



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

FOURTH SECTION

**CASE OF JERUZAL v. POLAND**

*(Application no. 65888/01)*

JUDGMENT

STRASBOURG

10 October 2006

**FINAL**

*12/02/2007*

*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 Jeruzal v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 19 September 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 65888/01) 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, Marianna Jeruzal (“the applicant”), on 31 October 2000.

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

3. On 10 September 2002 the Court decided to give notice of 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.

4. On 13 January 2003 the applicant’s daughter, Mrs Halina Jeruzal-Kuklińska, informed the Court’s Registry that the applicant had died on 25 November 2002. She stated that she wished to continue the proceedings before the Court in her late mother’s stead.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1912 and lived in Gdynia in Poland. She died in 2002.

6. In 1972 the applicant and her husband transferred the ownership of their house and land to their son – Z.J., and kept a lifetime usufruct interest

for themselves. Under the terms of the contract Z.J. was supposed to take care of the applicant and her husband and to provide them with food and medical care. However, he had failed to do so. Moreover, on two occasions criminal proceedings against him, for assault on the applicant, had been discontinued (pursuant to the relevant amnesty law).

7. On 2 February 1985 the applicant sued Z.J. in the Gdańsk District Court (*Sąd Rejonowy*) for damages for his failure to comply with the terms of the contract.

8. On several occasions before 1 May 1993 the applicant modified her claim.

9. On 13 July 1993 the Gdańsk District Court held a hearing and ordered an expert to prepare an opinion. On 16 December 1993 it ordered an additional expert opinion to be obtained.

10. On 1 February 1994, in reply to the applicant's complaint about the length of the proceedings, the President of the Gdańsk District Court acknowledged that they were indeed lengthy and promised to supervise their conduct. On 4 March 1994 the court held a hearing.

11. The hearings set for 3 June 1994, 5 July 1994 and 6 September 1994 were adjourned.

12. The court held hearings on 20 December 1994 and 6 January 1995.

13. On 31 January 1995 the Gdańsk District Court gave judgment. The defendant appealed. On 22 December 1995 the Gdańsk Regional Court (*Sąd Wojewódzki*) quashed the impugned judgment and remitted the case.

14. On 24 January 1996 the applicant sent a letter to the Minister of Justice. She complained about the slow conduct of the proceedings. On 26 February 1996, in reply to her complaints, the President of the Gdańsk Court of Appeal (*Sąd Apelacyjny*) admitted that the proceedings were indeed lengthy and gave his assurance that he would supervise their conduct.

15. On 23 April 1996 the Gdańsk District Court held a hearing. On the same date the court ordered an expert to prepare an opinion. On 31 May 1996 and 2 July 1996 the court held further hearings. On 6 June 1996 the expert submitted his opinion to the court.

16. On 4 September 1996 the court ordered yet another expert to prepare an opinion. It was submitted to the court on 6 May 1997.

17. On 6 June 1997 the court held a hearing. On 9 June 1997 the case was transferred to the Gdańsk Regional Court as that court had become competent to consider it. On 30 September 1997 the Gdańsk Regional Court gave judgment.

18. Upon the applicant's further appeal, the Gdańsk Court of Appeal gave judgment on 21 April 1998.

19. The defendant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*). On 25 May 1999 the Supreme Court gave judgment and remitted the case to the Gdańsk Court of Appeal.

20. On 29 October 1999 the Gdańsk Court of Appeal held a hearing and ordered an expert to prepare an opinion. It was submitted to the court on 13 January 2000.

21. On 11 May 2000 the Gdańsk Court of Appeal held a hearing and gave judgment. The applicant's legal aid lawyer did not file a cassation appeal. On 9 October 2000 the applicant asked to be granted leave to file an appeal out of time and to be assigned another legal aid lawyer. On 14 November 2000 the Gdańsk Court of Appeal rejected her application. The court considered that in view of the value of the claim, a cassation appeal in the applicant's case was inadmissible in law.

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

22. The Court notes at the outset that the applicant died after the introduction of her application. Subsequently, her daughter, Mrs Halina Jeruzal-Kuklińska, informed the Court that she wished to pursue the application introduced by her mother. She explained that during the proceedings in question, she had taken daily care of the applicant. As a result, she had experienced in part the frustration and distress which the applicant herself had suffered due to the protracted length of the proceedings.

23. The respondent Government submitted that the applicant's daughter could not be considered a person entitled to pursue the proceedings before the Court on the applicant's behalf and invited the Court to strike the application out of its list of cases.

24. The Court recalls that when an applicant dies during the proceedings, the next-of-kin of the applicant has a legitimate interest to justify the continuation of the examination of the case (see, for example, *Goc v. Poland* (dec.), no. 48001/99, 23 October 2001).

25. The Court observes that in the present case the proceedings concerned the applicant's pecuniary rights. It further accepts that the applicant's daughter has a legitimate interest to pursue the application on her mother's behalf.

26. Accordingly, the applicant's daughter has standing to continue the proceedings before the Court in the applicant's stead, and the Government's preliminary objection should be dismissed.

## II. 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, laid down 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 proceedings ended on 14 November 2000. Their length accordingly amounted to 7 years, 5 months and 2 weeks.

### A. Admissibility

30. 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

31. 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).

32. 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).

33. 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 and the overall length of the proceedings, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant complained that the domestic court's refusal to grant her legal assistance in connection with the preparation of a cassation appeal violated her right of access to a court. She relied on Article 13 of the Convention.

36. The Court considers that this complaint should be examined under Article 6 § 1 of the Convention, the safeguards of that provision, implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13 (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI).

37. The Court firstly recalls that the right to a court, embodied by Article 6 of the Convention, is not absolute and may be subject to limitations. However, the limitations applied cannot restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, *inter alia*, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, 12 July 2001, ECHR 2001-VII).

In the instant case, in view of the value of the claim, a cassation appeal was inadmissible in law. The Gdańsk Court of Appeal refused to grant the applicant a legal aid lawyer to file a cassation appeal, relying on the relevant provisions of the Code of Civil Procedure relating to the admissibility of appeals.

In this respect the Court reiterates that the rules which govern the conditions for the admissibility of appeals before the highest judicial authorities are undoubtedly designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty. Those concerned must expect those rules to be applied (see, *mutatis mutandis*, *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 45).

In view of the above considerations, it cannot be maintained that the very essence of the applicant's right to a court was impaired.

38. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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**

40. The applicant claimed an amount of PLN 109,200 in respect of pecuniary damage. This amount corresponded to the amount of her daily expenses during the proceedings. She also claimed PLN 100,000 in respect of non-pecuniary damage.

41. The Government contested these claims.

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

43. As regards the non-pecuniary damage, the Court considers that the applicant undeniably suffered non-pecuniary damage – such as distress and frustration resulting from the protracted length of the proceedings – which is not sufficiently compensated by a finding of a violation of the Convention. Taking into account the circumstances of the case, and making an assessment on an equitable basis, the Court awards the applicant’s daughter EUR 3,300 in respect of non-pecuniary damage sustained by the applicant.

### **B. Costs and expenses**

44. The applicant also claimed PLN 10,000 for the costs and expenses incurred before the domestic courts.

45. The Government contested these claims.

46. 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 are 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**

47. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;
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's daughter, Mrs Halina Jeruzal-Kuklińska, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,300 (three thousand three hundred 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 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 10 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Nicolas BRATZA  
President