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

FIRST SECTION

CASE OF STANKIEWICZ v. POLAND

(Application no. 46917/99)

JUDGMENT

STRASBOURG

6 April 2006

FINAL

06/07/2006

In the case of Stankiewicz v. Poland,

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

Christos Rozakis, *President*,
Loukis Loucaides,
Françoise Tulkens,
Peer Lorenzen,
Nina Vajić,
Snejana Botoucharova,
Lech Garlicki, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 16 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 46917/99) against the Republic of Poland lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Polish nationals, Mr Janusz and Mrs Krystyna Stankiewicz ("the applicants"), on 1 October 1998. The applicants were represented before the Court by Ms J. Banaszewska and Mr Z. Gieruń-Banaszewski, lawyers practising in Wrocław.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. The applicants complained under Article 6 § 1 of the Convention that a decision refusing them reimbursement of the costs they had borne in respect of a civil claim which the public prosecutor had unsuccessfully filed against them had been in breach of that provision.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 18 April 2002 the Court decided to communicate the application to the Government.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. On 17 March 2005 the Court, under the provisions of Article 29 § 3 of the Convention, decided to examine the merits of the application at the same

time as its admissibility, informed the parties accordingly and invited the applicants to submit their claims under Article 41. The parties did not object to Article 29 § 3 being applied.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 9 November 1992, at an auction organised by the Bolesławiec District Office, the applicants, who were the only participants in the bid, purchased real property owned by the District Office for 202,000 zlotys (PLN).

9. On 2 August 1996 the Bolesławiec District Prosecutor, acting on behalf of the State Treasury and relying on the 1991 Law on unjustified enrichment at the expense of the State Treasury, sued the applicants in a civil court, seeking payment in the amount of PLN 111,046. The prosecuting authorities referred to Article 7 of the Code of Civil Procedure (see paragraph 31 below) and invoked their powers as the guardians of the legal order. They submitted that the applicants had purchased the property concerned under a compensatory scheme for persons who had abandoned their property on territories beyond the Bug River that had belonged to Poland before the Second World War. Under this scheme, governed chiefly by the provisions of the Land Administration and Expropriation Act of 29 April 1985 ("the Land Administration Act" – see paragraphs 38-44 below), the applicants had a "right to credit", that is, the right to count the price of the abandoned property towards the price of the property to be purchased from the State Treasury.

10. The prosecuting authorities further argued that the purchase price, which partly comprised compensation for the property left by the applicants' legal predecessors in Trembowla, in the former Polish territories beyond the Bug River, had been calculated wrongly. They averred in that respect that the value of the property, as assessed by expert A.Ż., amounted to PLN 125,130. Later, a month before the contract was concluded, the same expert had assessed the value of the same property at PLN 218,985. The prosecuting authorities, harbouring certain doubts as to the soundness of the estimates, had instituted investigations and appointed a new expert, who had estimated the value of the abandoned property at only PLN 90,953. Consequently, as the value of the house that the applicants' legal predecessors had abandoned in Trembowla was much lower than the price the applicants had paid for the property in Bolesławiec, the State had sold them the latter property at a considerable loss. The plaintiff prosecuting authority further argued that the first expert, A.Ż., had had regard to the

market value of the Trembowla property, whereas under the relevant legislation he should have taken the technical value of the property into account. As the applicants had refused to comply with the Bolesławiec District Office's demand to pay PLN 111,046, the prosecuting authorities claimed that the applicants should repay that amount to them.

11. The applicants argued in their pleadings that the State Treasury, which had sold them the property in Bolesławiec under the provisions of the Land Administration Act, had had the expert estimates at its disposal and had not put forward any objections at that time. They submitted that the estimate relied on by the prosecuting authorities in their statement of claim was based on the assumption that the property in Trembowla was in a rural location, which was incorrect as it was situated in a town.

12. On 18 December 1997 the Nowy Sącz Regional Court dismissed the prosecutor's claim against the applicants, considering it to be unfounded.

