



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

FOURTH SECTION

CASE OF SOBIERAJSKA-NIERZWICKA v. POLAND

(Application no. 49349/99)

JUDGMENT

STRASBOURG

27 May 2003

FINAL

27/08/2003

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 Sobierajska-Nierzwicka 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 6 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 49349/99) 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, Ms Halina Sobierajska-Nierzwicka ("the applicant"), on 3 January 1999.

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 her 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.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 15 October 2002 the Court declared the application admissible.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1929 and lives in Gdańsk.

8. In June 1993 the counsel for H.K. (“the petitioner”) filed with the Tomaszów Mazowiecki District Court (“the court”) a petition to dissolve joint ownership of a certain property, belonging to H.K. and K.K. who owned four fifths of it, and to M.S., who owned one fifth. On 6 July 1993 the court returned the statement of the claim as H.K. had failed to pay the court fees. On 8 July 1993 she requested the court to exempt her from the court fees. On 14 July 1993 the court allowed her request.

9. The first hearing in the case was held on 10 September 1993. At the hearing H.K. requested the court to summon W.S., the applicant and J.S., who were successors of the late M.S. as parties to the case.

10. On 14 December 1993 and on 31 January 1994 the applicant filed her pleadings with the court.

11. On 20 December 1993 the court stayed the proceedings on the ground of the petitioner’s failure to indicate service addresses of certain of the parties. On 2 February 1994 the petitioner requested the court to resume the proceedings. On 4 February 1994 the court allowed this motion.

12. On 22 March 1994 the second hearing was held before the court. The applicant was absent. The hearing was adjourned until 26 April 1994.

13. At the hearing held on 26 April 1994 the court heard the petitioner and the applicant. The parties were given a fourteen-day time-limit to state their position with respect to H.K.’s petition to have the property divided, and also to submit their comments on the division proposal. The hearing was adjourned until 24 June 1994.

14. On 6 May 1994 the court received the applicant’s letter expressing her position as regards the petition.

15. On 24 June 1994 the court held another hearing. The applicant was absent. The court heard K.K. and granted the parties seven days to submit motions for any evidence to be taken. The hearing was adjourned until 6 September 1994.

16. On 17 August and 6 September 1994 the applicant filed her further pleadings with the court.

17. The applicant did not attend the hearing held on 6 September 1994. The court informed the parties about her pleadings. In view of their large volume and failure to produce copies for the other parties, the court ordered the applicant to provide it with the necessary number of copies and granted the other parties seven days to comment on her pleadings. The hearing was adjourned until 3 November 1994, but the court decided to inspect the property on 14 October 1994.

18. On 15 September 1994 J.S. informed the court that he wished to be paid off by H.K. and K.K. and that he gave up his claim for the physical division of the property.

19. On 27 September 1994 the petitioner's counsel replied to the applicant's pleadings, submitting that in almost all of her pleadings she had insulted the court and the parties. Moreover, she had alleged that all the witnesses were lying, even though no witnesses had been heard so far. On the whole, she had made no valuable contribution to the proceedings and had not adduced any evidence. Subsequently, K.K.'s counsel commented in a similar way on the applicant's conduct.

20. On 30 September and 11 October 1994 the applicant filed further pleadings with the court.

21. On 14 October 1994 the court inspected the property in issue and heard two witnesses.

22. On 21 October 1994 the applicant filed further pleadings with the court.

23. At the hearing held on 3 November 1994 the applicant was again absent. The court heard evidence from three witnesses and adjourned the hearing until 21 December 1994.

24. On 10 November 1994 the petitioner's counsel requested the court to interview a further six witnesses. On 28 November 1994 the applicant filed further pleadings with the court.

25. On 30 November 1994 the court heard evidence from one witness.

26. The applicant was present at the next hearing in the instant case, which was held on 20 December 1994. At her request the court swore in two witnesses before it heard them. The hearing was adjourned until 27 January 1995.

27. On 5 January 1995 the applicant filed another set of pleadings with the court.

28. On 27 January 1995 the court held the next hearing. The applicant was absent. The court heard one witness and adjourned the hearing until 3 March 1995.

29. On 20 February 1995 the applicant proposed in her pleadings that the property be divided into two equal parts, one for her and her father W.S. and the second for the petitioner H.K. and the party K.K. On 1 March 1995 the petitioner H.K. filed with the court her proposal as to the physical division of the property.

