CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF KRANC v. POLAND

(Application no. 12888/02)

JUDGMENT

STRASBOURG

31 January 2006

FINAL

30/04/2006

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 Kranc 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 10 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 12888/02) 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 Danuta Kranc ("the applicant"), on 28 August 2001.

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

3. On 24 June 2004 the Court decided to communicate the complaint concerning the length of the proceedings 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1929 and lives in Ciechanów, Poland.

5. On an unspecified date in 1988 a certain T.M. lodged a claim against the applicant with the Rzeszów District Court (*Sąd Rejonowy*). She sought a division of property.

6. On 26 April 1989 the court held a hearing.

7. On 24 January 1992 the court ordered that expert evidence be obtained. The expert's report was submitted to the court on 26 May 1992.

8. On 21 April 1993 the court gave judgment.

9. The applicant appealed on 26 June 1993.

10. On 22 April 1994 the Rzeszów Regional Court (*Sąd Okręgowy*) quashed the first-instance judgment and remitted the case to the District Court.

11. On 6 February 1996 the applicant sent a letter to the court, asking for a hearing date to be set.

12. On 3 October 1997 the court decided that new expert evidence be obtained.

13. The court held hearings on 4 May 1998 and 22 December 2000.

14. On 28 February 2001 the Rzeszów District Court gave judgment.

15. The applicant appealed on 5 April 2001.

16. On 26 June 2001 the Rzeszów Regional Court upheld the first-instance judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. State's liability for a tort committed by its official

1. Provisions applicable before 1 September 2004

17. Articles 417 et seq. of the Civil Code (*Kodeks cywilny*) provide for the State's liability in tort.

In the version applicable until 1 September 2004, Article 417 § 1, which lays down a general rule, read as follows:

> "1. The State Treasury shall be liable for damage caused by a State official in the course of carrying out the duties entrusted to him."

18. Article 418 of the Civil Code, as applicable until 18 December 2001 (see "C. Constitutional Court's judgment of 4 December 2001 below) provided for the following exception in cases where damage resulted from the issue of a decision or order:

> "1. If, in consequence of the issue of a decision or order, a State official has caused damage, the State Treasury shall be liable only if a breach of the law has been involved in the issue of the decision or order and if that breach is the subject of prosecution under the criminal law or of a disciplinary investigation, and the guilt of the person who caused the damage in question has been established by a final conviction or has been admitted by the superior of that person.
>
> 2. The absence of the establishment of guilt by way of a criminal conviction or in a decision given in disciplinary proceedings shall not exclude the State Treasury's liability for damage if such proceedings cannot be instituted in view of the [statutory] exception to prosecution or disciplinary actions."

2. Provisions applicable as from 1 September 2004

19. On 1 September 2004 the Law of 17 June 2004 on amendments to the Civil Code and other statutes (*Ustawa o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw*) ("the 2004 Amendment") entered into force. While the relevant amendments have in essence been aimed at enlarging the scope of the State Treasury's liability for tort under Article 417 of the Civil Code – which included adding a new Article 417^1 and the institution of the State's tortious liability for its omission to enact legislation (the so-called "legislative omission"; *"zaniedbanie legislacyjne"*) – they are also to be seen in the context of the operation of a new statute introducing remedies for the unreasonable length of judicial proceedings (see paragraphs 38-41 below).

Following the 2004 Amendment, Article 417^1, in so far as relevant, reads as follows:

> "3. If damage has been caused by failure to give a ruling (*orzeczenie*) or decision (*decyzja*) where there is a statutory duty to give them, reparation for [the damage] may be sought after it has been established in the relevant proceedings that the failure to give a ruling or decision was contrary to the law, unless otherwise provided for by other specific provisions."

20. However, under the transitional provisions of section 5 of the 2004 Amendment, Article 417 as applicable before 1 September 2004 (see paragraph 34 above) shall apply to all events and legal situations that subsisted before that date.

B. Constitutional Court's judgment of 4 December 2001

21. On 4 December 2001 the Constitutional Court (*Trybunał Konstytucyjny*) dealt with two constitutional complaints in which the applicants challenged the constitutionality of Article 417 and 418 of the Civil Code. They alleged, in particular, that those provisions were incompatible with Articles 64 and 77 § 1 of the Constitution.

On the same day the court gave judgment (no. SK 18/00) and held that Article 417 of the Civil Code was compatible with Article 77 § 1 of the Constitution in so far as it provided that the State Treasury was liable for damage caused by the unlawful action of a State official carried out in the course of performing his duties. It further held that even though Article 418 of the Civil Code was compatible with Article 64 of the Constitution, it was contrary to Article 77 § 1 since it linked the award of compensation for such damage with the personal culpability of the state official concerned, established in criminal or disciplinary proceedings.