13. The court first observed that the applicants had bought the property at a public auction organised by the Bolesławiec District Office under the compensation scheme for former owners of properties in the former Polish territories. For the purposes of the auction they had submitted to the authorities two successive expert opinions concerning the value of the property owned by their legal predecessors in Trembowla, prepared by expert A.Ż. He had estimated the value of the property abandoned in Trembowla at PLN 218,985. As the value of the property they had purchased from the Bolesławiec Municipality amounted to PLN 202,000, the applicants had not been obliged to pay anything to the municipality.

14. The court considered that the crux of the legal issue it had to resolve lay in the determination of the methods and criteria to be used when assessing the value of properties abandoned in the pre-war Polish territory. It referred to the Land Administration Act, applicable to the compensatory scheme at that time, and to the Cabinet's ordinance issued on the basis of section 81 of said Act. Under section 6 of the ordinance, the value of the abandoned land was to be assessed with reference to the current market price of land, and the value of houses with reference to their so-called reconstruction value.

15. The court further observed that the relevant legislation did not lay down any other criteria for the valuation of the properties concerned. The properties therefore had to be valued on a case-by-case basis, with reference to all the factors relevant to a particular case. In such circumstances, the court had to make a choice relying on the conclusions of the experts commissioned to submit their reports to the court.

16. Accordingly, the court took account of expert opinions prepared by experts W.A. and A.M. for the purposes of the investigations conducted by the prosecuting authorities in connection with the purchase of the property. It also had regard to the findings and estimates made for the purpose of the civil proceedings by experts A.D., J.K. and T.L., who had been assigned to

the case by the court. The court further noted the conclusions of an opinion prepared at the applicants' request by expert S.S.

17. The court concluded that, in the light of the various arguments advanced by the experts, the price paid by the applicants in 1992 corresponded to the value of the property abandoned in Trembowla.

18. Lastly, the court had regard to the fact that the applicants had, in the meantime, sold the property in question and obtained PLN 180,992 for it. This, in the court's view, confirmed its finding that the price for the property, fixed by the District Office in 1992 at PLN 202,000, had been excessive.

19. The court further ordered the Bolesławiec District Office of the State Treasury to repay to the applicants the litigation costs they had borne in the proceedings, in the amount of PLN 14,177.26. The court referred to Article 98 of the Code of Civil Procedure, taken in conjunction with Article 106.

20. The prosecuting authorities appealed, claiming that the Regional Court, in estimating the value of the properties concerned, had failed to take into account all the relevant expert opinions. In addition, the Regional Court's decision to award the legal costs borne by the defendants had been ill-founded. They argued that, since the plaintiff in the case had been the prosecutor, the general principle whereby the unsuccessful party in a civil case bore the litigation costs, enshrined in Article 98 of the Code of Civil Procedure, was not applicable.

21. The applicants, in reply to the appeal, submitted that the assessment of the value of the abandoned property had been thorough and had been based on five expert opinions prepared by seven experts.

22. As to the litigation costs, they argued that the prosecuting authorities, while acting on behalf of the District Office, had in fact been seeking to protect the financial interests of the State Treasury rather than to act as the guardian of the legal order. Hence, the prosecution had not been acting under Article 7 of the Code of Civil Procedure, that is, to protect the rule of law or citizens' rights, or in the public interest.

23. In such a situation, had the prosecution been exempted from operation of the general principle of responsibility of the unsuccessful party for the litigation costs, they would have been placed at an unfair advantage *vis-à-vis* the other party.

24. Hence, Article 106 of the Code of Civil Procedure should be applied to their case in the manner advanced by the Supreme Court, which had stated that the term "State Treasury" used in Article 106 of the Code of Civil Procedure should by no means imply that an award of costs for or against the State Treasury was ruled out in situations in which the prosecuting authorities acted in a civil case representing the financial interests of the State Treasury (decision of 6 July 1966, I Cz 62/66 OSP 1967/6/140).

25. On 7 April 1998 the Cracow Court of Appeal dismissed the prosecutor's appeal in so far as it related to the price of the property concerned. The court noted that the first-instance court had had regard to expert opinions prepared by seven experts. It had carefully examined their conclusions and explained convincingly, with reference to the detailed findings of their reports, why it had found the price paid by the applicants for the property to be correct.

