CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF MARIA KACZMARCZYK v. POLAND

(Application no. 13026/02)

JUDGMENT

STRASBOURG

24 January 2006

FINAL

24/04/2006

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 Maria Kaczmarczyk v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 5 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 13026/02) 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 Maria Kaczmarczyk ("the applicant"), on 5 September 2001.

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 21 January 2003 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Wiśniowa, Poland.

5. On an unspecified date in 1989 the applicant's father lodged an application with the Myślenice District Court (*Sąd Rejonowy*) for distribution of the inheritance from his late wife. The applicant was a participant in the proceedings.

6. Between October 1989 and December 1992 the court held four hearings.

7. On 19 February 1993 the court ordered that expert evidence be obtained.

8. On 26 May 1993 four of the participants challenged the expert opinion.

9. On 2 November 1994 the applicant submitted her own proposal to the court for distribution of inheritance.

10. On 15 November 1994 the expert submitted his new opinion.

11. At a hearing on 19 January 1995 the court proposed that the participants conclude a friendly settlement. Only two of the participants accepted the court's proposal.

12. At a hearing on 23 March 1995 the court ordered that new expert evidence be obtained. It also ordered the participants to pay an advance to cover the costs of the preparation of an expert report..

13. On 17 September 1997 the court decided that, as the participants had failed to comply with the order of 23 March 1995, the costs of the preparation of expert opinions would be temporarily covered by the court.

14. Between 17 January 1996 and 16 July 1998, J.M., one of the participants in the proceedings, unsuccessfully challenged the presiding judge four times.

15. On 2 October 1998 and 4 March 1999 the court appointed experts to prepare opinions on agriculture and forestry. The experts submitted their reports on 12 November 1998 and 21 March 1999 respectively.

16. On November 1999 the court held a hearing.

17. On 30 November 1999 the Myślenice District Court gave judgment.

18. On 27 March 2000 the Kraków Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal.

19. On 28 June 2001 the Supreme Court (*Sąd Najwyższy*) refused to deal with her cassation appeal.

THE LAW

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

20. 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..."

21. The Government contested that argument.

22. 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 period in question ended on 28 June 2001. It thus lasted approximately 8 years and 2 months for 3 levels of jurisdiction.

A. Admissibility

23. The Court notes that the application 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. It must therefore be declared admissible.

B. Merits

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).

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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 35,000 Polish zlotys[1] (PLN) in respect of pecuniary damage. She also claimed 40,000 PLN[2] in respect of non-pecuniary damage.

29. The Government contested these claims.

30. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,600 under that head.

B. Costs and expenses

31. The applicant also claimed 3,680 PLN[3] for the costs and expenses incurred before the domestic courts and for the proceedings before the Court.

32. The Government contested the claim.

33. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). The Court further notes that the costs of the domestic proceedings can be awarded if they are incurred by an applicant in order to try to prevent the violation found by the Court or to obtain redress therefor (see, among other authorities, *Le Compte, Van Leuven and De Meyere v. Belgium* (Article 50), judgment of 18 October 1982, Series A no. 54, p. 8, § 17). The Court finds that, in the present case, the costs of the proceedings before the domestic courts cannot be considered to have been actually and necessarily incurred in order to prevent or to have redressed a breach of the Convention. The claim concerning those costs must therefore be rejected. As regards the expenses incurred in the Convention proceedings, the Court notes that the

[1] Approx. 8,790 EUR
[2] Approx. 10,000 EUR
[3] Approx. 925 EUR

claim was not accompanied by any relevant supporting documents as required by Rule 60 § 2 of the Rules of Court. Accordingly, the Court makes no award in respect of the costs of the proceedings before it.

C. Default interest

34. 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 in accordance with Article 44 § 2 of the Convention, EUR 2,600 (two thousand six hundred 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 plus any tax that may be chargeable;
   (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 24 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President