CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF JASTRZĘBSKA v. POLAND

(Application no. 72048/01)

JUDGMENT

STRASBOURG

28 September 2004

FINAL

28/12/2004

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 Jastrzębska v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,
Having deliberated in private on 7 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 72048/01) 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 Hanna Jastrzębska ("the applicant"), on 24 March 2000.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Mr. J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. On 12 March 2002 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1952 and lives in Góra Kalwaria, Poland.

5. On 16 December 1987 the applicant filed with the Warsaw District Court (*Sąd Rejonowy*) an application for division of matrimonial property.

6. On 12 March 1993 the Warsaw District Court gave a partial decision (*postanowienie częściowe*).

7. Prior to 1 May 1993 the trial court held 20 hearings and obtained four expert opinions.

8. The court scheduled further hearings for 28 April 1995 and 26 May 1995 but the applicant due to her sick leave failed to appear. The hearings listed for 14 February 1996, 19 February 1997 and 16 May 1997 were adjourned.

9. On 18 July 1997 the court held a hearing and heard evidence from the parties. A hearing listed for 1 August 1997 was cancelled.

10. The applicant complained to the President of the District Court alleging inactivity on the part of that court in handling her case. In a reply of 9 February 1998 the President informed her that the next hearing was scheduled for 29 April 1998. However, that hearing was adjourned as the defendant and his counsel had not been present. They had not been served with the summons. The next hearing was held on 19 May 1998.

11. On 27 May 1998 the Warsaw District Court gave a decision (*postanowienie końcowe*). The applicant appealed.

12. The Warsaw Regional Court held hearings on 1 April, 20 July, 30 September, 24 November and 9 December 1999. The applicant was not present at any of the hearings despite being properly summoned.

13. On 4 January 2000 the Warsaw Regional Court gave a final decision.

THE LAW

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

14. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided 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..."

15. The Government contested that argument.

16. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The Court notes that the proceedings were initiated on 16 December 1987 and ended on 4 January 2000. They thus lasted 12 years and 19 days of which 6 years 8 months and 3 days falls within the Court's jurisdiction *ratione temporis*.

A. Admissibility

17. The Government submitted that the applicant could no longer claim to be a "victim" within the meaning of Article 34 of the Convention because on 4 January 2000 she obtained a favourable ruling of the domestic court. They further maintained that "after 4 January 2000 there was no longer a causal link between the duration of the proceedings and the frustration

suffered". The Government concluded, that the application should be declared incompatible *ratione personae* with the Convention.

18. The applicant generally contested the Government's submissions.

19. The Court reiterates that according to its case-law, the fact that the final judgment given in the domestic proceedings was in favour of the applicant, does not deprive her of "victim" status for the purposes of a length complaint (see, *Byrn v. Denmark,* no. 13156/87, Commission decision of 1 July 1992, DR 76, p. 5., *Politikin v. Poland,* no 68930/01, §§ 22 - 26, 27 April 2004).

20. The Court considers that, since the applicant's complaint relates merely to the length of the domestic proceedings, she can claim to have been directly affected by the allegedly excessive length of the proceedings to which she was a party and, thus, can be considered a "victim" within the meaning of Article 34 of the Convention (see, *Gavrielidou v. Cyprus* (dec.), no. 73802/01, 13 November 2003).

21. Accordingly, the Court rejects the Government's preliminary objection. It further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. The Court will therefore declare the case admissible.

B. Merits

22. The Government submitted that the case had not been complex. They further claimed that the authorities had shown due diligence in the proceedings. The hearings had been scheduled regularly and after 1 May 1993 the domestic courts held 20 hearings. They maintained that the applicant had not contributed to the prolongation of the proceedings. However, the fact that she had lived abroad had influenced their length as she had failed to appear at several hearings. Lastly, they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

23. The applicant replied that there had been significant periods of inactivity between the hearings. In particular she referred to the intervals when no hearing was held i.e. between 12 March 1993 and 30 April 1995 and also between 14 February 1996 and 19 February 1997. She further disagreed with the Government's submissions and claimed that after 1 May 1993 the trial courts held 16 hearings and not 20 as alleged by the Government. In conclusion she stressed that there had been a violation of Article 6 § 1.

24. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

25. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

26. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

27. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 26,429 PLN in respect of non-pecuniary damage that she suffered as a result of the protracted length of the proceedings. With respect to the pecuniary damage she asked for reimbursement of costs and expenses incurred in the domestic proceedings.

30. The Government submitted that the applicant's claim had been excessive.

31. The Court considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration on account of 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 EUR 3000 under that head.

B. Costs and expenses

32. The applicant claimed 26,429 PLN for the costs and expenses incurred before the domestic courts. That amount corresponded in particular to the lawyer's fees, domestic court fees and medical fees.

33. The Government contested the claim.

34. 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, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

35. 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 application 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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of the 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;

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

Done in English, and notified in writing on 28 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President