26. The court also partly amended the first-instance judgment by refusing to award the applicants their legal costs. The court considered that the situation of a prosecutor bringing a civil action on behalf of a third party represented a special case. He or she could not be regarded as a mere party to civil proceedings. This singular nature of the prosecutor's role in a civil case was reflected in the rule on costs contained in Article 106 of the Code of Civil Procedure. Under that provision, the participation of the prosecutor in a civil case did not entail for the other party a right to reimbursement of the litigation costs. Article 106 was fully applicable to the circumstances of the case. Therefore, and in view of the fact that the Bolesławiec District Office had not joined the proceedings as a plaintiff, all litigation costs, including the costs borne in connection with the appellate proceedings, had to be borne by the defendants.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Litigation costs

27. Under Polish law all persons, with the exception of public authorities and institutions, are obliged to pay a court fee when lodging a statement of claim with the competent civil court. As the case proceeds, a party is obliged to pay additional court fees when lodging any further appeals.

28. Under Article 98 of the Code of Civil Procedure, the costs of litigation necessary for the effective conduct of a case are borne by the unsuccessful party to the proceedings. The costs of litigation comprise the court fees referred to above, legal fees paid to professional legal representatives and various other items of expenditure incurred in connection with the proceedings, such as transport costs and loss of salary as a result of participation in the hearings.

29. An exception to this general principle is provided for in Article 101 of the Code. Pursuant to this provision, the court may not order the losing defendant to pay the costs of litigation if he or she did not cause the proceedings to be instituted and acknowledged the claim at a first hearing.

30. The scope of operation of the general principle whereby the unsuccessful party bears the litigation costs, referred to above, is also mitigated by Article 102 of the Code. This provision enshrines the principle of equity in respect of litigation costs and stipulates that the court may order

the losing party to pay only a part of the litigation costs, or may exempt it altogether from the obligation to pay these costs, where the particular circumstances of the case justify such a decision.

31. Under Article 7 of the Code of Civil Procedure, the public prosecutor may participate in civil proceedings whenever it is necessary to protect the rule of law or citizens' rights, or in the public interest. Pursuant to Article 55 of the Code, the prosecuting authorities are obliged to indicate the person or institution on behalf of which they have instituted the proceedings. Under Article 111 of the Code, the prosecuting authorities are exempt from the general obligation to pay court fees.

32. The court serves of its own motion the statement of claim on this person or institution, which is authorised to join the proceedings as a plaintiff.

33. Article 106 of the Code reads:

> "The participation of the prosecutor in a civil case shall not give rise to reimbursement of litigation costs either to or from the State Treasury."

34. According to the case-law of the Supreme Court, Article 106 of the Code of Civil Procedure is applicable only if the prosecutor joined a party in the course of the proceedings and not if he instituted them himself (decision of 17 June 1966, I Cz 54/66).

35. The Supreme Court further held:

> "Article 106 of the Code is applicable only to cases in which the prosecutor participates in civil proceedings for the purposes indicated in Article 7 of the Code, that is, to protect the rule of law or citizens' rights, or in the public interest. The term 'State Treasury' used in Article 106 of the Code of Civil Procedure in no sense implies that an award of costs for or against the State Treasury is ruled out in situations in which the prosecuting authorities act in a civil case representing the financial interests of the State Treasury in connection with its acts." (decision of 6 July 1966, I Cz 62/66 OSP 1967/6/140)

36. In its judgment of 12 June 2002, the Constitutional Court of Poland, examining the compatibility with the Constitution of certain provisions of civil procedure applicable in competition proceedings, observed:

