CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 52586/99
by Małgorzata TRUSZKOWSKA
against Poland

The European Court of Human Rights (Third Section), sitting on 11 December 2001 as a Chamber composed of

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced on 7 May 1999 and registered on 15 November 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant, Małgorzata Truszkowska, is a Polish national, who was born in 1969 and lives in Lidzbark, Poland.

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

On 27 May 1994 the applicant filed with the Warsaw Regional Court (*sąd wojewódzki*) a divorce action.

On 21 July 1994 the court held an information meeting aimed at a reconciliation between the spouses, but to no avail.

On 25 November 1994 it ordered an expert opinion concerning contacts of the applicant's husband (hereinafter: T) with their son. He refused to undergo an examination by psychologists.

On 12 May 1995 the court dismissed T's challenge to the participation in the proceedings of one of the judges. On 29 December 1995 the Warsaw Court of Appeal (*sąd apelacyjny*) dismissed his appeal against that decision.

At the hearing held on 30 May 1995 the Regional Court indicated the place of residence of the applicant's son and his contacts with T pending the divorce proceedings. During the hearing security guards were called to the courtroom, because of T's behaviour.

On 21 June 1995 the court refused T's request to correct the minutes of a hearing.

On 10 August 1995 the Warsaw Court of Appeal dismissed both parties' appeals against the Regional Court's decision of 30 May 1995.

On 2 December 1995 T challenged another judge participating in the proceedings. On 23 February 1996 the Regional court dismissed his petition. On 21 June 1996 the Warsaw Court of Appeal quashed that decision, relying on the unlawful composition of the Regional Court.

On 3 September 1996 the Regional Court again dismissed T's challenge. His appeal against that decision was on 27 November 1996 dismissed by the Court of Appeal.

On 21 February 1997 the Regional Court ordered an expert opinion concerning the custody over the applicant's son and his contacts with the parents. T failed to appear before the family centre where the examination was carried out.

On 24 March 1997 the Regional Court dismissed another challenge from T to the same judge and imposed a 500 zlotys' (PLN) fine on him for challenging a judge in bad faith. On 12 September 1997 the Court of Appeal dismissed T's appeal against that decision. In June 1998 the President of the Regional Court annulled the fine imposed on T.

At the hearing held on 12 May 1998 the Regional Court refused both parties' requests concerning the contacts with the son and granted him child support maintenance to be paid by T.

On 18 May 1998 it dismissed T's request to impose a fine on a witness.

On 16 November 1998 the Regional Court dismissed T's challenge to the participation in the proceedings of another judge and imposed a PLN 500 fine for lodging manifestly ill-founded petitions in this respect. On 3 February 1999 the Warsaw Court of appeal dismissed T's appeal against that decision.

On 24 May 1999 the Regional Court held a hearing. It dismissed T's request for a legal-aid lawyer and for transmitting the case to another court. T challenged another judge, which resulted in staying the proceedings until the adoption of a decision on T's petition.

On 17 June 1999 the court dismissed the challenge as unsubstantiated and again imposed a PLN 500 fine on him.

On 9 July 1999 it imposed a PLN 1000 fine on T for offending its authority in his pleadings.

On 16 December 1999 the Warsaw Court of Appeal dismissed T's appeal against the Regional Court's decision of 17 June 1999.

On 24 March 2000 the Regional Court gave judgment. It granted a divorce and declared T's fault for the marital breakdown. The court awarded custody of the son to the applicant, limiting T's rights to decisions concerning the son's education and health. It obliged T to pay PLN 300 monthly as child support. T lodged an appeal against that judgment.

On 30 November 2000 the Warsaw Court of Appeal dismissed that appeal. T lodged with the Supreme Court a cassation appeal against that judgment.

The proceedings are still pending.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the proceedings have exceeded a reasonable time. She submits that the case was not complex and that the courts should have dealt with the case with special diligence, because the outcome of the proceedings is decisive for her civil status. She points out that Polish law makes it impossible for courts to prevent parties acting in bad faith from obstructing the proper course of proceedings.

2. The applicant complains under Article 8 of the Convention, in conjunction with Article 6 § 1, that the lengthy proceedings have affected her private and family life. In particular, the applicant had to move out from Warsaw, where she could have found a better job. She submits that the court order indicating Saturdays as days of her son's meetings with his father made it impossible for her to undertake post-graduate studies. The applicant

notes, however, that despite those obstacles she has completed studies at an architecture faculty and found a job.

3. She complains under Article 12 of the Convention, in conjunction with Article 6 § 1, that as a result of the excessively long divorce proceedings her right to re-marry has been infringed, whereas, according to the Court's case-law, there is no difference under Article 12 between marriage and re-marriage.

4. She complains under Article 13 of the Convention that Polish law does not provide for an effective remedy in respect of the unreasonable length of proceedings.

THE LAW

1. The applicant complains under Article 6 § 1 of the Convention about the allegedly unreasonable length of the proceedings and under Article 13 about the alleged lack of an effective remedy in respect thereof.

The Court considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of the Court, to give notice of them to the respondent Government.

2. The applicant complains under Article 8 of the Convention that the allegedly excessive length of the divorce proceedings has interfered with her private and family life.

Article 8 provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court recalls that failure to try an action within a reasonable time can on occasions have repercussions as regards respect for some other right guaranteed by the Convention (see the Buchholz v. Germany judgment of 6 May 1981, Series A no. 42, p. 22, § 65).

However, the Court observes that the applicant has not provided any *prima facie* evidence that there is any causal link between the length of the proceedings and her moving out from Warsaw. As regards the allegations concerning her career prospects, the applicant herself admits that she has managed to complete her studies and find a job. In the light of these submissions, the Court finds no appearance of interference with the

enjoyment of the applicant's rights guaranteed by Article 8 of the Convention.

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

3. The applicant complains under Article 12 of the Convention that due to the excessive length of the divorce proceedings she has been deprived of the right to re-marry.

Article 12 provides:

> "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

However, the Court observes that the applicant has not shown that she actually wanted to and was prevented from re-marrying (cf., *inter alia*, S. D.P. v. Italy, application no. 27962/95, Commission decision of 16 April 1996, unreported, and Bolignari v. Italy, application no. 37175/97, Commission decision of 22 April 1998, unreported). Therefore, this part of the application is unsubstantiated and must be rejected as being manifestly ill-founded, pursuant to Article 35 § 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the allegedly unreasonable length of the proceedings and the lack of an effective remedy in respect thereof;

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President