CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF RYLSKI v. POLAND

(Application no. 24706/02)

JUDGMENT

This version was rectified on 7 November 2006
under Rule 81 of the Rules of Court

STRASBOURG

4 July 2006

FINAL

11/12/2006

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 Rylski v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 24706/02) 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, Mr Bernard Rylski ("the applicant") on 24 September 2001.

2. The applicant alleged, in particular, that the divorce proceedings in his case exceeded a reasonable time.

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

4. On 22 September 2005 the Court decided to communicate the complaint concerning the length of the proceedings. 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

5. The applicant was born in 1960 and lives in Warszawa.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The facts prior to 1 May 1993

7. In 1991 the applicant's wife filed with the Warsaw Regional Court (*Sąd Wojewódzki*) a petition for divorce, asking to be granted custody rights

over her daughter and child maintenance from the applicant. On 12 July 1991 a mediation hearing was held, but the parties did not reach an agreement.

8. On 29 October 1991 and 13 December 1991 hearings were held. The court heard witnesses and ordered the applicant to file a declaration of means. In addition, it requested an opinion of an expert psychologist and a social inquiry report to be prepared.

9. On 3 February 1992 the court secured the claim and ordered the applicant to pay 500,000 old zlotys (PLZ) in monthly maintenance for his daughter. On 5 February 1992 the court dismissed the applicant's motion for exemption from court fees. On 19 February 1992 the applicant appealed against the decisions of 3 and 5 February 1992. His appeal was dismissed. On 20 February 1992 the applicant challenged the impartiality of the judge. His motion was dismissed.

10. On 5 October 1992 the court ordered another social inquiry report. On 28 October 1992 a psychologist's opinion concerning relations between the parents and the daughter was issued. On 16 March 1993 the court held a hearing. It heard an expert in psychology and one witness. The court regulated the frequency of the applicant's contacts with his daughter pending the divorce proceedings.

11. On 16 March 1993 the court imposed a fine on the applicant for offending the court.

12. On 26 April 1993 the plaintiff asked the court to increase the amount of child maintenance.

2. The facts after I May 1993

13. On 14 May 1993 the plaintiff submitted her pleadings.

14. On 26 May and 7 June 1993 the court yet again summoned the applicant to submit, within seven days, information regarding his financial situation. He complied with the summons on 11 and 22 June 1993.

15. On 11 June 1993 the applicant appealed against the decision of 15 April 1993 by which his previous appeal against the fine imposed on him had been rejected. On 22 June 1993 his appeal was rejected as having been lodged outside the prescribed time-limit.

16. On 27 July 1993 the court amended its decision concerning maintenance, increasing it to PLZ 900,000. It considered that as a construction engineer the applicant was able to earn approximately PLZ 3,000,000 per month. The applicant appealed.

17. On 2 September 1993 the applicant appealed against the decision imposing a fine on him. On 9 September 1993 his appeal was rejected as having been lodged after the prescribed time-limit. The applicant appealed against this decision and his appeal was rejected on 29 November 1993.

18. On 22 October 1993 the court ordered him to comply with the formal requirements in respect of his appeal against the decision of 27 July

1993. On 12 November 1993 the case file was sent to the Warsaw Court of Appeal (*Sąd Apelacyjny*). On 29 November 1993 that court dismissed the applicant's appeal against the decision of 27 July 1993.

19. On 30 November 1993 the applicant complained that the plaintiff had impeded his contacts with the child. On 16 May 1994 the plaintiff asked the court not to schedule hearings in July.

20. On 8 June 1994 the applicant was charged with having forced a witness in his divorce proceedings to withdraw her testimony. On 12 July 1994 the Warsaw District Prosecutor (*Prokurator Rejonowy*) submitted to the Warsaw District Court a bill of indictment concerning that charge.

On 20 June 1994 the prosecutor submitted to the District Court another bill of indictment against the applicant. The applicant was charged with domestic violence against his wife. On 15 September 1994 the Warsaw District Court joined those two cases.

On 27 November 1995 the Warsaw District Prosecutor submitted to the court another bill of indictment in which he charged the applicant with evading the payment of maintenance for his daughter. Apparently the case was joined to the earlier proceedings.

On 30 September 2003 the District Court convicted him of the first two charges and acquitted him of the third charge and sentenced him to two years' imprisonment. Upon his appeal, on 6 May 2004 the Warsaw Regional Court stayed the execution of the sentence for a probationary period of five years.

