CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FOURTH SECTION

## DECISION

Application no. 15071/02
by Krystyna MAJ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 2 October 2007 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having regard to the above application lodged on 28 May 2001,

Having regard to the unsuccessful friendly settlement negotiations,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the Government's request to strike the case out of its list of cases and the text of a unilateral declaration made with a view to resolving the issues raised by the application,

Having regard to the applicant's comments on the Government's proposal for a unilateral declaration,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Ms Krystyna Maj, is a Polish national who was born in 1958 and lives in Tenczynek. She was represented before the Court by Mr Z. Cichoń, a lawyer practising in Cracow. The Polish Government ("the

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

## A. The circumstances of the case

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

The applicant was involved in a dispute with her neighbour concerning a right of way.

On 18 August 1990 the applicant and her daughter filed with the Cracow District Court an application for the grant of an easement involving a right of way. She also sought an interim order allowing her to cross her neighbour's land.

On 14 December 1990 the District Court stayed the proceedings. They were resumed on 10 April 1991.

On 23 May 1991 the District Court granted the interim order. The applicant's neighbour appealed. On 16 August 1991 the Cracow Regional Court quashed the interim order. On 10 January 1992 the District Court refused to grant the interim order. The applicant appealed against that decision. On 29 April 1992 the Regional Court dismissed her appeal. In 1992 two further applications for an interim order were dismissed.

On 22 October 1992 the Cracow District Prosecutor lodged with the Cracow District Court a bill of indictment against the applicant and her husband. They were indicted on charges of having unlawfully entered their neighbour's land. The applicant did not submit any further details related to those criminal proceedings.

On 17 September 1993 the District Court decided to stay the proceedings until the claimants had produced their ownership titles. The applicant requested that the proceedings be resumed. On 3 November 1993 the District Court refused that request. However, on 21 January 1994 the Regional Court quashed the decision to stay the proceedings and ordered the lower court to resume them. It found that the relevant ownership titles had been in the case file since July 1992.

On 31 March 1994 the District Court stayed the proceedings. They were resumed on an unspecified later date.

The District Court held hearings on 12 October 1994 and 31 May 1995.

On 19 March 1997 the District Court stayed the proceedings as one of the parties had died. The court held hearings on 27 May and 10 December 1997.

On 16 January 1998 the District Court gave its decision and granted the easement sought.

The applicant's neighbour appealed against that ruling to the Cracow Regional Court. On 8 October 1998 the Regional Court held a hearing. On 21 October 1998 it dismissed the appeal filed by the applicant's neighbour.

On 12 January 1999 the Cracow Regional Court granted the applicant an interim order, thus allowing her to cross her neighbour's land.

Subsequently, the applicant's neighbour lodged a cassation appeal against the judgment of the Regional Court. On 26 September 2000 the Supreme Court held a hearing and dismissed the cassation appeal. According to the applicant, the judgment of the Supreme Court was served on her in December 2000.

On 19 December 2000 the Cracow District Court provided the applicant with an enforcement order in respect of the decision of 16 January 1998.

## COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the proceedings.

2. The applicant further complained that she had not had an effective remedy against the excessive length of the proceedings in breach of Article 13 of the Convention.

3. She also alleged that her prolonged inability to use the contested right of way and have access to her property, coupled with the criminal prosecution against her, had amounted to inhuman treatment in breach of Article 3 of the Convention.

## THE LAW

### *A. Length of proceedings and the lack of an effective remedy in this respect*

On 4 July 2007 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by this part of the application. It further requested the Court to strike out the relevant part of the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "(...) the Government hereby wish to express – by way of unilateral declaration – its acknowledgment of the unreasonable duration of the domestic proceedings in which the applicant was involved.
>
> In these circumstances and having regard to the particular facts of the case, the Government declare that they offer to pay to the applicant the amount of PLN 10,000. ... The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on

Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Furthermore, the Government would like to note that in the particular circumstances of the applicant's case, there was no remedy to redress the applicant's length of proceedings complaint at the relevant time. In consequence, the applicant was denied an effective remedy as required by Article 13 of the Convention.

The Government would suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

..."

The applicant requested the Court to reject the Government's initiative on the basis that the unilateral declaration was insufficient in terms of the level of compensation proposed, which they found inadequate in the light of the Court's case-law. The applicant's lawyer also submitted his claim for costs in the amount of EUR 7,300.

The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. It recalls that, according to Article 38 § 2 of the Convention, friendly-settlement negotiations are confidential and that Rule 62 § 2 of the Rules of Court further stipulates that no written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in contentious proceedings. However, the declaration was made by the Government on 21 August 2006 and was subsequently amended outside the framework of the friendly-settlement negotiations.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Article 37 § 1 *in fine* includes the proviso that:

"However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court also recalls that under certain circumstances, it may strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, §§ 75-77, ECHR

2003-VI; *Meriakri v. Moldova* (striking out), no. 53487/99, §§ 29-32, 1 March 2005; *Swedish Transport Workers Union v. Sweden* (striking out), no. 53507/99, §§ 24-27, 18 July 2006 and *Van Houten v. the Netherlands* (striking out), no. 25149/03, §§ 34-37, ECHR 2005-IX).

Turning to the instant case, the Court notes that it has specified in a number of cases the nature and extent of the obligations which arise for the respondent State under Articles 6 and 13 of the Convention as regards the guarantees of the right to a trial within a reasonable time (see, among many others, *Podbielski v. Poland*, judgment of 30 October 1998, RJD 1998-VIII; *Zynger v. Poland*, no. 66096/01, 13 July 2004 and *Kuśmierek v. Poland*, no. 10675/02, 21 September 2004) and the requirement of an effective remedy capable of providing appropriate redress for the damage resulting from the breach of this right (see *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Skawińska v. Poland* (dec.), no. 42096/98, 4 March 2003; *Małasiewicz v. Poland*, no. 22072/02, 14 October 2003; *Ratajczyk v. Poland* (dec.), no. 11215/02, 31 May 2005; *Krasuski v. Poland*, no. 61444/00, ECHR 2005-... (extracts); *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-... and *Cocchiarella v. Italy* [GC], no. 64886/01, ECHR 2006-...). Where the Court has found a breach of these Articles it has awarded just satisfaction, the amount of which depended on the particular features of the case.

Having regard to the nature of the admissions contained in the Government's unilateral declaration, as well as the amount of compensation proposed (which can be considered reasonable in comparison with the Court's awards in similar cases), the Court considers that it is no longer justified to continue the examination of the relevant part of the application pursuant to Article 37 § 1 (c) (see, for the relevant principles, *Tahsin Acar* cited above and also *Haran v. Turkey* (striking out), no. 25754/94, 26 March 2002).

In the light of all the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

### *B. Complaint under Article 3 of the Convention*

The applicant also alleged that her prolonged inability to use the contested right of way and have access to her property, coupled with the criminal prosecution against her, had amounted to inhuman treatment in breach of Article 3 of the Convention.

In so far as the Article 3 complaint raises a separate issue from the length of the impugned proceedings, and regardless of other possible grounds of inadmissibility, the Court considers that it lacks substantiation. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

*C. Article 29 § 3 of the Convention*

Having regard to the above conclusions, Article 29 § 3 of the Convention should no longer apply to the case.

For these reasons, the Court unanimously

*Takes note* of the terms of the respondent Government's declaration in respect of the complaints under Articles 6 § 1 and 13 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in so far as it relates to the above complaints in accordance with Article 37 § 1 (c) of the Convention;

*Declares* the remainder of the application inadmissible.

T.L. EARLY
Registrar

Nicolas BRATZA
President