> "... exemption from the obligation to pay court costs, in particular costs other than the court fees, cannot be automatic in nature, that is to say, it cannot create a situation in which the successful party would not have any claim to have his or her costs reimbursed. In the Court's view, the particular circumstances of one of the parties or the particular character of the case may be such that the creation by law of a mechanism allowing for such a situation cannot be ruled out from the outset ... nevertheless, it may not result in a state of affairs in which a successful private party is obliged to bear the full financial cost of his or her participation in the proceedings. In some situations such an outcome might even lead to the economic benefit deriving from the ruling in the party's favour being cancelled out.
>
> If the legislature, having regard to circumstances militating in favour of such a solution, adopts an approach which allows the losing party to be completely exempted from the obligation to pay costs, it should at the same time create a separate legal

> mechanism enabling the successful party to obtain reimbursement of the costs it incurred from another source. ... Exemption of the losing party from any obligation to pay costs, without the successful party having any possibility of having his or her costs compensated, amounts to a restriction of the right of access to a court."

37. In its judgment of 6 September 2001 (P/3/01), the Constitutional Court observed that the principle of equality before the law which manifested itself in, among other things, the right of equal access to the courts and the right to a fair hearing, was also applicable to issues concerning litigation costs. Hence, the principle that the successful party should have its costs reimbursed, and the unsuccessful party bear the financial cost of the proceedings, must be regarded as consistent with the principles of equality and equity.

B. Entitlement to compensation of persons who abandoned property on territories that belonged to Poland before the Second World War

38. Since 1946 Polish law has provided that persons repatriated from the territories beyond the Bug River which belonged to Poland before the Second World War are entitled to have the value of the property abandoned as a result of the Second World War deducted either from the fee for the right of "perpetual use" or from the price of immovable property purchased from the State Treasury.

39. These provisions were repeated in several successive statutes. At the material time, the Land Administration Act governed the legal situation of persons entitled to such compensation.

40. The obligation to compensate repatriated persons was laid down in section 81 of the Act, the relevant parts of which provided that persons who, in connection with the war that began in 1939, abandoned real property in territories not at present belonging to the Polish State and who, by virtue of international treaties concluded by Poland, were to obtain equivalent compensation for the property abandoned abroad, would have the value of the abandoned real property offset against the fee for the right of perpetual use of land or against the price of a building plot and the State-owned buildings or premises situated thereon.

41. At the material time in the present case, the procedure for implementation of section 81 of the Land Administration Act was laid down in the Cabinet's Ordinance of 16 September 1985 on the principles applicable in connection with offsetting the value of real property abandoned abroad against the price of a title to real property or against the fee for perpetual use.

42. Rules concerning the determination of the value of the abandoned property were set out in the Cabinet's Ordinance of 16 September 1985 (as amended) on the offsetting of the value of real property abandoned abroad

against the fee for perpetual use or against the price of a building plot and buildings situated thereon (*Rozporządzenie Rady Ministrów w sprawie zaliczania wartości mienia nieruchomego pozostawionego za granicą na poczet opłat za użytkowanie wieczyste lub na pokrycie ceny sprzedaży działki budowlanej i położonych na niej budynków* – "the 1985 Ordinance").

43. Paragraph 3 of the 1985 Ordinance provided, in its relevant parts, as follows:

> "If the value of the property [abandoned abroad] exceeds the price of the real property that has been sold ..., the outstanding amount can be offset against the fee for the right of perpetual use, or against the price of an industrial or commercial plot of land and any commercial or small-business establishments, buildings designated for use as workshops or ateliers, holiday homes or garages situated thereon."

44. Paragraph 5 provided that a first-instance body of the local State administration competent to deal with town and country planning should issue the decisions on offsetting the value of property abandoned abroad. Paragraph 6 laid down certain general rules relating to the valuation of such property.

THE LAW

I. ADMISSIBILITY

45. The Court notes that the application 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.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

46. The applicants complained that the refusal to reimburse the costs of litigation they had incurred in respect of the civil action the prosecuting authorities had unsuccessfully brought against them was in breach of their right to a fair hearing as guaranteed by Article 6 of the Convention.

47. The relevant part of Article 6 § 1 reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

48. The Government first argued that the applicants had enjoyed a fair hearing as guaranteed by Article 6 of the Convention.