30. The next hearing was held on 3 March 1995. The court granted the parties seven days within which to comment on both proposals and adjourned the hearing until 4 April 1995.

31. On 15 March 1995 the petitioner submitted to the court that the applicant, together with her father, owned 2/15 of the property in question and the division proposed by her would be unjustified. On 23, 25 and 28 March 1995 the applicant filed her further pleadings with the court.

32. On 4 April 1995 the court held the next hearing.

33. In view of the applicant's absence, and that of her father W.S. and J.S., the court decided to ask the Gdańsk District Court and the Gdynia District Court for their assistance in interviewing the witnesses. It also decided to appoint the expert J.G. to prepare an opinion as to whether it was possible to divide the property between the petitioner and other parties, including the one-fifth share belonging to W.S., the applicant and J.S. On 18 April 1995 the court prepared a list of questions to be asked by the Gdańsk and Gdynia courts. On 11 May 1995 the court requested the Gdynia District Court to question J.S. and enclosed the list of questions to be put to him. On the same day the court requested the Gdynia District Court to hear the applicant and her father W.S.

34. On 22 May 1995 the court sent the case-file to the expert J.G. and ordered him to prepare the opinion within one month. The expert submitted his report on 23 June 1995. He stated that it was possible to divide the property between the petitioner and K.K., but that physical separation of one-fifth of the property was not possible since there would be no access to the parts thus formed.

35. On 29 May 1995 the Gdańsk District Court fixed the date for hearing the applicant and her father, as decided on 11 May 1995 (see above), for 26 June 1995. On that date the Gdańsk District Court heard the applicant, but in view of the absence of her father who was also to be interviewed, and at the applicant's request, the court decided to interview him at home. On 7 September 1995 the Gdańsk Court interviewed the applicant's father W.S. at his home. The court ascertained that W.S. was unable to answer any questions and did not remember any facts relevant to the case. The Gdańsk District Court then decided to return the file to the Tomaszów Mazowiecki District Court.

36. On 12 June 1995 the Gdynia District Court held a hearing to which J. S. was to be summoned to give evidence. J.S. failed to comply with the summons. The Gdynia District Court adjourned the hearing until 13 July 1995.

37. On 5 July 1995 the applicant filed pleadings with the court, maintaining her proposal of dividing the property into two equal parts, as she had submitted on 20 February 1995.

38. On 10 July 1995 the petitioner's counsel agreed in general with the expert's conclusions that it was possible to divide the property in question, but proposed a different manner of division and therefore requested the court to summon the expert to the hearing.

39. At the hearing held before the Gdynia District Court on 13 July 1995 J.S. was present but the petitioner H.K. and the party K.K. were absent. The District Court therefore adjourned the hearing until 18 September 1995. On 18 September 1995 none of the parties appeared before the District Court

despite the fact that they had been properly summoned. The hearing was adjourned until 30 October 1995.

40. On 20 October 1995 the Tomaszów Mazowiecki District Court held a hearing. The court considered that in view of the forthcoming hearing in Gdynia the hearing should be adjourned until 5 December 1995. The court also decided to summon the expert J.G. to that hearing. On 23 October 1995 the court enquired of the Gdynia District Court about the outcome of the assistance proceedings before the latter court.

41. Subsequently, the hearing fixed for 30 October 1995, which was to be held before the Gdynia District Court, was rescheduled for 29 November 1995 since the presiding judge had fallen ill. On 29 November 1995 the parties failed to attend the session of the Gdynia District Court. The session was adjourned until 7 February 1996.

42. In a letter of 1 December 1995 the expert J.G. informed the Tomaszów Mazowiecki District Court that he was unable to attend the hearing on 5 December 1995 for professional reasons. The next hearing was held before the court on 5 December 1995. During that hearing the petitioner H.K. lodged a motion claiming acquisitive prescription of one-fifth of the property in question. The court adjourned the hearing.

43. On 8 December 1995 the Tomaszów Mazowiecki District Court again enquired of the Gdynia District Court about the execution of its request to hear evidence from J.S. On 14 December 1995 the latter court replied that, owing to the absence of the parties, the session at which they were to be interviewed had been adjourned until 7 February 1996.