21. On 7 July 1994 the court ordered the parties to submit their pleadings within one month. On 22 August 1994 it urged them to comply with its summons. They submitted their pleadings on 21 September 1994.

22. On 12 October 1994 the case-file of the divorce proceedings was sent to the District Prosecutor upon his request. It was returned on 16 November 1994.

23. On 27 December 1994 the court scheduled a hearing for 24 February 1995. On 24 February and 19 May 1995 two hearings were held. The applicant did not appear and in consequence they were adjourned. On 15 September 1995 a hearing was heard. The applicant did not agree to a divorce.

24. On 13 and 27 September 1995 the applicant submitted pleadings in which he *inter alia* asked the court to order the plaintiff to pay him alimony.

25. On 24 November 1995 a hearing was held at which the court heard both parties. The Warsaw Regional Court dismissed the applicant's claim for alimony from his wife and refused his request to reduce the amount of the maintenance payable to his daughter. He appealed, but on 18 July 1996 the Warsaw Court of Appeal dismissed his appeal.

26. On 24 November 1995 the Warsaw Regional Court amended its decision of 16 March 1993 in that it increased the frequency of the applicant's meetings with his daughter. He and his wife appealed and on

18 July 1996 the Warsaw Court of Appeal quashed that decision. It considered that the contested decision was not supported by an opinion of psychologists.

27. The hearing scheduled for 23 February 1996 had to be adjourned until the appeals were examined. The hearing held on 13 December 1996 was adjourned. The court ordered a supplementary expert opinion of psychologists.

28. On 29 January 1997 the institution which was to prepare an expert opinion informed the court that it had started mediation between the parties and that the opinion would be submitted after 12 March 1997. The opinion was submitted on 30 March 1997. On 23 December 1997 a hearing was held at which the court heard the expert and the plaintiff. It decided to summon another witness – a Mr J.M.

29. On 23 December 1997 the Warsaw Regional Court issued an order concerning the applicant's contacts with his daughter pending the divorce proceedings. It decided that the meetings should take place on the first, second and third Saturdays of every month between 11 a.m. and 4 p.m. without the mother's presence. The court also ordered a guardian (*kurator sądowy*) to supervise those meetings. Having regard to the opinion of the psychologists, it considered that in the ongoing conflict between the parents, the daughter, who was emotionally attached to her mother, had become more and more unfriendly towards her father, which called for more frequent contacts with the father.

30. On 29 December 1997 the applicant requested the written grounds for the decision. They were sent to him on 5 February 1998. On 18 February 1998 he appealed against the decision. On 25 February 1998 he was summoned to pay a court fee. On 3 April 1998 a hearing was held but it was adjourned pending the examination of the applicant's appeal. On 18 June 1998 the Warsaw Court of Appeal dismissed the applicant's appeal against the decision of 23 December 1997.

31. On 30 September 1998 the applicant requested the court to increase the frequency of his contacts with the child.

32. On 15 January 1999 the court held a hearing and dismissed the motion to call the witness J.M. The court heard the parties. The applicant asked the court to hear another witness as well as all the witnesses who had already been heard. He also requested a stay of the proceedings pending the outcome of the criminal proceedings. The court dismissed those motions.

33. On 29 January 1999 the Warsaw Regional Court gave judgment, granting a divorce based on the applicant's fault, and deciding on the daughter's custody and child maintenance. On 19 March 1999 the court served the written grounds of the judgment on the applicant. He appealed and requested an exemption from the appeal fee on 7 April 1999.

34. On 5 May 1999 the court dismissed the applicant's motion for an exemption from court fees. The applicant appealed on 18 May 1999. On

17 June 1999 his appeal was dismissed. The court based its decision on the fact that the applicant had not submitted the necessary documents to confirm his financial situation.

35. On 2 August 1999 the applicant was summoned to pay the appeal fee. On 20 August 1999 he asked the court to exempt him from that fee. On 7 September 1999 the court dismissed his motion. The applicant appealed on 30 September 1999. On 18 November 1999 the Court of Appeal rejected the applicant's appeal.

36. On 4 January 2000 the applicant requested the court to exempt him from the court fee. On 18 January 2000 his motion was dismissed. The applicant appealed on 1 March 2000. On 14 April 2000 his appeal was dismissed by the Court of Appeal. The courts emphasised that the applicant had persistently repeated his request without providing any new circumstances to justify a new motion and without submitting relevant documents.

