CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF KORAL v. POLAND

(Application no. 52518/99)

JUDGMENT

STRASBOURG

5 November 2002

FINAL

21/05/2003

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 Koral v. Poland,

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

Sir Nicolas Bratza, *President*,
Mrs E. Palm,
Mrs V. Strážnická,
Mr M. Fischbach,
Mr J. Casadevall,
Mr R. Maruste,
Mr L. Garlicki, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having deliberated in private on 15 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 52518/99) 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 a Polish national, Zygmunt Koral ("the applicant"), on 11 May 1999.

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

3. The applicant alleged that his case had not been heard within a reasonable time in breach of Article 6 § 1 of the Convention.

4. 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 12 December 2000 the Fourth Section decided to communicate the complaint about the length of the proceedings to the Government. On the same date the remainder of the application was declared inadmissible. The application was granted priority pursuant to Rule 41 of the Rules of Court.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1).This case was assigned to the newly composed Third Section .

6. By a decision of 10 January 2002 the Court declared the application admissible.

7. Subsequently, the case was transferred to the Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1918 and lives in Kraków, Poland.

9. On 28 May 1971 the Chrzanów District Court (*Sąd Powiatowy*) gave a decision (*postanowienie*) declaring that, under the will of M.H. (the applicant's mother-in-law), her estate be inherited by her three daughters Z.Z., H.Ś.-Z. and M.K. (the applicant's wife) and by her granddaughter (M.S.).

On 30 June 1977 the Kraków-Śródmieście District Court (*Sąd Rejonowy*) declared that the applicant had inherited the estate of his late wife.

1. Facts prior to 1 May 1993

10. On 15 October 1977 Z.Z., H.Ś.-Z. and M.S. ("the petitioners") filed with the Kraków District Court (*Sąd Rejonowy*) an application for distribution of the estate of M.H. The estate consisted of three plots of land and a house and had so far been held in individual shares. The applicant was a party to these proceedings as a successor to his wife.

11. On 30 May 1979 the Kraków District Court gave a decision (*postanowienie*) distributing the estate. Upon the applicant's appeal, on 16 November 1979 the Kraków Regional Court (*Sąd Wojewódzki*) partly amended the first-instance decision.

12. On 3 October 1980, on an extraordinary appeal lodged by the Minister of Justice, the Supreme Court (*Sąd Najwyższy*) set aside both above decisions and remitted the case to the court of first instance.

13. On 29 January 1985 the District Court gave a decision. On 11 September 1985 the Regional Court quashed that decision and remitted the case. On 16 June 1986 the District Court gave a subsequent decision. On 18 September 1987 the Regional Court set it aside.

14. On 26 October 1988 the District Court gave a decision. On 3 February 1989 the Regional Court dismissed the applicant's further appeal against that decision.

15. On 14 September 1989, on an extraordinary appeal lodged by the Minister of Justice, the Supreme Court partly quashed the decisions of both lower courts, and remitted the case to the District Court. On 14 September 1989 the decision of the District Court of 26 October 1988, in respect of the manner in which the estate was distributed, became final. The subsequent proceedings concerned solely the amount of payments for the respective shares in the estate.

16. Prior to 1 May 1993 there were 38 hearings held in the case before the District Court, the Regional Court and the Supreme Court. During that period the courts dealing with the case heard evidence from at least fifteen

witnesses and five experts. There were eleven expert reports submitted to the courts and five inspections of the site took place. On five occasions the applicant challenged the judges dealing with the case which resulted in a delay of approximately ten months. The proceedings were stayed on two occasions (on 23 May 1980 by the Supreme Court and on 13 July 1982 by the District Court) which resulted in a delay of approximately eleven months.

2. *Facts after 30 April 1993*

17. On 1 July 1993 the District Court ordered that a fresh report from expert R.L be obtained. On 15 September 1993 the applicant challenged that expert and requested the court to obtain an additional report from expert A.S.

18. On 11 October 1993 expert R.L. submitted his report to the District Court. There were certain difficulties in the preparation of that report which were caused by the parties. On 6 November 1993 the applicant again requested the court to obtain a report from another expert.

19. On 10 November 1993 the applicant challenged the presiding judge. On 18 November 1993 the District Court dismissed that challenge as unfounded.

20. On 30 November 1993 the applicant requested the court to issue an interim order and to enter a warning in the land register about the proceedings related to the estate.

21. On 1 December 1993 the petitioners submitted their observations on the expert report. On 10 January 1994 the applicant submitted his observations. He also requested the court to obtain a report from another expert. On 11 January 1994 the applicant filed further pleadings with the court.

22. On 17 January 1994 the District Court held a hearing. It dismissed the applicant's request of 30 November 1993. On 18 February 1994 the applicant asked the court to call a witness and submitted his further observations on the expert report.

