CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

Application no. 61278/00
by Maria SZCZEPANIEC
against Poland

The European Court of Human Rights (Fourth Section), sitting on 18 January 2005 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 regard to the above application lodged on 23 December 1999.

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 formal declarations accepting a friendly settlement of the case.

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Maria Szczepaniec, is a Polish national who was born in 1913 and lives in Skoczów, Poland. She was represented before the Court by Mr Paweł Koehler, a lawyer practising in Katowice. The respondent

Government were represented by Mr Jakub Wołąsiewicz, of the Ministry of Foreign Affairs.

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

On an unspecified date the applicant lodged a breach of contract claim against W.G. The action was registered under file no. IIC 880/83.

On 21 March 1984 the Katowice District Court allowed the applicant's claim.

On 23 July 1984 the defendant filed an appeal against the first-instance judgment.

By a decision of 29 March 1985 the court stayed the proceedings in view of the defendant's death on 8 May 1984.

Subsequently, file no. IIC 880/83 was lost.

On 4 December 1991 the applicant filed an action against P.G., J.G. and A.G., the legal successors of W.G., for payment of the modified sum awarded to her in the judgment of 21 March 1984.

On 30 June 1992 the court stayed the proceedings as the applicant had failed to submit the information on the defendants' whereabouts within the prescribed time-limit.

On 15 October 1992 the Bielsko-Biała Regional Court decided to resume the proceedings.

Subsequently, the case was transferred to the Katowice Regional Court.

By a decision of 3 December 1995 the Katowice Regional Court rejected the applicant's modified claim against the legal successors of W.G. The court observed that the judgment of 21 March 1984 was not final and that proceedings relating to the same claim were still pending.

On 27 March 1996 the Katowice Court of Appeal quashed this decision. The court considered that in view of the fact that the dispute had not been finally settled, the applicant's claim should be rejected.

On 7 May 1996 the Katowice Regional Court decided to stay the proceedings until the reconstitution of the case-file no. IIC 880/83 was completed.

On 4 September 1996 the Katowice District court issued a decision stating that file no. IIC 880/83 had been reconstituted.

On 10 January 1997 the Katowice Regional Court decided to resume the proceedings.

By a decision of 13 June 1997 the Katowice Regional Court stayed the proceedings at issue.

On 24 June 1997 the Katowice District Court quashed the decision of 4 September 1996.

On 5 February 1998 the Katowice Distict Court issued a decision stating that file no. IIC 880/83 had been reconstituted.

In a supplementary decision of 17 February 1998 the Katowice District Court established that file no. IIC 880/83 had not been reconstituted to a

sufficient degree to allow the court to continue the proceedings. Consequently, the proceedings were to be recommenced.

On 26 February 1998 the applicant lodged an appeal against the decision of 5 February 1998. She also requested the court to grant her retrospective leave to appeal out of time, exemption from court fees and a legal aid lawyer.

By a decision of 6 May 1998 the Katowice District Court dismissed the applicant's request.

On 3 June 1998 the applicant appealed against this decision. Her appeal was dismissed on 18 September 1998 by the Katowice Regional Court.

On 12 October 1998 the Katowice District Court rejected the applicant's appeal against the decision of 5 February 1998 as being lodged out of time.

On 25 February 1999 the applicant lodged an appeal against this decision. At the same time, she requested the court to grant her retrospective leave to appeal out of time.

This request was refused by the court at a hearing held on 23 March 1999.

On 1 July 1999 the Katowice Regional Court dismissed the applicant's appeal against the decision of 23 March 1999.

On 8 July 1999 the Katowice District Court rejected the applicant's appeal against the decision of 12 October 1998 as being lodged out of time.

On 23 July 1999 the Katowice Regional Court decided to resume the proceedings.

On 13 October 2000 the Katowice Regional Court delivered a partial judgment. It partly allowed and partly dismissed the applicant's claim.

On 20 June 2001 the Katowice Court of Appeal lowered the amount awarded to the applicant and dismissed the remainder of the appeal.

THE COMPLAINT

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

THE LAW

On 30 October 2003 the Court decided to communicate the application to the Government.

On 5 November 2004 the Court received the following declaration signed by the applicant's representative:

"I note that the Government of Poland are prepared to pay the sum of PLN 20,000 to Mrs Maria Szczepaniec with a view of securing a friendly settlement of the above mentioned case pending before the European Court of Human Rights.

This sum, 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 and payable within three months from the date of notification of the judgment by the Court pursuant to the Article 37 § 1 of the European Convention on Human Rights. 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.

I accept the proposal and declare that the applicant waives any further claims against Poland in respect of the facts giving rise to this application. I declare that this constitutes a final settlement of the case."

On 26 November 2004 the Court received the following declaration from the Government:

"I declare that the Government of Poland offer to pay PLN 20,000 to Mrs Maria Szczepaniec with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, 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 and payable within three months from the date of notification of the judgment by the Court pursuant to the 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. This payment will constitute the final resolution of the case."

The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention;

Decides to strike the application out of its list of cases.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President