37. On 28 April 2000 the applicant again requested to be exempted from the court fee.

38. On 2 June 2000 the court again ordered the applicant to pay the court fee for his appeal, amounting to 400 PLN.

39. On 16 June 2000 the applicant asked for exemption from the court fee. This motion was dismissed on 28 June 2000 for the same reasons as given previously. On 19 July 2000 the applicant appealed against this decision. It was dismissed by the Court of Appeal on 27 October 2000.

40. On 28 June 2000 the applicant's appeal against the judgment of 29 January 1999 was rejected on formal grounds for non payment of the appeal fee. The Regional Court noted that the applicant's repeated and unsubstantiated motions for exemption had been dismissed several times and he had failed to pay the fee despite two summonses. The court emphasised that the applicant's only intention was to delay the proceedings, to the detriment of the plaintiff. The applicant appealed on 19 July 2000.

41. On 27 December 2000 the applicant asked to be exempted from all court fees, in particular from the appeal fee. On 8 January 2001 his motion was sent to the Regional Court.

42. On 12 March 2001 the court called on the applicant to pay the court fee of 80 PLN for his appeal against the decision of 28 June 2000 (see paragraph 40 above).

43. On 27 March 2001 the court refused to exempt the applicant from the court fees. It underlined that the applicant had requested to be exempted from the court fees on several occasions but had once again not indicated any new circumstances justifying his request. On 24 April 2001 the applicant appealed. On 28 May 2001 his appeal was dismissed.

44. On 28 June 2001 the Regional Court ordered the applicant to pay the court fee due for his appeal against the decision rejecting his appeal against the judgment (see paragraph 42 above).

45. On 12 July 2001 the defendant informed the court that he had paid the court fee for the appeal against the judgment (amounting to 400 zlotys) and requested the court to reinstate the time-limit for paying the fee.

46. On 19 July 2001 the Warsaw Regional Court issued two decisions, in which it rejected the applicant's appeal against the decision of 28 June 2000 and rejected the applicant's motion to be granted retrospective leave to pay the appeal fee.

47. The judgment of 29 January 1999 became final on 8 August 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

1. Provisions applicable before 1 September 2004

48. 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."

49. Article 418 of the Civil Code, as applicable until 18 December 2001, 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 inability to establish 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 a [statutory] exception to prosecution or disciplinary action."

2. Provisions applicable as from 1 September 2004

50. 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 – including the addition of a new Article 417[1] and the imposition on the State of 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.

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."

51. However, under the transitional provisions of Article 5 of the 2004 Amendment, Article 417 as applicable before 1 September 2004 shall apply to all events and legal situations that subsisted before that date.

B. Constitutional Court's judgment of 4 December 2001

52. 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 Constitutional 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.

53. 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 the actions 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 principles of State liability laid down in specific statutes and not necessarily only those listed in the Civil Code."

C. The Law of 17 June 2004

54. 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 Article 2 read in conjunction with Article 5(1) of the 2004 Act.

Article 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)."

Article 5 provides, in so far as relevant:

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

55. Article 16 refers to proceedings that have been terminated and that do not fall under the transitional provision of Article 18 in the following terms:

> "A party which has not lodged a complaint about the unreasonable length of the proceedings under Article 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."

56. 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 occurred."

57. Article 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

58. 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..."

59. The Government contested that argument.

60. 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 proceedings in question ended on 8 August 2001, the date on which the Warsaw Regional Court decision became final. The period under the Court's scrutiny is therefore 8 years and 3 months for two levels of jurisdiction.

A. Admissibility

61. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004 when the 2004 Act came into force, the applicant had a possibility of lodging with the Polish civil courts a claim for compensation for damage suffered due to the excessive length of proceedings under Article 417 of the Civil Code read together with Article 16 of the 2004 Act. They argued that the three-year prescription period for the purposes of a compensation claim in tort based on the excessive length of proceedings could run from a date later than the date on which a final decision in these proceedings had been given.

The Government further submitted that such a possibility had existed in Polish law even before the entry into force of the 2004 Act since the

judgment of the Constitutional Court of 4 December 2001, which entered into force on 18 December 2001.

62. The applicant contested the Government's arguments.

63. The Court observes that in the present case the proceedings at issue terminated on 8 August 2001 at the latest, which is more than three years before the relevant provisions of the 2004 Act read together with the Civil Code became effective. It follows that the limitation period for the State's liability for tort set out in Article 442 of the Code Civil had expired before 17 September 2004.