23. On 10 March 1994 expert R.L. submitted to the court yet another report. On 21 April 1994 the petitioners submitted their observations on that report. In principle, they agreed with its conclusions but requested that a further supplementary report be prepared.

24. On 4 July 1994 the applicant requested the court to issue an interim order. The District Court set a hearing for 15 July 1994. It was adjourned to 9 September 1994 at the petitioners' request. On 22 August 1994 the applicant challenged the presiding judge.

25. On 9 September 1994 the court held a hearing and heard the expert. On 21 September 1994 the court dismissed the applicant's request of 4 July 1994. On 30 September 1994 the expert submitted his reply to the applicant's observations on his report.

26. On 19 October 1994 the applicant appealed against the decision of 21 September 1994. On 5 December 1994 the applicant rectified procedural defects in his appeal and paid the fee due for lodging the appeal. On 22 December 1994 the Kraków Regional Court dismissed the applicant's appeal. On 2 January 1995 the case file was received at the registry of the District Court.

27. On 28 April 1995 the applicant filed with the court his reply to the submissions of the expert of 30 September 1994. On 5 May 1995 the court held a hearing and heard evidence from two witnesses and the expert R.L.

28. On 16 August 1995 the applicant asked the court to obtain a report from another expert. On 18 September 1995 the applicant asked the court to issue an interim order to secure his claims in the proceedings. On 22 September 1995 the court held a hearing. It refused the applicant's request for an interim order and invited the parties to settle the case. On the same date, on the joint request of the parties, the court stayed the proceedings.

29. On 22 November 1995 the applicant asked the court that the proceedings be resumed as he disagreed with the amount of payment proposed to him by other petitioners (within the framework of the settlement). On 6 December 1995 the court refused.

30. On 17 January 1996 the applicant again asked the court – this time successfully – to resume the proceedings. On 16 February 1996 the court held a hearing. It heard evidence from two witnesses and imposed a fine on another witness who did not appear at the hearing. A hearing fixed for 22 March 1996 was adjourned at the petitioners' request.

31. At the hearing held on 23 April 1996 the court heard evidence from one witness. The court gave all petitioners a time-limit of fourteen days for the submission of their proposals concerning re-evaluation of items included in the expert report.

32. On 6 May 1996 the applicant asked the court to obtain a report from another expert. The court granted that request and attempted to find an expert. Two experts refused to prepare a report. On some later unspecified date expert J.W. agreed to prepare a report.

33. On 11 February 1997 expert J.W. submitted his report to the court. On 14 April 1997 the petitioners contested the report.

34. On 29 April 1997 the court ordered expert J.W. to prepare a supplementary report, taking into account the market value of the estate. On 19 May 1997 the expert replied that he was not able to do so. On the same day the court ordered yet another expert, W.O., to prepare a report in order to determine the market value of the estate (taking as the starting point 26 October 1988, the date on which the court had decided to grant the estate to S.Z.).

35. On 12 June 1997 the court, in the presence of the expert and the petitioners, held a view of the estate. On 27 June 1997 the expert submitted

his report. On 25 July 1997 the petitioners requested the court to reschedule a hearing fixed for 11 September 1997. On 29 July 1997 the court refused that request.

36. On 8 August 1997 the applicant submitted his observations on the expert report, in which he objected to its findings. On 27 August 1997 the applicant requested the court to summon expert J.W. in order to explain the differences in the value of the estate between the two expert reports.

37. On 11 September 1997 the court held a hearing. The court closed the examination of the case. On 12 September 1997 the applicant requested the court to obtain yet another expert report.

38. On 25 September 1997 the District Court gave a decision and ordered S.Z. to pay off the applicant's share in the estate. It dismissed the applicant's claim for the maintenance expenses and for the house to be divided because these issues had already been determined in the decision of 26 October 1988 (*res iudicata*). The court based its decision exclusively on the report of 27 June 1997 prepared by expert W.O., which assessed the market value of the estate. It regarded the reports prepared by experts A.S. and J.W. outdated. In respect of the report prepared by expert R.L. the court considered that it should not have been taken into account.

39. On 16 October 1997 the applicant appealed and asked the court to exempt him from a fee due for lodging an appeal. On 22 and 23 October the petitioners filed their appeals. On 25 November 1997 the District Court decided to exempt the applicant from the appeal fee.

40. On 17 December 1997 the case file was transferred to the Regional Court. On 18 December 1997 the applicant challenged the impartiality of two judges of that court. On 19 February 1998 the Regional Court held a hearing. It was adjourned until 3 April 1998 due to the absence of a witness. On the latter date the court heard evidence from a witness and expert W.O. The court closed examination of the case and adjourned delivery of a decision until 8 April 1998. On 7 April 1998 the court dismissed the applicant's challenge of 18 December 1997. On 8 April 1998 the Regional Court dismissed both appeals.

