



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

FOURTH SECTION

**CASE OF CZERWIŃSKI v. POLAND**

*(Application no. 10384/02)*

JUDGMENT

STRASBOURG

17 October 2006

**FINAL**

*17/01/2007*

*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 Czerwiński 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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 26 September 2006,

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

## PROCEDURE

1. The case originated in an application (no. 10384/02) 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 Kordian Czerwiński (“the applicant”), on 2 August 2001.

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

3. On 24 August 2005 the President of the Fourth Section decided to communicate the applicant’s complaint concerning the length of proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1937 and lives in Brześć Kujawski, Poland.

5. On 29 January 1985 the applicant initiated before the Włocławek District Court (*Sąd Rejonowy*) civil proceeding concerning the division of his late parents’ estate. The estate consisted of two plots of land, 16 hectares in area, and one house.

6. Subsequently, the court held hearings and ordered expert opinions.

7. In 1993 the court held hearings in June and November. Subsequently, the court ordered expert opinions and in September 1994 it stayed the proceedings. Upon the applicant's appeal the proceedings were resumed on 5 June 1995. The next hearing was held in July 1996 but subsequent hearings were held at more regular intervals.

8. Between September 1997 and March 1999 no hearings were held. During this period, the court ordered an expert opinion which was submitted in April 1998. A hearing scheduled for January 1999 was cancelled and took place in March 1999. Subsequently, the court ordered another expert opinion to be prepared and held the next hearing on 25 April 2000.

9. At least on two occasions, in 1996 and 2000, the presiding judge changed and the proceedings had to start from the beginning.

10. On 4 May 2000 the Włocławek District Court gave judgment. The court divided up the estate in question.

11. A party to the proceedings lodged an appeal against the judgment.

12. On 13 February 2001 the Włocławek Regional Court (*Sąd Okręgowy*) dismissed the appeal.

## II. RELEVANT DOMESTIC LAW

13. Articles 417 et seq. of the Civil Code (*Kodeks cywilny*) provide for the State's liability in tort.

In the version applicable until 1 September 2004, Article 417 § 1, which lays down a general rule, read as follows:

“1. The State Treasury shall be liable for damage caused by a State official in the performance of the duties entrusted to him.”

14. Article 442 of the Civil Code sets out limitation periods in respect of various claims based on tort. That provision applies to situations covered by Article 417 of the Civil Code. Article 442, in so far as relevant, reads:

“1. A claim for compensation for damage caused by a tort shall lapse three years following the date on which the claimant learned of the damage and of the persons liable for it. However, the claim shall in any case lapse ten years following the date on which the event causing the damage occurred.”

15. On 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”) entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings.

A more detailed rendition of the relevant domestic law provisions is set out in the Court's judgment in *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-... (extracts) and in *Charzyński v. Poland* (dec.), no. 15212/03, §§12-23, ECHR 2005-....

## THE LAW

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

16. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down 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...”

17. The Government contested that argument.

18. The Court notes that the period to be taken into consideration began not on 29 January 1985 when the applicant initiated the proceedings, but 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.

The period in question ended on 13 February 2001. It thus lasted 7 years and almost 10 months for two levels of jurisdiction.

#### A. Admissibility

19. The Court firstly notes that the Government raised a preliminary objection that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004, when the 2004 Act had come into force, the applicant had a possibility of lodging a claim for compensation for damage suffered due to the excessive length of proceedings with the Polish civil courts under Article 417 of the Civil Code read together with section 16 of the 2004 Act.

20. However, the Court has already found that the civil action relied on cannot be regarded with a sufficient degree of certainty as an effective remedy in cases where the three-year limitation period for the State’s liability in tort expired before the entry into force of the 2004 Act on 17 September 2004 (see *Ratajczyk v. Poland*; (dec), 11215/02, 31 May 2005, *Barszcz v. Poland*, no 71152/01, § 45, 30 May 2006). The present case belongs to this group of applications as the proceedings at issue ended on 13 February 2001, which is more than three years before the 2004 Act had come into force. It follows that the Government’s plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

21. The Court further 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.

### **B. Merits**

22. 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).

23. 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). 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.

24. 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.

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

## **II. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

25. 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**

26. The applicant claimed 50,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

27. The Government contested the claim.

28. The Court awards the applicant 4,400 euros (EUR) in respect of non-pecuniary damage.

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

29. The applicant also claimed PLN 15,000 for costs and expenses incurred before the domestic courts.

30. The Government contested the claim.

31. 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

32. 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 4,400 (four thousand four hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
  - (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 17 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Nicolas BRATZA  
President