The Court notes that the arguments raised by the Government are the same as those already examined by the Court in previous case against Poland (see *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003; *Ratajczyk v. Poland*; (dec), 11215/02, 31 May 2005; *Barszcz v. Poland,* no. 71152/01, 30 May 2006) and the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

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

64. 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

1. The parties' submissions

65. The applicant complained about the length of the divorce proceedings.

66. The Government submitted that the case had been very complex. The court had to rule not only on the divorce petition, but also on the amount of maintenance for the applicant's daughter and alimony for the plaintiff as well as on the parental rights and contacts with the child. Examination of the case had required the obtaining of expert opinions.

67. The Government further argued that the parties had contributed significantly to the length and complexity of the proceedings, in particular by lodging numerous requests, motions and appeals. In addition, the court had encountered difficulties in hearing one of the witnesses who resided abroad and whose address was unknown. Moreover, the case file had to be sent to the prosecutor in connection with the criminal proceedings against the applicant.

68. As regards the conduct of the public authorities, the Government were of the view that the courts had conducted comprehensive proceedings to obtain evidence in order to clarify the factual and legal circumstances of

the case. The Government submitted that a number of hearings had to be adjourned due to circumstances beyond the control of the court such as the requirement to examine the applicant's appeals. Moreover, the domestic court had taken disciplinary measures to proceed with the case more efficiently, e.g. it had fixed time-limits for the parties to submit documents and pleadings and had urged them to comply with its summonses. It had also taken measures to establish the reasons for the absence of a witness.

69. The Government emphasised that in the course of the first-instance proceedings, the courts had issued at least ten decisions concerning motions and appeals of the parties and after adoption of the first-instance judgment the courts had issued thirteen decisions concerning the applicant's requests for exemption from court fees and his appeals.

70. The Government were of the opinion that the applicant had contributed decisively to the protracted length of the proceedings at issue.

Firstly, two hearings had been adjourned given that his appeals had to be examined. Secondly, he had lodged numerous motions, some of which had been of a clearly dilatory nature, such as numerous repetitive motions for exemption from court fees, a motion for alimony for him from the plaintiff, and motions to have all witnesses heard again or to stay the proceedings pending the criminal proceedings. On several occasions he had delayed his replies to the court's summonses. The fact that the applicant aimed to prolong the proceedings had been on some occasions emphasised by the courts (for example in the Warsaw Regional Court decision of 28 June 2000). After 30 April 1993 the applicant lodged ten appeals which were dismissed as unfounded or inadmissible.

The Government agreed that in the above situations the applicant had made use of his procedural rights. However, they recalled that while the applicant is entitled to make use of his/her procedural right, he/she must bear the consequences when it leads to delays (*Malicka-Wąsowska v. Poland* (dec.), no. 41413/98, 5 April 2001).

In this respect the Government assessed that the applicant had been responsible for at least three and a half years of the length of the proceedings (see paragraphs 11-14; 16-17; 25-27; 29-30; 33-34; 35-46).

71. The Government concluded, relying on the Court's case-law (among other authorities, *Wróblewski v. Poland*, no. 52077/99, 1 December 2005) that there had been no violation of the applicant's right to a hearing within a reasonable time.

72. The applicant submitted that the length of the proceedings was excessive.

2. The Court's assessment

73. 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; *Malinowska v. Poland*, no. 35843/97, 14 December 2000).

74. The Court firstly observes that the case should be considered complex, regard being had to the fact that several accompanying issues had to be determined apart from the divorce petition, in particular the amount of maintenance for the applicant's daughter, the contacts with the child, and the question of alimony for both parties. The Court is aware that these issues are normally to be dealt with by the divorce court. However, in the present case some of the interlocutory proceedings in which these issues were decided lasted several years themselves, as the parties could not reach an agreement on any matter. Furthermore, sensitive matters such as child custody required to be considered with particular diligence and required expert opinions to be prepared.

The Court does not overlook the fact that, concurrently with the proceedings at issue, criminal proceedings against the applicant were being conducted on several charges: domestic violence against his wife, evasion of payment of child maintenance, and forcing a witness in divorce proceedings to withdraw testimony (see paragraph 20). These proceedings were closely linked to the divorce proceedings, which required the exchange of files between the courts.

75. The Court notes that the domestic courts attempted to discipline the parties and to proceed with the case (see paragraphs 12, 14, 21).