22. On 18 December 2001, the date on which the Constitutional Court's judgment took effect, Article 418 was repealed. The Constitutional Court's opinion on the consequences of the repeal read, in so far as relevant:

"The elimination of Article 418 of the Civil Code from the legal system ... means that the State Treasury's liability for an action of a public authority consisting in the issue of unlawful decisions or orders will flow from the general principles of the State liability laid down in Article 417 of the Civil Code. This, however, does not rule out the application in the present legal system of other, not necessarily only those listed in the Civil Code, principles of the State liability laid down in specific statutes."

D. The Law of 17 June 2004

23. On 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act") entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings.

A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length under section 2 read in conjunction with section 5(1) of the 2004 Act.

Section 2, in so far as relevant, reads as follows:

"1. Parties to proceedings may lodge a complaint that their right to a trial within a reasonable time has been breached [in the proceedings] if the proceedings in the case last longer than is necessary to examine the factual and legal circumstances of the case ... or longer than is necessary to conclude enforcement proceedings or other proceedings concerning the execution of a court decision (unreasonable length of proceedings)."

Section 5 provides, in so far as relevant:

"1. A complaint about the unreasonable length of proceedings shall be lodged while the proceedings are pending. ..."

24. Section 16 refers to proceedings that have been terminated and that do not fall under the transitional provision of section 18 (see paragraph 46 below) in the following terms:

"A party which has not lodged a complaint about the unreasonable length of the proceedings under section 5 (1) may claim – under Article 417 of the Civil Code ... – compensation for the damage which resulted from the unreasonable length of the proceedings after the proceedings concerning the merits of the case have ended.

25. Article 442 of the Civil Code sets out limitation periods in respect of various claims based on tort. That provision applies to situations covered by Article 417 of the Civil Code. Article 442, in so far as relevant, reads:

"1. A claim for compensation for damage caused by a tort shall lapse 3 years following the date on which the claimant learned of the damage and the persons liable for it. However, the claim shall in any case lapse 10 years following the date on which the event causing the damage had occurred."

26. Section 18 of the 2004 Act lays down the following transitional rules in relation to the applications already pending before the Court:

> "1. Within six months after the date of entry into force of this law persons who, before that date, had lodged a complaint with the European Court of Human Rights ... complaining of a breach of the right to a trial within a reasonable time guaranteed by Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ..., may lodge a complaint about the unreasonable length of the proceedings on the basis of the provisions of this law if their complaint to the Court had been lodged in the course of the impugned proceedings and if the Court has not adopted a decision concerning the admissibility of their case.
>
> 2. A complaint lodged under subsection 1 shall indicate the date on which the application was lodged with the Court.
>
> 3. The relevant court shall immediately inform the Minister of Foreign Affairs of any complaints lodged under subsection 1."

THE LAW

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

27. 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..."

28. The Government contested that argument.

29. 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 26 June 2001. It thus lasted approximately 8 years and 2 months for 3 levels of jurisdiction.

A. Admissibility

1. The Government's plea on inadmissibility on the ground of non-exhaustion of domestic remedies

30. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that since coming into force of the 2004 Act on 17 September 2004 the applicant had the

possibility under Article 417 of the Civil Code read together with section 16 of the 2004 Act to lodge a claim for compensation for damages suffered due to the excessive length of proceedings with the Polish civil courts.

31. The applicant contested the Government's arguments.

32. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see the Aksoy v. Turkey judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

33. The Court has already held that a civil action for compensation provided for by Article 417 of the Civil Code read together with section 16 of the 2004 Act cannot be regarded as an effective remedy if more than three years elapsed between the date of the final decision and the entry into force of the 2004 Act, on 17 September 2004 (see, *Ratajczyk v. Poland*; (dec), 11215/02, 31 May 2005). In the present case, the proceedings at issue terminated on 26 June 2001, which is more than three years before the relevant provisions became effective. It follows that the limitation period for the State's liability for a tort set out in Article 442 of the Code Civil had expired before 17 September 2004. The applicant could not therefore avail himself of the remedies relied on by the Government.

For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

2. Substance of the complaint

34. 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. It must therefore be declared admissible.

B. Merits

35. 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).

36. 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).

37. 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. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

38. The applicant further complained that the length of the proceedings complained of had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

39. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

40. Having regard to its finding under Article 6 § 1 (see paragraph 37 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 **(**see *Kroenitz v. Poland*, no. 77746/01, § 37, 25 February 2003).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 20,000 Polish zlotys (PLN) in respect of pecuniary and 50,000 PLN in respect of non-pecuniary damage.

43. The Government did not express an opinion on the matter.

44. 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, it considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 2,800 under that head.

B. Costs and expenses

45. The applicant did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

C. Default interest

46. 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* that it is not necessary to examine the complaint under Article 1 of Protocol No. 1;

4. *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 2,800 (two thousand eight 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 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 31 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President