the Regional Court had decided his procedural request on 25 November 1996 and the case-file had been lying since then in the archives of the Regional Court. As a result, no judicial activity had taken place during that period. On 22 January 1997 the applicant visited the registry of the Warsaw Regional Court and repeated his complaint of 8 January 1997.

18. On 6 February 1997 the Vice-President of the Warsaw Regional Court informed the applicant that his complaint was well-founded and

apologised to him for the delay in returning the case-file to the Pruszków District Court. He also advised the applicant that on 5 February 1997 the case-file had been transmitted to the District Court and a copy of the Regional Court's decision of 25 November 1996 had been sent to him.

19. On 28 May 1997 the applicant filed with the trial court three requests concerning an expert witness and the disputed property.

20. Hearings took place on 28 May, 30 June and 6 August 1997. During the first of these hearings, the plaintiff replied to forty-one questions submitted by the applicant in 1995.

21. On 12 August 1997 the applicant filed with the trial court written pleadings concerning the distribution of the property.

22. On 22 August 1997 the Pruszków District Court ordered the applicant to allow the plaintiff access to a water supply on the contested property. The applicant appealed.

23. On 31 October 1997 the applicant requested the Pruszków District Court to transmit the case-file to the Warsaw Regional Court so that it could decide his appeal against a procedural decision taken by the District Court. On 12 November 1997 the applicant renewed his request in a letter addressed to the Vice-President of the Warsaw Regional Court. He also threatened that he would commit suicide in the courtroom and set fire to the court building if the proceedings in his case were not concluded speedily.

24. Between 16 July 1998 and 26 May 1999 the District Court held four hearings and issued one decision. During that time, the court received written pleadings on six occasions.

25. On 3 April 2000 the applicant filed with the District Court written pleadings setting out his terms for a settlement of the case.

26. On 27 November 2000 the applicant challenged all the judges of the Pruszków District Court.

27. The proceedings are apparently still pending.

## THE LAW

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

28. The applicant asserted that the civil proceedings in his 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...”

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

### **A. Period to be taken into consideration**

30. The Court notes that the period to be taken into consideration began not in 1976, when the proceedings were initiated, 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. The proceedings are still pending. So far they have lasted about twenty-five years, out of which eight years and over seven months fall within the Court's jurisdiction *ratione temporis*.

31. In order to determine the reasonableness of the length of time in question, the Court may have regard to the state of the proceedings in 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**

32. The applicant contended that the length of civil proceedings in his case was in breach of Article 6 § 1. The Government disputed this view.

33. The parties discussed various criteria which the Court has applied in such cases, such as the exact period to be taken into consideration, the degree of complexity of the case and the parties' conduct. The Court notes, however, that its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance those circumstances call for a global assessment. The Court does not deem it necessary to consider the question in such detail (see, among other authorities, the *Obermeier v. Austria* judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72; the *Ferraro v. Italy* judgment of 19 February 1991, Series A no. 197, pp. 9-10, § 17).

34. The Court considers that the subject matter of the case involved a degree of complexity. However, it notes that twenty-five years after the litigation started, the case is still pending. Such an inordinate delay in deciding the case cannot be justified by its complexity or the sometimes menacing and unacceptable attitude displayed by the applicant. It follows that, having regard to the state of the case on 1 May 1993, the Court cannot regard as "reasonable" the subsequent lapse of time of eight years and over seven months.

There has therefore been a violation of Article 6 § 1 of the Convention in the present case.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant sought an award of PLN 500,000 to compensate him for the losses he suffered because he had to repay a bank loan which he had taken out with his wife.

37. The Government did not comment on the applicant’s claim.

38. The Court’s conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage claimed was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making any award to him under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

### B. Non-pecuniary damage

39. The applicant also sought an award of PLN 100,000 by way of compensation for an alleged loss of health caused by the unreasonable delay in deciding his case.

40. The Government did not comment on the applicant’s claim.

41. The Court is of the view that the applicant has failed to demonstrate that his health was affected by the delay in the proceedings. However, it considers that the applicant suffered some non-pecuniary damage on account of the protracted length of the proceedings in his case, which is not sufficiently compensated by the finding of a violation of the Convention. In the circumstances of the instant case and making its assessment on an equitable basis, the Court awards the applicant EUR 5,500 plus any value-added tax that may be chargeable.

### C. Costs and expenses

42. The applicant also claimed PLN 84,086 by way of legal costs and expenses incurred in the domestic proceedings.

43. Again, the Government did not comment on the applicant’s claim.

44. The Court recalls that, in order to be entitled to such an award under Article 41, the costs and expenses must have been incurred in seeking to

prevent or redress the violation found by the Court. However, it considers that the applicant has not shown that this was the case here (see, *mutatis mutandis*, *Malinowska v. Poland*, no. 35843/97, § 105, 14 December 2000, unpublished). The Court accordingly dismisses the claim.

