



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

FOURTH SECTION

**CASE OF PIECHOTA v. POLAND**

*(Application no. 40330/98)*

JUDGMENT

STRASBOURG

5 November 2002

**FINAL**

***05/02/2003***

*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 Piechota v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

Mrs V. STRÁŽNICKÁ,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 8 October 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 40330/98) 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, Mr Romuald Piechota ("the applicant"), on 15 October 1997.

2. The Polish Government ("the Government") were represented by their Agent, Mr Krzysztof Drzewicki.

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.

6. By a decision of 3 May 2001 the Court declared the application partly admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section. On 19 April 2002 the case was assigned to Section Four (Rule 52 § 1).

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

9. The applicant was born in 1934 and lives in Katowice, Poland.

### A. The property

10. On 13 November 1981 the Katowice District Court (*Sąd Rejonowy*) declared the applicant the sole heir of his mother's estate. Consequently, he became a co-owner of an apartment building situated in Katowice. The building was owned in equal parts by the applicant and his brother, Mr M. P., who had inherited his share of the property from their father in 1973. It consisted of two separate apartments, a staircase and several rooms situated in the basement and in the attic.

### B. The proceedings before 1 May 1993

11. On 10 January 1983 Mr M.P. instituted non-contentious proceedings (*postępowanie nieprocesowe*) before the Katowice District Court in which he sought a ruling on how the property should be used by the co-owners.

12. The Government averred that the proceedings were stayed between 1 March and 11 November 1983 because the parties had failed to make a downpayment to cover expert fees. The applicant claimed that he had made the required payment on time.

13. The Government submitted that before 1 May 1993 the trial court had held fifteen hearings and that the applicant had failed to attend six of them. The applicant contested that submission.

14. Before 1 May 1993 the presiding judge on two occasions inspected the property.

### C. The proceedings after 30 April 1993

15. Between 17 August and 7 December 1993 the trial court held five hearings. The Government submitted that the applicant had failed to attend three of them and that one of these absences had not been justified. The applicant claimed that he had attended all five hearings.

16. During the hearing held on 11 January 1994 the trial court dismissed two requests concerning evidence submitted by the applicant. It also suggested a friendly settlement to the parties, but to no avail.

17. On 25 January 1994 the Katowice District Court decided that the applicant should have exclusive access to a room situated in the attic and that he should share a garden with his brother. Both parties appealed to the Katowice Regional Court (*Sąd Wojewódzki*) against that decision.

18. On 25 October 1994 the Regional Court held the first hearing, which was adjourned because of the applicant's absence. The applicant submitted that he had not attended the hearing because he had not been served with the summons.

*1. The remittal of the case to the first-instance court*

19. On 24 November 1994 the Katowice Regional Court quashed the judgment of the District Court except for a part concerning the division of the garden and remitted the case to the first-instance court. The Regional Court considered that the decision to award the applicant exclusive access to a room situated in the attic could lead to further conflicts between the parties. It also pointed out that on several occasions the applicant had changed his claims and that the District Court had failed to take into account certain proposals submitted by the plaintiff in the first-instance proceedings.

20. On 28 January 1995 Mr M. P. died and was replaced as a party to the proceedings by his widow, Mrs K. P. and his son, Mr L. P. During the hearing held on 14 March 1995 the District Court stayed the proceedings to allow them to obtain a declaration of heirs. The proceedings were resumed on 21 August 1995.

21. The next hearing was held on 19 October 1995. On 13 November 1995 the judge visited the property.

22. The Government submitted that during the hearing held on 19 March 1996 the applicant had asked the court to take evidence from two expert witnesses. The applicant disputed that submission.

23. Between 1 August and 28 November 1996 the District Court held four hearings. The Government submitted that the applicant had failed to attend the first of these hearings. The applicant disagreed with that submission.

24. During the hearing held on 4 March 1997 the court allowed the applicant's request and appointed an expert witness. On 23 December 1997 the witness submitted his report. The Government submitted that a delay in taking evidence from the expert witness resulted from the trial court's "unsuccessful attempts to find an expert who was able to prepare the opinion".

25. On 10 March and 7 May 1998 the District Court held hearings.

26. On 27 May 1998 the presiding judge and the parties visited the property. The applicant refused to sign the record of the survey because he considered that it was not objective.

27. The next hearing was held on 16 June 1998. The applicant was absent for health reasons.

28. On 19 August 1998 the applicant challenged the presiding judge. On 24 August 1998 the challenge was dismissed by the District Court but the applicant appealed to the Katowice Regional Court.