49. They submitted that the prosecuting authorities had instituted the civil proceedings against the applicants under Article 7 of the Code of Civil Procedure. In doing so, they had been acting for the purpose of protecting the rule of law and in the public interest. The action against the applicants had not related to any pecuniary interests of the prosecuting authorities themselves. Furthermore, the State Treasury, in whose interest the prosecutor had instituted the proceedings, had not joined the proceedings as a plaintiff. Therefore, considering that the prosecutor had acted on the basis of provisions conferring on him the special role of guardian of the public interest, the courts had been right in deciding that the applicants should bear the costs they had incurred in the course of the proceedings.

50. The Government further submitted that the provisions of Article 106 of the Code of Civil Procedure did not discriminate against private parties as they did not provide for the reimbursement of legal costs either to or from the State Treasury in civil cases in which the prosecuting authorities participated. Thus, the latter were not placed at an unfair advantage.

51. The applicants argued that the prosecuting authorities had instituted civil proceedings on behalf of the State Treasury, represented, *statio fisci*, by the Bolesławiec District Office. The compensation claim filed by the prosecutor had been dismissed on the merits by both the first and second-instance courts. Despite that, the second-instance court had ordered the applicants to pay the legal costs they had borne in full.

52. The applicants submitted that, under Polish law on civil procedure, the unsuccessful party normally had to bear the legal costs of the successful party, pursuant to Article 98 of the Code of Civil Procedure.

53. They accepted that under certain circumstances exceptions might be made to the principle of financial responsibility for bringing an unsuccessful civil action. These exceptions allowed the courts to take into account, when giving a decision on costs, the parties' conduct, the character of the proceedings or considerations of social policy, and to adapt their decisions accordingly.

54. Article 106 of the Code of Civil Procedure, conferring a privileged position on the prosecuting authorities in respect of litigation costs, was also an exception to this principle. However, that provision, in so far as it did not permit the courts to order reimbursement of the litigation costs to a party against whom the prosecutor had brought an unsuccessful civil action, was blatantly unfair. The decision of the appellate court in their case had also been erroneous, especially in the light of the fact that both the first and second-instance courts had found against the prosecuting authorities on the merits.

55. In their case, neither the prosecuting authorities nor the institution of local government on whose behalf the prosecutor had acted in the case had borne any financial consequences of the unsuccessful civil action. As a result, the applicants had been obliged to bear the litigation costs,

amounting to PLN 23,987.26, in full. Had any party other than the prosecutor been acting as plaintiff in the proceedings on behalf of the State, the applicants would have been granted the costs in accordance with the general rule that the unsuccessful party to civil litigation pays the costs of the successful party.

56. The applicants argued that the operation of this provision discriminated against them as individuals, in their capacity as defendants in a civil case brought by the prosecuting authorities. It was generally acknowledged that the prosecuting authorities had at their disposal ample financial means exceeding those available to any individual. Nevertheless, the prosecuting authorities were not immune to errors of law when bringing a case before a civil court. It was the obligation of an independent and impartial court to examine whether their civil action was well-founded. In the applicants' case, in the light of the conclusions of both the first and second-instance courts, this had clearly not been the case.

57. The applicants submitted that they had incurred considerable expenses in the proceedings as professional legal representation had been indispensable in view of the high value of the claim and, in particular, of the complexity of the legal issues involved in the case.

58. Lastly, they submitted that favouritism towards the interests of the State was discriminatory and violated the principle of equality between the parties to the proceedings. In their view, the notion of fairness could not be restricted to a fair judicial decision on the merits of a civil dispute; it must also encompass fairness in adjudicating the litigation costs.

B. The Court's assessment

59. The Court first reiterates that it has found on several occasions that the court fee levied on parties to civil proceedings constituted a restriction that impaired the very essence of the applicants' right of access to a court guaranteed by Article 6 § 1 of the Convention (see *Kreuz v. Poland (no. 1)*, no. 28249/95, § 60, ECHR 2001-VI; *Jedamski and Jedamska v. Poland*, no. 73547/01, § 60, 26 July 2005; and *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 64, 26 July 2005). The Court considered in these cases, having regard to the principles established by its case-law in respect of the right of access to a court, that the amount of the court fees assessed in the light of the circumstances of a given case, including the applicants' ability to pay them and the phase of the proceedings at which that restriction was imposed on them, were factors which were material in the determination of whether or not a person had enjoyed his right of access to a court.

