



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

FOURTH SECTION

**CASE OF LESZCZYŃSKA v. POLAND**

*(Application no. 47551/99)*

JUDGMENT

STRASBOURG

22 June 2004

**FINAL**

*22/09/2004*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision*



**In the case of Leszczyńska v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 1 June 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 47551/99) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Aniela Leszczyńska ("the applicant"), on 23 February 1998.

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

3. On 10 July 2001 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

**THE FACTS**

4. The applicant was born in 1936 and lives in Włocławek, Poland.

**A. Proceedings concerning dissolution of co-ownership.**

5. The applicant and her neighbours were the co-owners of real estate located in Włocławek. On 28 June 1982 the applicant filed an action with the Włocławek District Court (*Sąd Rejonowy*) in which she requested that the co-ownership of the estate be dissolved.

6. Prior to 19 September 1989 the court held a number of hearings and two viewings of the site. It also obtained two expert reports.

7. On 19 September 1989 the District Court gave a decision. The neighbours (“the respondents”) appealed. On 5 July 1991 the Włocławek Regional Court (*Sąd Wojewódzki*) set aside the first-instance decision and remitted the case.

8. On 20 December 1991 the District Court held a hearing. On 17 November 1992 the court obtained another expert’s opinion.

9. A hearing listed for 16 June 1993 was adjourned due to the absence of the respondents’ lawyer. On 3 August 1993 the court held a hearing and heard evidence from an expert.

10. The court held a further hearing on 29 April 1994. It ordered yet another expert to prepare an opinion. On 7 October 1994 the court held a viewing of the site. On 17 November 1994 a hearing was held. At a hearing held on 13 April 1995 the court heard evidence from an expert.

11. On 27 April 1995 the Włocławek District Court gave a decision and dissolved the co-ownership. The respondents appealed.

12. On 20 July 1995 the District Court refused to exempt the respondents from the court fees due for lodging the appeal. On 22 August 1995 they appealed against this decision and requested the court to grant them leave to appeal out of time. On 19 December 1995 the court granted them that leave. On 15 April 1996 the Włocławek Regional Court amended the decision of 20 July 1995 and partially exempted the respondents from the court fees.

13. On 12 September 1996 the Włocławek Regional Court dismissed the respondents’ appeal. On 18 December 1996, they lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*). On 3 September 1997 the Supreme Court dismissed the cassation appeal.

## **B. Proceedings concerning the action for repossession.**

14. On 21 September 1996 the applicant filed an action for repossession of part of the property with the Włocławek District Court. She claimed that the court in its decision of 27 April 1995 (given in the first set of proceedings), had not ordered the respondents to surrender part of the property in question to her.

15. On 14 April 1997 the court stayed the proceedings, considering that the determination of the case depended on the outcome of the proceedings pending before the Supreme Court. On 5 January 1998 the proceedings were resumed.

16. On 28 January 1998 the trial court held a hearing. On 14 March 1998 an expert opinion was submitted to the court.

17. On 21 April 1998 the Włocławek District Court gave judgment and granted the applicant's claim. The defendants appealed. On 8 October 1998 the Włocławek Regional Court dismissed their appeal.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

18. The applicant complained that the length of two sets of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

19. The Government contested that argument.

#### A. Period to be taken into consideration

##### 1. *Proceedings concerning dissolution of co-ownership*

20. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999, unreported). The Court notes that the proceedings were initiated on 28 June 1982 and ended on 3 September 1997. They thus lasted 15 years and 2 months of which 4 years and 4 months falls within the Court's jurisdiction *ratione temporis*.

##### 2. *Proceedings concerning the action for repossession*

21. The period to be taken into consideration began on 21 September 1996, when the applicant lodged her claim with the Włocławek District Court. The proceedings were terminated by the Włocławek Regional Court on 8 October 1998. Thus, they lasted 2 years and 17 days.