76. Furthermore, the Court considers that the conduct of the applicant significantly contributed to the length of the proceedings. In addition to the arguments submitted by the Government (see paragraphs 68-70 above) it is noted that the applicant refused to cooperate on almost every aspect of the case and, *inter alia*, did not agree to the divorce (see paragraph 23). He repeatedly failed to comply in time with the court's summonses. He also failed to appear in court on two occasions (see paragraph 23) and in consequence the hearing had to be adjourned for seven months, while on other occasions the hearing had to be adjourned pending examination of the applicant's appeals (see paragraphs 27, 30). The applicant reiterated his request for exemption from the court fee for an appeal six times. The court examined his request on the merits, and on the other occasions it referred the applicant to its first decision, reiterating that new circumstances should have been submitted to support his fresh request. This prolonged the proceedings for almost two years.

77. With respect to the conduct of the authorities, the Court considers that although the Government have not explained some of the delays (see paragraphs 18-19), on the whole and regard being had to the applicant's conduct they did not exceed a reasonable time within the meaning of Article 6 § 1. Therefore, the Court agrees with the Government that the

primary responsibility for the delays in the proceedings lies with the applicant.

78. The Court therefore finds that there has been no violation of Article 6 § 1 of the Convention on account of the length of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

79. The applicant complains under Article 8 of the Convention about a failure of the domestic court to enforce the decisions concerning his contacts with the child, namely the decision of 23 December 1997 and the judgment of 29 January 1999, in that it did not appoint a guardian to assist at the meetings (§ 29 and § 33).

The Court first notes that the applicant's complaint concerning the decision of 23 December 1997 is essentially the same as the complaint already considered by the Court in his previous application which was declared inadmissible. Further, the Court notes that the present application was lodged on 24 September 2001 and finds that this part of the application has therefore been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

80. The applicant complains under Article 6 § 1 of the Convention that the divorce proceedings were unfair and the courts were not impartial.

The Court recalls that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, § 28).

With regard to the alleged bias on the part of the courts, the Court notes that the applicant failed to submit any evidence or explanation to support this allegation. The only indication that he ever attempted to challenge the impartiality of the judge is his motion of 20 February 1992, which was dismissed on 28 May 1992 (§ 9). This decision falls outside the Court's jurisdiction *ratione temporis*, and, in any event, the allegation is entirely unsubstantiated.

It follows that this complaint is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

IV. OTHER COMPLAINTS UNDER ARTICLE 6 OF THE CONVENTION

81. The applicant complains under Article 6 § 1 of the Convention that he was deprived of his right of access to a court by not being exempted from the appeal fee.

82. The Court recalls that Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect.

However, this right is not absolute, but may be subject to limitations. The Court has ruled that, guaranteeing to litigants an effective right of access to courts for the determination of their "civil rights and obligations", Article 6 § 1 leaves to the State a free choice of the means to be used towards this end but, while the Contracting States enjoy a certain margin of appreciation in that respect, the final decision as to the observance of the Convention's requirements rests with the Court (see, *Kreuz v. Poland*, no. 28249/95, § 53, ECHR 2001-VI; *Podbielski and PPU Polpure v. Poland*, no. 39199/98, 26 July 2005).

The Court must be satisfied that the limitations applied do not restrict or reduce the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired (see, *Kreuz v. Poland*, cited above, § 58).

83. The Court reiterates that the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicants' ability to pay them, and the phase of the proceedings at which that restriction has been imposed, are factors which are material in determining whether or not a person enjoyed his right of access and had "a ... hearing by [a] tribunal" (*Jedamski and Jedamska v. Poland*, no. 73547/01, § 60, 26 July 2005).

84. The Court notes that the amount of the fee (400 PLN) cannot be regarded as a total bar on the applicant's access to a court, the more so since he finally paid the fee (two years later), though after the prescribed time-limit had elapsed. The Court further observes that the applicant lodged several motions and appeals concerning exemption from the court fees, all of them being examined by the courts and their decisions being sufficiently reasoned (see paragraphs 35-46). The domestic courts emphasised that in repeatedly lodging his complaints, the applicant had not submitted relevant documents concerning his financial situation that would allow for examination of his motions on the merits, nor had he invoked any new circumstances each time he renewed his motions. The examinations of his repeated motions (at least six concerning the same request for exemption from the court fee) took almost two years (§ 80). The domestic court cannot be said to have acted arbitrarily in refusing to allow his requests (see paragraph 40). Consequently, the Court is of the view that the applicant did

not effectively avail himself of the possibility of obtaining exemption from the court fee guaranteed by the relevant legal provisions.

85. It follows that this complaint is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the divorce proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 4 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President