60. The Court is well aware that in the circumstances of the present case neither the court fee nor the applicants' access to a court is concerned. However, the Court is of the view that there may also be situations in which

the issues linked to the determination of litigation costs can be of relevance for the assessment as to whether the proceedings in a civil case seen as a whole have complied with the requirements of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Robins v. the United Kingdom*, 23 September 1997, § 29, *Reports of Judgments and Decisions* 1997-V).

61. The Court also notes the relevance of the case-law of the Constitutional Court of Poland referred to above (see paragraphs 36-37) to the issues examined in the present case. In particular, the latter emphasised that the right of equal access to a court and the right to a fair hearing were also applicable to issues concerning litigation costs.

62. In that connection, the Court first notes that under Article 98 of the Polish Code of Civil Procedure the unsuccessful party in a civil case is normally obliged to reimburse the litigation costs to the successful party, provided that those costs were "necessary for the effective conduct of a case".

63. The Court observes that the situation of the prosecutor in respect to litigation costs in Polish civil procedure constitutes an exception to this principle. Under Article 106 of the Code of Civil Procedure, the principle in question is not applicable when the prosecutor participates in civil proceedings in his capacity as guardian of the legal order.

64. The Court further notes the case-law of the Polish Supreme Court, according to which this provision is applicable only if the prosecutor joins a party in the course of the proceedings and not if he institutes them himself (see paragraph 34 above). It further notes that the Supreme Court also held that the term "State Treasury" used in Article 106 of the Code of Civil Procedure in no sense implied that an award of costs for or against the State Treasury was ruled out in situations in which the prosecuting authorities were acting in a civil case representing the financial interests of the State Treasury (see paragraph 35 above).

65. It is true that the Court's power to review compliance with domestic law is limited (see, *mutatis mutandis*, *Fredin v. Sweden (no. 1)*, 18 February 1991, § 50, Series A no. 192). Nevertheless, the Court observes, having regard to the case-law of the Supreme Court, that in the present case the exception referred to in paragraph 63 above was applied by the second-instance court. That court gave its decision in respect of costs without regard to the fact that Article 102 of the Code of Civil Procedure expressly stipulates that the court may order an unsuccessful party to civil proceedings to pay only a part of the litigation costs, or may exempt it altogether from the obligation to pay them, when the particular circumstances of the case justify such a decision.

66. The Court further notes that the case-law of the Supreme Court in this regard allows the courts to apply the relevant provisions of the Code of Civil Procedure in such a way as to mitigate the privileged position of the

prosecuting authorities and thus better take account of the particular features of each case and the legitimate interests of the individual.

67. The Court observes that no such mitigation on the ground of equity was available to the applicants under the decision of the appellate court. That court overturned the decision of the first-instance court in respect of costs only because the prosecuting authorities had been the opposing party in the civil case and despite the fact that the courts, in both the first and second-instance judgments, had found against the public prosecutor as to the merits.

68. The Court further notes that the prosecuting authorities enjoy *ab initio* a privileged position with respect to the costs of civil proceedings. In that connection, the Court also notes the applicants' argument that in any event the prosecuting authorities have at their disposal legal expertise and ample financial means exceeding those available to any individual.

69. It is true that such a privilege may be justified for the protection of the legal order. However, it should not be applied so as to put a party to civil proceedings at an undue disadvantage *vis-à-vis* the prosecuting authorities.

70. Further, in the Court's view, the general factual and legal background to the case should not be overlooked in the assessment of whether the applicants in the present case had a fair hearing within the meaning of Article 6 of the Convention. The Court refers in this respect to its judgment in *Broniowski v. Poland* ([GC], no. 31443/96, §§ 180-87, ECHR 2004-V), in which it found that there had been a violation of Article 1 of Protocol No. 1, originating in a systemic problem connected with the malfunctioning of domestic legislation and practice caused by the failure to set up an effective mechanism to implement the "right to credit" of Bug River claimants.