44. On 8 January 1996 the Tomaszów Mazowiecki District Court decided to return the petitioner's motion for acquisitive prescription since the formal shortcomings had not been rectified within the time allowed.

45. On 26 January 1996 the court held the next hearing. The court heard the expert J.G. and allowed him to prepare a supplementary opinion, as the petitioner H.K. had proposed to divide the property in a different way. The court adjourned the hearing until 19 March 1996. During that time the expert was to inspect the property and prepare an opinion about the possibility of the division of the property in the manner proposed by the petitioner. On 31 January 1996 the case-file was sent to the expert.

46. On 7 February 1996 the persons summoned to attend the session to be held before the Gdynia District Court failed to do so. The Gdynia District Court subsequently decided to return the request to the Tomaszów Mazowiecki District Court, having been unable to execute it fully.

47. On 26 February 1996 the expert J.S. submitted his opinion to the court.

48. On the same day the applicant filed with the court her reply to the petitioner's motion for acquisitive prescription. She requested the court to dismiss the application. On 8 March 1996 the applicant submitted to the court her position regarding the expert's supplementary opinion.

49. On 21 March 1996 the petitioner requested the court not to arrange any hearings between 8 and 22 May 1996 since she had to take care of her sick mother. Thus, the hearing fixed for 20 May 1996 was rescheduled. On 11 April 1996 the petitioner H.K. submitted to the court her comments on the expert's opinion.

50. On 12 April 1996 the next hearing was held. Having regard to the death of the applicant's father W.S., the court stayed the proceedings under Article 174 § 1 (a) of the Code of Civil Procedure. On 23 May 1996 the applicant enquired of the court about the course of the proceedings. On 10 June 1996 the applicant provided the court with her father's will, declaring her to be his only successor.

51. On 19 September 1996 the applicant requested the Court to resume the proceedings and to order the Gdańsk District Court to hear her.

52. On 23 September 1996 the court resumed the proceedings under Article 180 § 1 (1) of the Code of Civil Procedure. However, on 7 October 1996 the applicant informed the court that the proceedings to establish W.S.'s heirs were still pending before the Gdańsk District Court. In view of this, on 7 October 1996 the court again stayed the proceedings under Article 177 § 1 (1) CCP.

53. On 30 December 1996 the applicant requested the court to resume the proceedings in the instant case. She submitted a decision of the Gdańsk District Court in the inheritance case. She also requested the court to secure her claim since she was afraid that the party K.K. would sell his share in the property. On the same day the court ordered the applicant to produce the factual grounds for her request. On 30 December 1996 the court resumed the proceedings. The applicant complied with the court's order on 15 January 1997 and on 3 February 1997 the court dismissed the applicant's request to have her claim secured by way of an interlocutory decision. On 12 February 1997 the applicant appealed against that decision. On 21 February 1997 the applicant requested the court for leave to pay the court fee for the appeal in two instalments. The court regarded that as a request to be exempted from the court fee and ordered her to provide details regarding her financial situation. On 28 February 1997 the court received the information ordered and on the same day it exempted her from the fee.

54. On 11 March 1997 the court held the next hearing. The applicant was not present at that hearing, but submitted a medical certificate concerning her poor state of health, which made it impossible for her to participate in any further hearings. As the witnesses summoned were absent, the court adjourned the hearing until 29 April 1997.

55. On 17 March 1997 the case-file was transferred to the Piotrków Trybunalski Regional Court, following the applicant's appeal of 12 February 1997. On 26 March 1997 the Piotrków Trybunalski Regional Court dismissed her appeal. On 3 April 1997 the case-file was received at the Tomaszów Mazowiecki District Court.

56. In a letter of 21 April 1997 the Gdynia District Court requested the Tomaszów Mazowiecki District Court to provide it with the current address of J.S. since he had moved. On 5 May 1997 the Tomaszów Mazowiecki District Court complied with that request.

57. In a letter of 24 April 1997 the expert J.G. informed the court that he was unable to attend the hearing to be held on 29 April 1997.

58. The court held the next hearing on 29 April 1997. The petitioner maintained her motion for acquisitive prescription, the party K.K. joined that motion and the court heard four witnesses and adjourned the hearing until 15 July 1997.