41. On 9 April 1998 the applicant filed a notice of cassation appeal. On 19 May 1998 he requested the Regional Court to be exempted from a court fee due for lodging a cassation appeal. On 1 June 1998 the applicant lodged his cassation appeal. On 5 June 1998 the Regional Court refused the applicant's request for exemption from the fee. On 10 June 1998 the applicant paid the fee himself.

42. On 9 December 1998 the Supreme Court heard, and dismissed the applicant's cassation appeal.

THE LAW

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

43. The applicant complained that the length of the proceedings in his case exceeded a "reasonable time" within the meaning of Article 6 § 1 of the Convention which reads, in so far as relevant,:

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

44. The Government contested this view.

A. Period to be taken into consideration.

45. The Court first observes that the proceedings began on 15 October 1977 (see paragraph 10 above). However, the period to be taken into consideration began on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. The proceedings were terminated on 9 December 1998 by the Supreme Court (see paragraph 42 above). Thus, they lasted twenty-one years, one month and twenty five days, of which the period of five years, seven months and eight days falls within the Court's jurisdiction *ratione temporis*.

46. The Court recalls that in order to assess the reasonableness of the length of time in question regard must be had to the stage reached in the proceedings on 1 May 1993 (see among other authorities, *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999, unreported).

B. Reasonableness of the length of the proceedings

1. The applicant's submissions

47. The applicant submitted that the proceedings in his case lasted more than 21 years. He further maintained that the overall length of the proceedings could not be justified by the significant complexity of the case.

The applicant also alleged that there had been considerable periods of inactivity on the part of the courts from 1980 to 1983 and from 1989 to 1997. He maintained that the courts had been responsible for delays caused by the slow preparation of the expert reports.

48. Lastly, he stressed that the excessive length of the proceedings had put a severe strain on him, in view of his great age.

2. *The Government's submissions*

49. The Government argued that the case had been particularly complex on account of the fact that the determination of the value of the estate had been very difficult. In that connection, the courts had needed to obtain a significant number of expert reports.

50. They further submitted that the courts had shown due diligence in dealing with the case.

51. Lastly, the Government stressed that the applicant had substantially contributed to the prolongation of the proceedings. In particular, he had on six occasions requested the District Court to obtain a report from an expert.

3. *The Court's assessment*

52. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; and *Humen v. Poland* cited above, § 60).

53. As regards the complexity of the case, the Court notes that following the remittal of the case by the Supreme Court on 14 September 1989 the District Court obtained reports from four different experts. Nevertheless, only the last expert report, submitted on 27 June 1997, was considered by the court in its decision of 25 September 1997, whereas the others were considered by the court as not being material (see paragraph 38 above).

In view of the foregoing and of the fact that the need to obtain several expert reports resulted from the court's inconsistent decisions made in respect of admitting evidence as well as its failure to supervise the experts' work properly, the Court considers that the Government's contention that the case was very complex is not persuasive. Moreover, the assessment of the market value of the estate and subsequent determination of the amount of payments to be made to the heirs for their respective shares in the estate cannot be regarded as a particularly complex issue.

54. The Government argued that the applicant contributed substantially to the prolongation of the proceedings (see paragraph 51 above). The Court considers that it is true that the applicant twice challenged the presiding judge. However, it does not appear that those events significantly prolonged the trial.

55. As to the conduct of the authorities, the Court observes that, following the decision of the District Court of 25 September 1997, there were no delays in the proceedings before the Regional Court and the

Supreme Court, which could be attributable to the authorities (see paragraphs 38-42 above).

Yet the Court, considers that the authorities were responsible for delays in the process of obtaining expert evidence (see paragraphs 17, 18, 23, 32-34 above). In that respect, the Court notes that it took some 8 years (including some 4 years and 4 months after 1 May 1993) for the District Court to obtain such evidence in order to determine the issue of the payments for shares in the estate.

56. Lastly, having regard to what was at stake for the applicant in the proceedings, the Court notes that the applicant's great age and overall length of the proceedings is a factor militating in favour of the expeditious determination of the case.

57. Assessing all relevant facts as a whole and having regard to the state of the case on 1 May 1993, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant sought an award of 250,000 Polish zlotys (approx. 62500 euros) by way of compensation for damage which he suffered as a result of the length of the proceedings and for an alleged loss of health caused by the unreasonable delay in deciding his case.

61. The Government submitted that the applicant's claim was exorbitant and asked the Court to rule that the finding of a violation would constitute sufficient just satisfaction.

62. As regards the alleged pecuniary damage, 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 award to him under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no 30210/96,§164, ECHR 2000-XI).

63. The Court considers that the applicant certainly suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by finding a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a total sum of 5,000 euros ("EUR") under that head.

B. Costs and expenses

64. The applicant did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

C. Default interest

65. 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 (see *Cristine Goodwin v. the United Kingdom* [GC], application no 28957/95, § 124, to be published in ECHR 2002-).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 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, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage to be converted into the national 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE — Registrar

Nicolas BRATZA — President