CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF HENRYKA MALINOWSKA v. POLAND

(Application no. 76446/01)

JUDGMENT

STRASBOURG

14 October 2003

FINAL

14/01/2004

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 Henryka Malinowska v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 76446/01) 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, Mrs Henryka Malinowska ("the applicant"), on 24 January 2001.

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

3. On 17 December 2002 the Fourth Section declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. It also gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

4. The applicant was born in 1914 and lives in Warsaw, Poland.

A. Facts prior to 1 May 1993

5. In November and December 1989 the applicant's neighbours were renovating an attic over her flat and partly removed the roof. As a result, the applicant's flat was flooded and her belongings were damaged.

6. On 3 June 1992 the applicant lodged with the Warsaw District Court (*Sąd Rejonowy w Warszawie*) a civil action against her neighbours. She

requested PLN 4,000 in compensation for damage to her property. On 16 October 1992 the case was transferred to the Warsaw Regional Court (*Sąd Wojewódzki w Warszawie*).

7. On 17 February 1993 the trial court held its first hearing at which it heard both parties.

B. Facts after 30 April 1993

8. In December 1993 the applicant challenged a judge. On 4 January 1994 her application was dismissed.

9. In 1994 the trial court held five hearings. The applicant's lawyer twice asked the court not to schedule any hearings during a total period of five weeks because of her holidays.

10. In 1995 six hearings were held. The trial court ordered preparation of an expert opinion and held a view of the property.

11. On 28 December 1995 the Warsaw Regional Court gave judgment. It awarded the applicant PLN 1,500 by way of pecuniary damage and dismissed the remaining part of her action.

12. Both parties lodged appeals.

13. In August 1996 the President of the Warsaw Regional Court informed the applicant that her case-file was lost. Subsequently, the applicant was requested to provide copies of all documents in order to reconstruct it.

14. On 13 November 1996 the Warsaw Court of Appeal (*Sąd Apelacyjny w Warszawie*) held a hearing at which it gave a judgment. It partly quashed the Regional Court's judgment and remitted the case to the court of first-instance.

15. On 24 July 1997 the Warsaw District Court held the first hearing.

16. On 2 October 1997 the court, sitting *in camera*, ordered an expert opinion. Subsequently, the court expert who was ordered to inspect the flat and evaluate the damages informed the court about his difficulties in entering the apartment in question.

17. Between 25 July 1997 and 8 June 1998 no hearings were held.

18. On 9 June 1998 the court held a hearing and decided to set a new deadline for the expert opinion. The applicant informed the court that in 1994 her flat had been sold by the City Council and that the new owner did not agree to the inspection. The hearing was adjourned *sine die*.

19. On 22 October 1998 the trial court held a hearing at which it again decided to send the case-file to the expert and set a one-month deadline for the expert opinion.

20. In November 1998 the applicant challenged a judge. On 19 November 1998 her application was dismissed.

21. In April 1999 the applicant's lawyer asked the court not to schedule any hearings during a three-week period in July because of her holidays.

22. Between 23 October 1998 and 29 January 2001 no hearings were held.

23. In January 2001 the case was taken over by another judge.

24. On 30 January, 10 April and 16 May 2001 the court held hearings.

25. At the hearing held on 16 May 2001 the court again decided to send the case-file to the expert.

26. Between 17 May 2001 and 3 December 2002 no hearings were held.

27. On 4 December 2002 the Warsaw District Court held a hearing and on 18 December 2002 it gave a judgment.

28. On 25 February 2002 the applicant lodged an appeal. It appears that the proceedings are pending before the appellate court.

THE LAW

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

29. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement in Article 6 § 1 of the Convention, which reads as follows:

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

30. The Government contested that argument.

31. The Court notes that the period to be taken into consideration began not on 3 June 1992 when the applicant initiated the proceedings, but on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. The proceedings are still pending (see paragraphs 6 and 28 above).

It follows that the proceedings have lasted so far over eleven years and four months out of which ten years and six months are taken into consideration by the Court.

32. In assessing the reasonableness of time in question the Court will have regard to the state of the case on 1 May 1993.

A. Admissibility

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. The Court will therefore declare the case admissible.

B. Merits

1. The submissions before the Court

34. The Government submitted that the case was complex and noted that the trial court ordered several expert opinions. They argued that the experts on four occasions had not been allowed to inspect the flat because of the lack of help from the applicant.

35. The Government further argued that the applicant significantly contributed to the length of the proceedings because, *inter alia*, she had challenged judges and had requested the court not to schedule hearings during her lawyer's holidays.

36. As regards the conduct of the domestic authorities the Government submitted that they had proceeded with due diligence and contested the assertion that the trial court had lost the case file. They further argued that in the instant case no special diligence was required of the domestic authorities.

37. Finally, the Government were of the opinion that what was at stake for the applicant was of a minor pecuniary nature and had already been satisfied by the trial court.

38. The applicant did not agree with the Government's submission that her case was complex. She submitted that facts of the case were simple and her claim was well-substantiated since after 1995 no new evidence had been adduced.

39. The applicant denied that her conduct during the proceedings contributed to the delay. She argued that on several occasions she had asked presidents of the District and the Regional Courts to intervene in order to speed up the proceedings. In addition, she submitted that two applications for the adjournment of hearings during the summer holidays filed by her counsel did not contribute to the overall length of the proceedings.

40. With regard to the conduct of the domestic authorities the applicant submitted that they were not diligent in examining her case because, *inter alia,* the hearings had been often adjourned *sine die*, there had been two long periods of inactivity and the trial court had lost the case-file.

41. Finally, as regards what was at stake for her, the applicant submitted that the domestic litigation concerned loss of all her belongings which were

of substantial financial and emotional value and for which she was not in any way compensated.

2. The Court's assessment

42. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

43. The Court considers that the case involved a certain degree of complexity as the facts of the case had to be assessed against the expert evidence. However, the overall length of the proceedings cannot be explained by their complexity.

44. The Court is not persuaded by the Government's argument that the applicant significantly contributed to the delay and finds that her conduct cannot justify the overall length of the proceedings.

45. As regards the conduct of the domestic authorities, the Court notes three significant periods of inactivity on the part of the trial court which lasted in total over four years and eight months (see paragraphs 17, 22 and 26 above). Although during that time the domestic court took some action, such as ordering expert opinions, this does not explain such long delays between the hearings. It is true that the domestic court had difficulty in obtaining a satisfactory expert opinion, nevertheless the expert's work in the context of judicial proceedings is supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, the Proszak v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 44).

46. Furthermore, the Court is of the view that what was at stake for the applicant in the domestic litigation was of significant importance for her.

47. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of over ten years and six months, within its competence *ratione temporis*, exceeds a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 4,000 Polish zlotys (PLN) in respect of pecuniary and PLN 20,000 in respect of non-pecuniary damage.

50. The Government did not comment on the applicant's claims.

51. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

52. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, it awards the applicant 4,800 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed PLN 585 for the costs and expenses incurred before the Court.

54. Again, the Government did not comment on the applicant's claim.

55. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant duly documented her expenses on correspondence and translation in connection with the procedure before it. Accordingly, regard being had to the information in its possession and the above criteria, the Court awards the applicant EUR 140.

C. Default interest

56. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the proceedings admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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 to be converted into Polish zlotys at the rate applicable at the date of settlement:
      (i) EUR 4,800 (four thousand eight hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 140 (one hundred forty 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President