59. On 8 May 1997 the Gdynia District Court transmitted the request of the Tomaszów Mazowiecki District Court to hear J.S. to the Kwidzyń District Court, which was competent *ratione loci*.

60. In a letter of 28 May 1997 the applicant asked the court whether it was necessary for her to be present at the hearing on 15 July 1997. On 2 June 1997 the court replied that her presence was indeed necessary since it intended to question the parties to the proceedings. On 2 July 1997 the applicant applied to the Tomaszów Mazowiecki District Court to request the Gdańsk District Court to interview her, invoking her bad health.

61. On 15 July 1997 the Tomaszów Mazowiecki District Court held the next hearing. The court heard evidence from the expert J.G. As the Kwidzyń District Court had not interviewed J.S., the court decided not to give a preliminary ruling and adjourned the hearing until 9 September 1997. In the meantime the court was to ask the Kwidzyń Court about progress in carrying out the request to interview J.S.

62. On 24 July 1997 the applicant again requested the Tomaszów Mazowiecki District Court that she be questioned before the Gdansk Court.

63. On 9 September 1997 another hearing was held before the Tomaszów Mazowiecki District Court. The court decided to give a preliminary ruling in the near future, concerning the claim for acquisitive prescription.

64. On 15 September 1997 the Kwidzyń District Court held a session at which J.S. was present. However, in view of the absence of all the other parties to the proceedings, the court decided to adjourn the session until 29 September 1997 and on 19 September 1997 it informed the Tomaszów Mazowiecki District Court accordingly. Having regard thereto, the Tomaszów Mazowiecki District Court decided on 23 September 1997 to reopen the hearing and to adjourn it until 29 October 1997.

65. On 29 September 1997 J.S. failed to attend the session to be held before the Kwidzyn District Court. The court, accordingly, had to adjourn the hearing again until 16 October 1997. On 16 October 1997 the Kwidzyń District Court finally interviewed J.S.

66. The next hearing before the Tomaszów Mazowiecki District Court was held on 28 October 1997. The petitioner H.K. and the party K.K.

upheld their motion for acquisitive prescription. The court decided to adjourn the hearing and to give a preliminary ruling on 7 November 1997.

67. On 7 November 1997 the court gave a preliminary ruling declaring that the petitioner H.K. and the party K.K. had acquired one-fifth of the property in question by way of acquisitive prescription.

68. On 27 November 1997 the applicant asked the court whether the proceedings had come to an end. On the same day the court informed the applicant about the ruling it had given on 7 November 1997. On 9 December 1997 the applicant requested the court to provide her with written reasons for that ruling and to restore the time-limit for lodging an appeal against it. On 11 December 1997 the court restored the time-limit and on 10 April 1998 the court received the applicant's appeal against the preliminary ruling of 7 November 1997.

69. On 17 April 1998 the court ordered the applicant to provide it with a statement concerning her financial situation. The applicant provided the relevant information on 24 April 1998 and on 27 April 1998 the court exempted the applicant from the fee for her appeal.

70. On 13 May 1998 the case-file was received by the Piotrków Trybunalski Regional Court, which was to examine the applicant's appeal against the preliminary ruling on the merits of the case. A hearing was held on 28 May 1998. On 4 June 1998 the Regional Court quashed the preliminary ruling given on 7 November 1997 by the Tomaszów Mazowiecki District Court and remitted this part of the case for re-examination. On 7 July 1998 the case-file was served on the Tomaszów Mazowiecki District Court.

71. On 26 October 1998 the applicant informed the court that she would not be present at the hearing scheduled for 30 October 1998 owing to her bad health. On that day the court adjourned the hearing until 4 December 1998 as no party attended it.

72. On 25 November 1998 the applicant informed the court that she would not attend the hearing fixed for 4 December 1998 due to her ill health.

73. On 4 December 1998 the court held the next hearing. The court granted the petitioner and the party K.K. fourteen days within which to produce the building permit concerning the property. On 9 December 1998 the applicant requested the Court to provide her with a copy of that decision.

74. On 31 December 1998 the petitioner informed the Tomaszów Mazowiecki District Court that the building permit could probably be found in the Piotrków Trybunalski Division of the State Archives and requested the court to contact that institution in order to obtain it. On 19 January 1999 the Tomaszów Mazowiecki District Court requested the State Archives to provide it with the copy of the permit. On 25 January 1999 the State Archives informed the court that it did not have the copy of the document requested.