#### **D. Default interest**

45. 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**

1. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* by six votes to one
  - (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, EUR 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, together with any value-added tax that may be chargeable;
  - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 January 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Loucaides is annexed to this judgment.

J.-P.C.  
S.D.

## DISSENTING OPINION OF JUDGE LOUCAIDES

I am unable to agree with the majority that there has been a violation of Article 6 § 1 in this case on account of the length of the proceedings.

It is true that according to the case-law of the Court, the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. But there is no absolute or objective limit to the length of time that can be taken. The question whether there has been a delay contrary to the requirements of Article 6 § 1 cannot be decided *in abstracto* with reference only to the total length of the proceedings. Whether there has been an unreasonable delay is a matter that must be assessed in the light of the particular facts of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among other authorities, the Vernillo v. France judgment of 20 February 1991, Series A no. 198, p. 12, § 30).

A breach of Article 6 § 1 can only be found where it is established that there have been delays attributable to the State regardless of the total length of proceedings. Thus, in the case of Ciricosta and Viola v. Italy (judgment of 4 December 1995, Series A no. 337-A), in which the period in issue was more than 15 years for civil proceedings that were still pending at the time of the judgment, the Court held:

“even though a period of more than fifteen years for civil proceedings that are still pending may, on the face of it, seem unreasonable, the conduct of the applicants ... leads the Court to declare Mr Ciricosta's and Mrs Viola's complaint unfounded”. (p. 11, § 32)

In the same case the Court stated the following:

“The Court reiterates in the first place that only delays attributable to the State may justify a finding of failure to comply with the ‘reasonable time’ requirement”. (p. 10, § 28)

The majority admit that the subject matter of the case under consideration involved a degree of complexity. However, the judgment does not proceed to deal with any other specific aspect of the case. Indeed, the majority state: “In this instance [the particular] circumstances of the case call for a global assessment. The Court does not deem it necessary to consider the question in such detail (see, among other authorities, the Obermeier v. Austria judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72; the Ferraro v. Italy judgment of 19 February 1991, Series A no. 197, pp. 9-10, § 17)” (see paragraph 33 of the judgment)<sup>1</sup>. The majority concluded as follows:

---

<sup>1</sup> However, in both cases cited it appears from the facts that there were periods of inactivity attributable to the Government (see, for example, the Ferraro judgment, § 17).

“However, it notes that twenty-five years after the litigation started, the case is still pending. Such an inordinate delay in deciding the case cannot be justified by its complexity or the sometimes menacing and unacceptable attitude displayed by the applicant. It follows that, having regard to the state of the case on 1 May 1993, the Court cannot regard as ‘reasonable’ the subsequent lapse of time of eight years and over seven months.

There has therefore been a violation of Article 6 § 1 of the Convention in the present case”. (§ 34)

The majority do not point out any particular period of time which may be regarded as an unreasonable delay attributable to the State during the period under consideration, i.e. 8 years and over 7 months since 1 May 1993. And indeed, I myself have been unable to identify any such delay. I believe that the conduct of the relevant authorities was not in this case primarily responsible for the length of the proceedings. It was the conduct of the applicant throughout the proceedings which contributed decisively to their length. A mere perusal of the facts of the case as they appear in the judgment supports this conclusion.

But there is another flaw in the approach of the majority which has affected the result. In the reasoning of their conclusion the majority note that “twenty-five years after the litigation started, the case is still pending” and describe this situation as “an inordinate delay”. It is therefore obvious that the majority have given more weight than they were entitled to give to the length of the proceedings which took place before 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), i.e. seventeen years.

It is true that the Court was entitled to have regard to the *state* of the proceedings in the case on 1 May 1993, but I believe that this does not mean that the Court can take into account the length of the proceedings before that date in a way that will reflect negatively on the conduct of the respondent State. Nor can the Court include that period as part of the overall length in respect of which it is expected to pass judgment under Article 6 of the Convention. The contrary view would lead, directly or indirectly, to an impermissible extension of the Court’s jurisdiction *ratione temporis*.

In my opinion, the majority did in fact include the period before 1 May 1993 as part of the overall length taken into account in finding that there had been an “inordinate delay in deciding the case”, without examining that period on the basis of the criteria relevant to the question of reasonableness of the length of proceedings – an examination which was in any event precluded on account of the Court’s lack of jurisdiction *ratione temporis*.

For all the above reasons, I find that there has been no violation of Article 6 of the Convention in this case.