



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

FOURTH SECTION

**CASE OF FLOREK v. POLAND**

*(Application no. 20334/04)*

JUDGMENT

STRASBOURG

20 May 2008

**FINAL**

**29/09/2008**

*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 Florek v. Poland,**

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

Nicolas Bratza, *President*,  
Lech Garlicki,  
Giovanni Bonello,  
Ljiljana Mijović,  
David Thór Björgvinsson,  
Ján Šikuta,  
Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 April 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 20334/04) 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, Mrs Elżbieta Florek (“the applicant”), on 26 May 2004.

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

3. On 12 March 2007 the President of the Fourth Section decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1950 and lives in Szczecin.

**A. Main proceedings**

5. On 27 June 1995 the applicant lodged a statement of claim with the Goleniów District Court (*Sąd Rejonowy*).

6. On 26 October 1995 the Goleniów District Court found that it lacked jurisdiction to deal with the case and referred it to the Szczecin Regional Court (*Sąd Okręgowy*).

7. On 12 December 1995 the applicant was ordered to rectify certain procedural shortcomings in her claim in order to fulfil the formal requirements set out in Polish law. She complied with the court's order in December 1995.

8. At a hearing on 22 March 1996 the defendant lodged a counterclaim. On an unknown date in April 1996 the applicant submitted her reply to the counterclaim.

9. Between 12 February and 14 November 1997 the court held five hearings.

10. On 1 December 1997 the Szczecin Regional Court delivered its judgment.

11. On 5 December 1997 the applicant lodged a notice of appeal. On 27 March 1998 she was served with the court's statement of reasons.

12. The case was referred to the Poznań Court of Appeal (*Sąd Apelacyjny*) in August 1998. On 7 March 2000 the court partly amended the judgment and remitted the case in part.

13. On 12 June 2000 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*) against the judgment of the Court of Appeal.

14. On 14 February 2002 the Supreme Court, sitting in camera, refused to entertain the cassation appeal as it did not raise any issue of general importance.

15. On 20 June 2002 the Poznań Court of Appeal remitted the case to the Szczecin Regional Court.

16. On 23 May 2003 the Szczecin Regional Court held a hearing. A hearing scheduled for 6 April 2004 was postponed because the judge was ill.

17. On 15 June 2004 a hearing was held.

18. On 29 June 2004 the Szczecin Regional Court delivered its judgment. The applicant lodged an appeal against it.

19. On 23 November 2005, by a final judgment of the Poznań Court of Appeal, the applicant's appeal was dismissed.

## **B. Proceedings under the 2004 Act**

20. On 16 March 2005 the applicant lodged a complaint with the Supreme Court under section 5 of 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"). The Supreme Court referred the case to the Szczecin Court of Appeal.

21. The applicant sought a ruling declaring that the length of the proceedings before the Szczecin Regional Court had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN).

22. On 24 June 2005 the Szczecin Court of Appeal gave a decision in which it acknowledged the excessive length of the proceedings before the Szczecin Regional Court, finding that there had been periods of unjustified inactivity in 1995 and 1996, then between January and March 1998 and between June and November 2002. It awarded the applicant PLN 3,000 in just satisfaction. The court observed that the claim for just satisfaction in the amount of PLN 10,000 was excessive.

23. The court did not take into consideration the delays that had occurred before the Szczecin Court of Appeal (between August 1998 and 7 March 2000), nor did it consider the period between 12 June 2000 and 14 February 2002, when the case was pending before the Supreme Court.

### **C. Civil proceedings for repossession**

24. On 5 January 1995 a certain “S-P” Company Ltd instituted civil proceedings for repossession against the applicant. Between 20 January 1995 and 22 October 1996 the court held twelve hearings. By a decision of 12 December 1996 the Goleniów District Court discontinued the proceedings.

### **D. Criminal proceedings against the applicant**

25. On an unknown date in 1994 the police instituted criminal proceedings against the applicant on charges of threatening behaviour. On 9 January 1995, by a decision of the district prosecutor, the applicant was made subject to a police supervision order. The applicant appealed.

26. On 10 February 1995 the Szczecin Regional Prosecutor amended the decision and the police supervision order was quashed.

27. On 29 March 1996 the Goleniów District Court issued a penal order imposing a fine on the applicant. It appears that the applicant lodged an appeal. The proceedings were terminated by a final decision of 5 June 1996 (the applicant has not produced a copy of it).

## **II. RELEVANT DOMESTIC LAW AND PRACTICE**

28. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court’s decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the

judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

## THE LAW

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

29. 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...”

30. The Government contested that argument.

31. The period to be taken into consideration began on 27 June 1995 and ended on 23 November 2005. It thus lasted 10 years and 5 months for 3 levels of jurisdiction.

#### A. Admissibility

32. The Government raised a preliminary objection that the applicant had not exhausted remedies available under Polish law. They maintained that she had not lodged a civil claim with the Polish civil courts under Article 417 of the Civil Code for compensation for damage suffered due to the excessive length of the proceedings.

33. The applicant generally contested the Government’s arguments.

34. The Court notes that the applicant lodged a complaint about the length of the proceedings under the 2004 Act. On 24 June 2005 the Szczecin Court of Appeal confirmed that the proceedings had been lengthy and awarded the applicant the equivalent of EUR 810 in compensation.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak v. Poland* (dec.) no. 24549/03, §§ 37-43).

35. Furthermore, the Court has already held that having exhausted the available remedy provided by the 2004 Act, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Cichla v. Poland* no. 18036/03, § 26, 10 October 2006).

36. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. It follows that the Government’s plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

37. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

38. 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).

39. 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).

40. 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.

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

## **II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION**

42. The applicant also complained of the unfairness of the proceedings for repossession and the criminal proceedings instituted against her.

43. However, pursuant to Article 35 § 1 of the Convention:

“1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken...”

44. The Court notes that the proceedings in question ended with the District Court’s decisions of 12 December 1996 and 5 June 1996 respectively, that is, more than six months before 26 May 2004, the date on which this complaint was submitted to the Court.

It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 20,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 5,000 for non-pecuniary damage.

47. The Government contested these claims.

48. 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 awards the applicant the equivalent of the full sum claimed, namely EUR 1,400 in respect of the non-pecuniary damage she must have suffered as a result of the protracted character of the proceedings.

#### B. Costs and expenses

49. The applicant did not make any claim for costs and expenses incurred in the proceedings.

#### C. Default interest

50. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 1,400 (one 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 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President