75. The next hearing was held before the Tomaszów Mazowiecki District Court on 9 February 1999. One of the parties informed the court that the building permit could probably be found in the bank, which had granted the loan for the construction of the house. The court decided to grant the party fourteen days to produce the permit. On 16 February 1999 the court requested the Gdańsk District Court to hear the applicant. On 1 March 1999 the Gdańsk District Court fixed the hearing for 27 April 1999. On 27 April 1999 the Gdańsk District Court interviewed the applicant as requested.

76. The next hearing before the Tomaszów Mazowiecki District Court was fixed for 3 August 1999. By a letter of 13 July 1999 the applicant informed the court that she would not be present at the hearing for health reasons.

77. At the hearing held on 3 August 1999 the Tomaszów Mazowiecki District Court decided to request the Gdańsk District Court to interview the applicant again since on 27 April 1999 she had been questioned as a witness and not as a party to the proceedings. The hearing was adjourned until 15 September 1999. On 4 August 1999 the Tomaszów Mazowiecki District Court requested the Gdańsk District Court to interview the applicant.

78. The next hearing before the Tomaszów Mazowiecki District Court was held on 15 September 1999. It was adjourned as the parties failed to attend. The court adjourned the hearing until 20 October 1999.

79. The Gdańsk District Court interviewed the applicant on 24 September 1999.

80. On 22 October 1999 the Tomaszów Mazowiecki District Court contacted the Piotrków Trybunalski and the Tomaszów Mazowiecki Divisions of the State Archives requesting them to provide a copy of the building permit. On 2 November 1999 the Tomaszów Mazowiecki Division provided the court with a copy of the building permit.

81. On 4 November 1999 the applicant informed the Tomaszów Mazowiecki District Court that she would not be able, for health reasons, to attend the hearing fixed for 19 November 1999.

82. On 19 November 1999 the court held the next hearing. In the absence of confirmation that counsel for one of the parties had been properly summoned by post the court adjourned the hearing until 10 December 1999.

83. In a letter of 7 December 1999 J.S. and his counsel informed the court that they joined the petition of H.K. and K.K. for acquisitive prescription and would not be present at the next hearing.

84. The next hearing was held on 8 December 1999. No party, except the participant K.K., was present and the court adjourned the hearing until 12 January 2000.

85. On 7 January 2000 the Tomaszów Mazowiecki District Court rescheduled the hearing from 12 to 24 January 2000 for organisational reasons concerning the court.

86. On 24 January 2000 the court held a hearing. The court heard the petitioner H.K. and the party K.K. The part of the hearing regarding the petition for acquisitive prescription was closed and the court decided to give a preliminary ruling on 4 February 2000. However, on 4 February 2000 the Court decided to postpone the ruling until 7 February 2000.

87. On 7 February 2000, following certain information provided by J.S., the Tomaszów Mazowiecki District Court reopened the hearing and adjourned it until 29 February 2000. The court also ordered the applicant to state her position regarding information provided by J.S. On 14 February 2000 the applicant submitted relevant pleadings.

88. At the hearing on 29 February 2000 the parties stated that the applicant's pleadings of 14 February 2000 contained statements insulting to both living and dead members of their families and added nothing relevant to the case. The petitioner and K.K. maintained their application for acquisitive prescription. The court closed the part of the hearing relating to that claim and adjourned the giving of the preliminary ruling until 6 March 2000. On that day the court dismissed the motion for acquisitive prescription. On 9 March 2000 K. K. requested the court to give written grounds for that decision.

89. On 4 April 2000 the applicant filed with the court her pleadings relating to the written reasons for the decision of 6 March 2000.

90. The next hearing was held before the Tomaszów Mazowiecki District Court on 5 July 2000. The court adjourned the hearing until 3 August 2000. However, as the petitioner's counsel was on holiday, the hearing was subsequently rescheduled for 12 September 2000. On 5 July 2000 the petitioner H.K. requested the court to secure her claim and on 8 August 2000 she supplemented her request with factual circumstances justifying it. On 13 July 2000 the applicant informed the court that she would not be able to participate in the hearing fixed for 12 September 2000, owing to ill health.

