



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

FOURTH SECTION

**CASE OF LAKOMIAK v. POLAND**

*(Application no. 28140/05)*

JUDGMENT

STRASBOURG

21 October 2008

**FINAL**

***21/01/2009***

*This judgment may be subject to editorial revision.*



**In the case of Łakomiak 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 30 September 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 28140/05) 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, Ms Anna Łakomiak (“the applicant”), on 27 July 2005.

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

3. On 25 September 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

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

4. The applicant was born in 1948 and lives in Łódź.

**A. Civil proceedings for division of an inheritance and dissolution of co-ownership**

5. On 19 September 1996 the applicant lodged an application for division of an inheritance and dissolution of co-ownership with the Łódź

District Court (*Sąd Rejonowy*). The inheritance consisted of an apartment, money deposited on bank accounts and golden jewellery.

6. During the proceedings the hearings were scheduled approximately once a year. The hearings were often adjourned due to the judge's illness or the parties' lawyers' failure to appear.

7. On 8 February 2000 the applicant lodged an application with the District Court for the case to be dealt with speedily as, on account of unpaid rent for the apartment, being a part of the inheritance, the estate had fallen into debt.

8. On 18 October 2006 the District Court ruled on the inheritance rights and awarded the applicant money and furniture. The applicant appealed.

9. On 16 April 2007 the Łódź Regional Court (*Sąd Okręgowy*) partially amended the District Court's judgment and increased the sum awarded to the applicant. On 11 May 2007 the Regional Court issued a writ of execution in respect of the judgment.

The enforcement proceedings are pending.

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

10. On 27 April 2005 the applicant filed a complaint with the Łódź Regional Court under 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").

11. The applicant sought a ruling declaring that the length of the proceedings before the Łódź District Court had been excessive and an award of just satisfaction in the amount of 20,684.79 Polish zlotys (PLN) (approximately 5,200 euros (EUR)).

12. On 20 June 2005 the Łódź Regional Court gave a decision in which it acknowledged the excessive length of the proceedings before the Łódź District Court. It awarded the applicant PLN 3,000 (approximately EUR 750) in just satisfaction. The court referred to the overall length of the proceedings and to the complexity of the case.

13. The applicant appealed. On 20 July 2005 the Regional Court rejected the appeal as inadmissible in law.

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

14. 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.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

15. The applicant first complained that the proceedings in her case had been unfair. In particular, she alleged that the domestic courts had incorrectly assessed the evidence. She alleged a breach of Article 6 § 1 of the Convention, which, in its relevant part, reads:

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

16. However, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

17. In the present case the applicant did not allege any particular failure to respect her right to a fair hearing on the part of the relevant courts. Indeed, her complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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

### II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

18. 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...”

19. The Government did not submit observations on the admissibility and merits of the complaint.

20. The period to be taken into consideration began on 19 September 1996 and ended on 16 April 2007. It thus lasted ten years and seven months for two court instances.

### A. Admissibility

21. In the present case the Regional Court acknowledged a breach of the applicant's right to a hearing within a reasonable time and awarded her the equivalent of EUR 750 in respect of the length of the proceedings (see paragraph 12 above). The just satisfaction awarded by the Regional Court amounts to approximately 12 per cent of what the Court would be likely to have awarded the applicant at that time in accordance with its practice, taking into account the particular circumstances of the proceedings.

The Court thus concludes that the redress provided to the applicant at domestic level, considered on the basis of the facts of which she complains before the Court, was insufficient (see *Czajka v. Poland*, no. 15067/02, § 56, 13 February 2007). Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the judgment of *Scordino v. Italy (no.1)* ([GC], no. 36813/97, §§ 193-215, ECHR-2006-...), the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

22. 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.

### B. Merits

23. 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).

24. 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).

25. 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.

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

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

26. 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

27. The applicant, who was not represented by a lawyer, did not claim any particular sum in respect of pecuniary or non-pecuniary damage. However, she submitted that she had suffered pecuniary damage as well as stress and frustration due to the protracted length of the proceedings.

28. The Government did not express an opinion on the matter.

29. 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 EUR 5,800 in respect of non-pecuniary damage.

#### B. Costs and expenses

30. The applicant also claimed 58,705 Polish zlotys (PLN) for the costs and expenses incurred before the domestic courts and PLN 750 for those incurred before the Court.

31. The Government contested these claims.

32. 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 and considers it reasonable to award the applicant, who was unrepresented, the sum of EUR 100 for the proceedings before the Court.

#### C. Default interest

33. 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 5,800 (five thousand eight hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) for costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Nicolas Bratza  
President