



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

FOURTH SECTION

**CASE OF SZCZECIŃSKI v. POLAND**

*(Application no. 73864/01)*

JUDGMENT

STRASBOURG

11 October 2005

**FINAL**

*11/01/2006*

*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 Szczeciński v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

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

Having deliberated in private on 20 September 2005,

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

## PROCEDURE

1. The case originated in an application (no. 73864/01) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Czesław Szczeciński ("the applicant"), on 21 May 2001.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołásiewicz of the Ministry for Foreign Affairs.

3. On 4 February 2003 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

## THE FACTS

### THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1951 and lives in Sławno, Poland.

5. On 5 August 1993 the Housing Co-operative "Wybrzeże" lodged a compensation claim with the Sławno District Court (*Sąd Rejonowy*) claiming the amount of 27,880,200 old Polish zlotys from the applicant for unpaid interest on a loan.

6. On 29 October and 9 November 1993 the court held hearings. On 30 November 1993 the Sławno District Court gave judgment. The applicant appealed.

7. On 18 May 1994 the Słupsk Regional Court (*Sąd Wojewódzki*) quashed the contested judgment and referred the case to the first-instance court.

8. On 22 November 1996 the District Court held a hearing.

9. On 11 December 1996 the plaintiff increased the amount of the claim. Accordingly, the case had to be transmitted to the Słupsk Regional Court, which was now competent to examine it.

10. The court held hearings on the following dates: 19 May 1997, 6 October 1997, 22 April 1998, 20 May 1998, 10 June 1998 and 14 September 1998.

11. On 19 August 1997 an expert submitted his opinion to the court.

12. On 23 September 1998 the Słupsk Regional Court gave judgment. The applicant appealed. On 17 February 1999 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal and upheld the first-instance judgment.

13. On 23 February 1999 the applicant asked the Gdańsk Court of Appeal to be served with a copy of the judgment. On 28 July 1999 it was served on the applicant.

14. On 30 August 1999 the applicant lodged a cassation appeal with the Supreme Court. On 8 February 2001 the Supreme Court rejected his appeal, considering that the applicant had failed to satisfy the procedural requirements set out in Polish law.

## THE LAW

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

15. The applicant complained that the length of the proceedings was 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...”

16. The Government contested that argument.

17. The period to be taken into consideration began on 5 August 1993 and ended on 8 February 2001. It thus lasted 7 years, 6 months, 3 days.

#### A. Admissibility

18. The Government raised a preliminary objection based on an abuse of the right of petition within the meaning of Article 35 § 3. They submitted that the domestic proceedings had been a consequence of the applicant’s

failure to pay off a loan. Consequently, the applicant was not a victim of the domestic proceedings but a person attempting to avoid his contractual obligations. The Government concluded, that the application should be declared inadmissible under Article 35 § 3 and rejected under Article 35 § 4 of the Convention.

19. The applicant generally contested the Government's submissions.

20. The Court considers that, although it is true that the applicant was the defendant in the domestic proceedings, this was not such as to justify a decision to declare the application inadmissible as an abuse of the right of petition. It follows that the preliminary objection must be dismissed.

21. The Court further 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.

## **B. Merits**

22. The Government submitted that the case had not been very complex. The authorities had shown due diligence in the proceedings. They maintained that the applicant had contributed to some extent to the prolongation of the proceedings. Lastly, they invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

23. The applicant disagreed with the Government. In conclusion he stressed that there had been a violation of Article 6 § 1.

24. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and 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).

25. The Court notes that the Government agreed that the proceedings had not been particularly complex (see paragraph 22 above). It does not see any reason to hold otherwise.

26. As to the conduct of the applicant the Court notes that it does not appear that his conduct had significantly prolonged the trial.

Considering the conduct of the authorities the Court observes that there was a significant period of inactivity between 18 May 1994 and 22 November 1996. There were also delays resulting from the slow process of obtaining evidence.

27. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

28. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of

persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

29. There has accordingly been a breach of Article 6 § 1.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 200,000 PLN in respect of pecuniary damage. Under the head of non-pecuniary damage he did not claim any particular sum. However, he requested the Court to grant him just satisfaction in an amount it considered equitable, given the detriment suffered by him on account of the length of the proceedings in his case

32. The Government contested the claim.

33. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage such as distress and frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by the finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicants a total sum of EUR 2,000 (two thousand euros) under that head.

### B. Costs and expenses

34. The applicant also claimed 6,000 PLN for the costs and expenses incurred before the domestic courts.

35. The Government contested the claim.

36. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings.

### C. Default interest

37. 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*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of the settlement, plus any tax that may be chargeable on the above amount;
  - (b) that 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President