71. In the present case, the Court notes that the applicants managed to have their "right to credit" for the property in Trembowla recognised by purchasing a property from the State Treasury in 1992 at auction. Subsequently, the legal certainty of the ownership they had thus acquired was threatened by the prosecutor's civil action. Had the action of the prosecuting authorities been successful, the applicants would have had to reimburse the full price they had received when in 1994 they had sold to a third party the property purchased in exchange for their "right to credit" (see paragraph 18 above).

72. The Court further notes that expert opinions were commissioned by the first-instance court in order to establish the value of the property purchased by the applicants and of the abandoned property. The Court observes that the law did not determine the method of estimating the price of the abandoned property, as observed by the court in its judgment of 18 December 1997 (see paragraphs 14-15 above). Hence, it was left to the court to determine the values concerned, choosing a method which it judged

best suited to the circumstances of the case, one which involved obtaining the opinion of experts in the valuation of real property.

73. Having regard to all these factors taken together (see paragraphs 70-72 above), the Court is of the view that the case before the civil courts was a complex one.

74. The Court is further of the opinion that in such circumstances, and having regard also to the substantial amount of money involved in the case, the applicants' decision to have professional legal representation cannot be said to have been unwarranted.

75. The Court further considers that it has not been shown by the Government that the legal fees incurred in the case were excessive. In particular, no evidence was adduced to demonstrate that the legal fees the applicants had paid for legal representation before two judicial instances were inconsistent with the legal fees charged at the relevant time in similar cases. In the circumstances, the Court considers that the costs of professional legal assistance in the civil case were not incurred recklessly or without proper justification.

76. Having regard to the foregoing considerations and to the circumstances of the case as a whole, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

77. The applicants complained that the circumstances of the case gave rise to a violation of Article 1 of Protocol No. 1.

78. The Government contested that argument.

79. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

80. Having regard to its finding relating to Article 6 § 1 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicants first claimed 61,501.05 zlotys (PLN) in respect of pecuniary damage. They submitted that this amount comprised the actual

litigation costs which they had borne before the domestic courts, in the amount of PLN 23,987.26, with statutory interest in the amount of PLN 37,513.79 payable under the applicable provisions of Polish law for the period from the date on which that amount had been paid until 13 April 2005, the date on which they submitted their Article 41 claims to the Court. They subsequently reduced their claim to PLN 50,000.

83. They also claimed PLN 15,000 in respect of non-pecuniary damage. They referred to the anguish and frustration they had endured as a result of the judicial decisions concerning the litigation costs in their case.

84. The Government submitted that the applicants' claims were too high and requested the Court to make its award, if at all, with due regard to the circumstances of the case taken as a whole.

85. The Court observes that the damage sustained by the applicants as a result of the breach of Article 6 § 1 of the Convention was, in the circumstances of the case, essentially of a pecuniary nature in that they had to bear the litigation costs in full. There is therefore a direct causal link between the violation found and the pecuniary damage which they claim. It accordingly awards the applicants the full amount of PLN 50,000 claimed in respect of pecuniary damage, which corresponds to the costs the applicants had to bear, with interest, plus any tax chargeable on that amount.

86. The Court also considers that the applicants have suffered non-pecuniary damage owing, for instance, to the distress resulting from the judicial decisions complained of. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicants 2,500 euros under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

87. The applicants also claimed PLN 5,000 for the costs and expenses incurred in the proceedings before the Court in which they sought redress for the violation of their rights resulting from the decisions of the domestic courts.

88. The Government argued that any award under this head should be limited to those costs and expenses that had been actually and necessarily incurred and were reasonable as to quantum.

89. 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, the documents submitted by the applicants and the above criteria, the Court considers it reasonable to allow their claim in full to cover the costs of the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

90. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) PLN 50,000 (fifty thousand zlotys) in respect of pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage to be converted into zlotys at the rate applicable at the date of settlement;
      (iii) PLN 5,000 (five thousand zlotys) in respect of costs;
      (iv) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President