91. On 1 September 2000 the applicant applied to have her share of the property (two-thirds of one-fifth) entered in the land and mortgage register and to be paid off by H.K. and K.K. At the next hearing held on 12 September 2000 the petitioner withdrew her motion for securing the claim and maintained her application for physical division of the property. K.K. joined the latter motion. The court adjourned the hearing until 5 October 2000.

92. On 22 September 2000 the applicant informed the court that for health reasons she would not be able to participate in the hearing fixed for 5 October 2000.

93. During the hearing held on 5 October 2000 H.K. and K.K. informed the court about the possibility of a settlement in respect of movable parts of the property. The court adjourned the hearing until 9 November 2000 and ordered the applicant to adduce any evidence she possessed, since in her earlier pleading she had maintained that she had had some additional evidence at her disposal. The applicant replied on 25 October 2000.

94. The hearing fixed for 9 November 2000 was adjourned at the request of the petitioner's counsel, invoking the petitioner's ill health. On 27 December 2000 the Tomaszów Mazowiecki District Court fixed the next hearing for 8 January 2001.

95. On 4 January 2001 the applicant informed the court that she would not be able to participate in that hearing for reasons of ill health and advanced age. At the hearing held on 8 January 2001 the petitioner H.K. and the party informed the court about the friendly settlement regarding movable parts of the property, which had been concluded. Therefore the petitioner's claim became limited to her application for physical division of the real estate. The parties accepted the proposal of the division prepared by the expert. The Tomaszów Mazowiecki District Court decided to appoint an expert in evaluation of real property.

96. Subsequently, the expert submitted her report and was questioned by the court on 2 July 2001.

97. On 4 January 2002 the Gdańsk District Court again interviewed the applicant, at the request of the Tomaszów Mazowiecki Court.

98. The next hearing was held on 18 December 2002.

99. The proceedings are pending.

THE LAW

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

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

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

A. Period to be taken into consideration

101. The proceedings concerned in the present claim were instituted in 1993. The applicant, who is a co-owner of real estate constituting part of the property at issue, was joined as a party to the proceedings on 10 September

1993. The proceedings are still pending before the first-instance court. The period to be examined has therefore lasted for about nine years and seven months.

B. Arguments before the Court

1. The Government's submissions.

102. The Government contended that the case was exceptionally complex as there were initially five parties to the proceedings, which had inevitably brought about their prolongation. The fact that the applicant had a hostile attitude towards other parties had also complicated the proceedings to a certain degree. Thus, the task of the court to divide the property and at the same time to satisfy the parties' reasonable claims appeared to be very difficult. Furthermore, the court had had to conduct time-consuming evidence proceedings. It had interviewed fifteen witnesses and one expert, who on two occasions, in June 1995 and in February 1996, had inspected the property to be divided.

103. The Government further submitted that in June 1995 and in February 1996 the court had had to stay the proceedings, following the death of the applicant's father W.S., awaiting the outcome of inheritance proceedings. The trial had been resumed on 30 December 1996. On the whole, that had prolonged the proceedings for seven months. Certain delays had been caused by the fact that the court had had to obtain the copy of the building permit issued approximately thirty years before.

104. The Government maintained that the applicant had contributed to the prolongation of the proceedings to some extent. They acknowledged that the fact that she had failed to attend almost any hearings due to the bad state of health and advanced age might not be interpreted as proof of her bad faith. However, it had made it necessary for the court to adjourn many hearings and to grant other parties time-limits for commenting on her written pleadings. Secondly, the applicant had showed a hostile attitude towards other parties as well as towards the court, which was reflected by other parties' comments on the contents of her pleadings. They had considered they did not bring anything relevant to the case, but contained merely insults. Moreover, the applicant, in her proposal of 20 February 1995 to divide the property in question into two equal parts, one for her and for her father and one for another parties, showed her vexatious attitude, as she owned only 2/15 of the property, which had never been disputed.

105. The Government claimed that the judicial authorities had shown particular diligence in dealing with the case and could not be held responsible for the length of the proceedings. Firstly, the hearings had been scheduled at very regular intervals, there had been no periods of complete inactivity on the part of the court, and the hearings had hardly ever been

adjourned *sine die*. Secondly, the court on many occasions had requested other courts to interview the participants to the proceedings in the place of their residence. Moreover, the court had shown its diligence by giving preliminary ruling on the matters, which were ready for determination.