## B. Admissibility

22. The applicant's first complaint relates to the length of the proceedings instituted before the Włocławek District Court, which concern her claim for dissolution of co-ownership. According to her, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

The Court notes that this complaint 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.

23. As regards the complaint concerning the second set of proceedings, the Government maintained that their length had not been in breach of the "reasonable time" requirement.

The Court considers, with reference to the criteria laid down in its case-law (see, e.g., the *Humen v. Poland* cited above § 60), that the overall length of the impugned proceedings did not exceed a "reasonable time" within the meaning of Article 6 § 1.

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

## C. Merits

### 1. *The parties' submissions*

24. The Government claimed that the proceedings had been complex. In particular they stressed that the trial court had to obtain expert opinions. They agreed that the applicant had not significantly contributed to the length of the proceedings. They were further of the opinion that after 1 May 1993 the domestic authorities had diligently dealt with the case. They pointed to the fact that the hearings had been scheduled regularly. They invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

25. The applicant generally disagreed with the Government's submissions. She alleged that there had been considerable periods of inactivity on the part of the courts from 1982 to 1989. She further maintained that there had been long intervals between the hearings (i.e. between 3 August 1993 and 29 April 1994) and that she had not contributed to the length of the proceedings. Referring to what was at stake for her in the litigation, the applicant stressed that it had concerned her property rights, in particular: dissolution of co-ownership of her house. Also, given her age and bad health the excessive length of the proceedings had put a severe emotional and physical strain on her.

## 2. *The Court's assessment*

26. The Court reiterates that the reasonableness of the length of proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, *Humen v. Poland* cited above § 60).

27. The Court considers that even though the case involved a certain degree of complexity, it cannot be said that this in itself justified the total length of the proceedings.

28. As regards the conduct of the applicants, the Court observes that the Government acknowledged that the applicant had not significantly contributed to the length of the proceedings (see paragraph 24 above).

29. The Court notes that the applicant's action concerned the property rights to her house. Therefore, the Court agrees that what was at stake in the litigation at issue was undoubtedly of significant importance to the applicant and required that the domestic courts show diligence and expedition in handling his case.

30. Assessing all relevant facts as a whole and having regard to the state of the case on 1 May 1993, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case.

31. There has therefore been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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**

33. The applicant sought an award of 35,000 Polish zlotys in respect of pecuniary damage. According to the applicant, that amount corresponded to the difference in value between the dates when she wanted to sell her property and when she finally sold it. She further claimed the sum of 20,000 USD for non-pecuniary damage that she suffered as a result of the protracted length of the proceedings.

34. The Government submitted that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention.

35. As regards the pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making any award to her under that head (see, *mutatis mutandis Kudla v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

36. The Court further considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration on account of the protracted length of the proceedings, which cannot sufficiently be compensated by finding a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a total sum of EUR 3000 under that head.

### **B. Costs and expenses**

37. The applicant also claimed 925 Polish zlotys for the costs and expenses incurred before the domestic courts and the Court.

38. The Government did not comment on the applicant's claim.

39. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. To be recoverable, the domestic costs and expenses must also be incurred to prevent or obtain redress for the violation found.

On the basis of the information in its possession, the Court finds no indication that in the present case any of the domestic costs and expenses claimed by the applicant had been incurred by her for this purpose.

The Court notes that the applicant was not represented by a lawyer in the proceedings before it. Making its own assessment on an equitable basis, the Court awards the applicant EUR 50 for translation and copying expenses which she incurred in the context of filing and pursuing her application.

### **C. Default interest**

40. 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* admissible the complaint under Article 6 § 1, relating to the excessive length of the proceedings instituted on 28 June 1982 before the Włocławek District Court;
2. *Declares* inadmissible the remainder of the application;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 50 (fifty euros) in respect of costs and expenses, plus any tax that may be chargeable on the above amounts, to be converted into Polish zlotys at a rate applicable at the date of the settlement;
  - (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President