CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 73192/01
by Mieczysława WAWRZYNOWICZ and Władysław WAWRZYNOWICZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 8 December 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 25 February 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mrs Mieczysława Wawrzynowicz and Władysław Wawrzynowicz, are Polish nationals who were born in 2 June 1948 and 5 February 1940 respectively and live in Poznań.

The circumstances of the case

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

1. First set of civil proceedings

In 1984 the first applicant divorced and on 5 June 1992 the Poznań Regional Court gave a decision on a division of the matrimonial property.

On 27 September 1994 the first applicant's former husband lodged a claim with the Poznań Regional Court for an order of payment to him of an amount of 5,600 PLN for non-contractual occupation of an apartment, which had been a part of the matrimonial property, by the first applicant and her new husband, the second applicant.

On 22 December 1998 the Poznań Regional Court ordered the first applicant to pay the amount of 7,322 PLN to her former husband. The applicant appealed. As transpires from the case file, she failed to pay a court fee but was subsequently exempted from court costs exceeding an amount of PLN 100. On 6 June 2000 the Poznań Regional Court required the applicant to pay a part of the court fee for an appeal in the amount of 100 PLN. The applicant failed to do so. On 11 September 2000 the Poznań Regional Court dismissed her request to reinstate the time limit to pay the fee.

2. Second set of civil proceedings

On 12 March 1993 the first applicant lodged a motion with the Poznań District Court claiming interest on the amount awarded to her by the court on 30 September 1991 against her former husband. On 26 June 1995 the Poznań District Court gave judgment against the applicant, and she appealed to the Poznań Regional Court. On 1 December 1995 the Regional Court partly quashed the judgment and remitted the case to the first-instance court for re-examination.

On 7 December 2000 the Poznań District Court partly allowed the applicant's claim. On 7 September 2001 the Poznań Regional Court dismissed the appeal.

COMPLAINT

1. The applicants complain that the outcome of the first set of proceedings resulted in the breach of their right to property guaranteed by the Article 1 of Protocol No. 1 to the Convention and their right to free movement secured by Article 2 of Protocol No. 4.

2. They further complain, without invoking any Article of the Convention, about the outcome of the second set of the proceedings.

3. Finally, they complain in substance under Article 6 § 1 of the Convention about the excessive length of the second set of the civil proceedings.

THE LAW

1. The applicants complain about the outcome of the first set of proceedings invoking Article 1 of Protocol No. 1 to the Convention and their right to free movement secured by Article 2 of Protocol No. 4.

The Article 1 of Protocol No. 1 reads as far as relevant:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The relevant part of Article 2 of Protocol No. 4 provides:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence".

The Court recalls Article 35 § 1 of the Convention which reads as follows:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

The Court observes that the applicants failed to comply with the procedural requirements before the court of appeal and, as a result their appeal was rejected on formal grounds. The Court is, therefore, of the opinion that the applicants have not exhausted domestic remedies as required by Article 35 § 1 of the Convention.

It follows that this part of the application must be rejected pursuant to Article 35 § 1 of the Convention.

2. The applicants further complain about the unfavourable outcome of the second set of civil proceedings.

The Court reiterates that according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and insofar as they may have infringed rights and freedoms protected by the Convention (see Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, ECHR 1999-I).

In the light of all the material in its possession and insofar as the applicants' complaint about the outcome has been substantiated, the Court finds that it does not disclose any appearance of a violation of the Convention. The Court finds no elements which would indicate that the national courts went beyond their proper discretion in their assessment of facts or that they reached conclusions which will be unfair or unreasonable.

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

3. The first applicant also complains in substance of Article 6 § 1 of the Convention about the excessive length of the second set of the civil proceedings.

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

For these reasons, the Court unanimously

Decides to adjourn the examination of the first applicant's complaint concerning the length of the second set of the civil proceedings

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President