2. The applicant's submissions

106. As to the complexity of the case, the applicant argued that the mere fact that there had been five parties to the proceedings did not suffice to draw the conclusion that the case was complex. She also stressed that only one expert had been appointed to give an opinion on issues relevant to the case.

107. The applicant argued that her absence at certain hearings could not be seriously considered as contributing to the length of the proceedings, as it had been caused by her age and bad health. She disagreed that she had a hostile attitude towards other parties. In her opinion, she showed a “positive attitude” towards the proceedings.

108. The applicant criticised the conduct of the court, which in her opinion had contributed to the length of the proceedings. She emphasised that on 21 November 2000 the President of the Piotrków Trybunalski Regional Court, following her complaint about the length of proceedings, had examined the facts and considered the complaint justified, having found that no adequate efforts had been made by the court to issue a judgment on the merits.

C. Reasonableness of the length of the proceedings

109. 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 and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Zwierzynski v. Poland*, no. 34049/96, 19 June 2001, § 41; *Zawadzki v. Poland*, no. 34158/96, 20 December 2001, § 69).

110. In the Court's view the subject of the litigation, namely, the physical division of real property, was not particularly complex as the property consisted of just one house and some movables. It would appear, however, that the court did not take steps to ensure the efficient collection of information necessary for giving a judgment on the merits. Therefore, the complexity of the subject-matter of the case cannot alone justify the length of the proceedings.

111. The Court observes that the applicant gave her testimony before the court as required. The Court considers that while the applicant was rather verbose in her pleadings, there is nothing more to suggest that she seriously contributed to delays in the proceedings.

112. The Court accepts the Government's argument that there were no substantial delays or complete procedural inactivity on the part of the courts. It is also true that, on the whole, the hearings were scheduled at regular intervals. However, the Government have not come up with an adequate explanation as to the overall length of the proceedings. On the whole, the court did not take efficient steps to discipline the parties to the proceedings and to ensure the efficient conduct of proceedings within a reasonable time. It failed to take measures in order to ensure the attendance of the witnesses, and to ensure that certain authorities submitted their comments and documents speedily. The length of the proceedings had already been considered by the relevant domestic authorities and the case was taken under the administrative supervision of the President of the Piotrków Trybunalski Regional Court.

113. Having regard to all the circumstances of the case and to the fact that the proceedings are still pending before the first-instance court, the Court considers that the total duration of the proceedings has been excessive. The Court concludes therefore that the case of the applicant was not heard within a "reasonable time". Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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

115. The applicant claimed EUR 11,400 for pecuniary damage arising out of the length of proceedings. She also claimed EUR 150,000 for non-pecuniary damage sustained as a result of the protracted proceedings.

116. The Government submitted that the applicant's claims were excessive. They emphasised that no causal link had been shown between the facts of the case and the damage allegedly suffered by the applicant. They argued that the damage should be assessed in the light of the relevant case-law of the Court in its cases against Poland.

117. 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 violation of the Convention in her case. Consequently, there is no justification for making any award to her under that head (see, *mutatis*

mutandis, *Nowicka v. Poland*, no. 30218/96, § 82, 3 December 2002, unreported).

118. However, the Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings to which she was a party. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 6,700 as compensation for non-pecuniary damage.

B. Costs and expenses

119. The applicant also claimed EUR 143 by way of legal costs and expenses she had incurred in the domestic proceedings. She also claimed EUR 162 for costs incurred in proceedings before the Court.

120. The Government requested the Court to award legal costs and expenses insofar as they had been actually and necessarily incurred and reasoning as to quantum. They relied in this respect on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 35, § 36).

121. 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, the 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 her 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*, *Malinowska v. Poland*, no. 35843/97, § 105, 14 December 2000).

122. As to the costs incurred in connection with the proceedings before the Court, the Court notes that the applicant quantified her claim and, accordingly, awards her EUR 162.

C. Default interest

123. 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 *Christine Goodwin v. the United Kingdom*, No. 28957/95, 3 July 2002, § 124).

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, the following amounts:
 - (i) EUR 6,700 (six thousand seven hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 162 (one hundred sixty-two euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President