29. On 25 August 1998 the District Court held a hearing. The Government submitted that it had been adjourned since the applicant had failed to attend it and his challenge to the judge had not been decided. The applicant claimed that he had not received the summons for that hearing.

30. On 14 October 1998 the Katowice Regional Court dismissed as manifestly ill-founded the applicant's appeal against the District Court's decision of 24 August 1998.

31. On 16 December 1998 the applicant filed with the Katowice District Court a written statement in which he complained about a delay in the proceedings and submitted several requests concerning evidence.

32. On 17 December 1998 and 25 February 1999 the District Court held hearings.

33. On 5 March 1999 the President of the Katowice Regional Court responded to the applicant's complaint of 5 January 1999 about the excessive length of the proceedings in his case. He pointed out that the case involved both legal and factual complexity and that both parties had changed their claims on many occasions. Furthermore, he noted that fifteen hearings had taken place since 24 November 1994. The inspection of the property on 27 May 1998 had been necessary since a new judge had taken over the case and in order to establish the actual condition of the house. The President concluded that in those circumstances the court could not be blamed for the lack of activity in the case.

### *2. The judgment of the first-instance court*

34. On 11 March 1999 the Katowice District Court decided that rooms situated in the attic should be used exclusively by the plaintiffs, whereas a room in the basement should be shared with the applicant. Both parties appealed to the Katowice Regional Court.

35. On 16 June 1999 the Katowice Regional Court dismissed the applicant's appeal against the District Court's decision rejecting as lodged out of time his request to supplement the judgment (*wniosek o uzupełnienie wyroku*).

### *3. The appellate proceedings*

36. On 7 July 1999 the Katowice Regional Court dismissed the applicant's appeal. The court pointed out that the applicant contributed to a delay in the proceedings by submitting and changing numerous requests and appeals and refusing to settle the case.

37. On 6 September 1999 the applicant filed a cassation appeal but it was rejected by the Katowice Regional Court on 29 September 1999.

38. On 11 October 1999 the applicant lodged with the Supreme Court an appeal against the Regional Court's decision rejecting his cassation appeal. On 2 February 2000 the Supreme Court dismissed his appeal.

## THE LAW

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

39. 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...”

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

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

41. The Court notes that the period to be taken into consideration began not on 10 January 1983, 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.

It follows that the proceedings, which ended on 2 February 2000, have lasted more than seventeen years, out of which six years and nine months are taken into consideration by the Court (see paragraphs 11 and 38 above).

42. 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, *Malinowska v. Poland*, no. 35843/97, § 84, 14 December 2000, unreported).

#### B. Reasonableness of the length of the proceedings

43. The applicant contended that the length of the civil proceedings in his case was in breach of Article 6 § 1; the Government, on the other hand, disputed this view.

44. 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 so that the Court does not consider it necessary to consider these questions in 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; *Olstowski v. Poland*,

no. 34052/96, § 86, 15 November 2001, unreported; *Parciński v. Poland*, no. 36250/97, § 49, 18 December 2001, unreported).

45. The Court considers that the case was not particularly complex. Although the applicant contributed to the length of the proceedings by filing and changing numerous requests, his conduct cannot explain an inordinate delay in deciding his case. It follows that, having regard to the state of the case on 1 May 1993, the Court cannot regard as “reasonable” in the instant case a lapse of time of six years and nine months.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant asked the Court to award him 84,407.50 Polish zlotys (PLN) for pecuniary damage and PLN 500,000 under the head of non-pecuniary damage.

48. The Government submitted that the applicant’s claim was excessive.

49. The Court considers, on the evidence before it, that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the unreasonable length of the proceedings in his case. 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).

50. On the other hand, the Court is of the view that the applicant can reasonably be considered to have suffered frustration on account of the protracted nature of the proceedings. Accordingly, the Court considers that, in the circumstances of this particular case and deciding on an equitable basis, the applicant should be awarded the sum of EUR 6,500 under the head of non-pecuniary damage.

### B. Costs and expenses

51. The applicant also claimed PLN 85,000 by way of legal costs and expenses incurred in the domestic court proceedings. In particular, he submitted specifications of fees charged by court experts and counsel.

52. The Government submitted that the applicant’s claim was excessive.

53. 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. However, it considers that the applicant has not shown that the legal costs and expenses claimed by him were incurred in order to prompt domestic courts to comply with the requirements of Article 6 § 1. The Court accordingly dismisses the claim (see, *mutatis mutandis*, the Malinowska judgment cited above, § 105).

### C. Default interest

54. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], application no. 28957, § 124, to be published in ECHR 2002-).

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* unanimously 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, EUR 6,500 (six 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;
  - (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points 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 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President