



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

FOURTH SECTION

**CASE OF GÓRKIEWICZ v. POLAND**

*(Application no. 41663/04)*

JUDGMENT

*The present version was rectified on 7 April and 5 May 2009  
in accordance with Rule 81 of the Rules of Court*

STRASBOURG

13 January 2009

**FINAL**

***05/06/2009***

*This judgment may be subject to editorial revision.*



**In the case of Górkiewicz 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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 December 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 41663/04) 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 two Polish nationals, Mr Jan Górkiewicz (“the first applicant”) and Mrs Bogdana Górkiewicz (“the applicants”), on 9 July 2004.

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

3. On 6 December 2007 the President of the Fourth Section of the Court 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 applicants were born in 1948 and 1955 respectively and live in Glinica.

### **A. Civil proceedings for compensation for seizure of property**

5. On 27 November 1995 the first applicant lodged a claim for payment of compensation for the seizure of his property. On 13 May 1998 the Katowice Regional Court gave judgment. On 24 June 1999 the Katowice Court of Appeal partly remitted the case. On 6 November 2003 the Katowice Regional Court gave judgment. The first applicant appealed. On 9 June 2004 the Katowice Court of Appeal upheld that judgment. According to an assessment made by two lawyers, a cassation appeal lacked any prospects of success.

6. In a letter of 5 December 2004 the first applicant informed the Court that he did not intend to make use of the remedies provided by the Law of 17 June 2004 (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”).

### **B. Proceedings for compensation for the unlawful annulment of a contract**

#### *1. The applicants’ claim for compensation*

7. On 25 November 2002 the applicants filed an action against the State Treasury with the Gliwice Regional Court (*Sąd Okręgowy*). They claimed compensation for the unlawful annulment of a contract by a public official.

8. On 27 December 2002 the Gliwice Regional Court ordered that the applicants rectify certain formal shortcomings in their statement of claim.

9. On 18 November 2003 the Court dismissed the applicants’ request to be exempted from court fees. The applicants appealed. On 19 February 2004 the Katowice Court of Appeal (*Sąd Apelacyjny*) quashed the Regional Court’s decision and exempted the applicants from court fees.

10. On 24 March 2004 the Gliwice Regional Court found that it did not have the competence to deal with the subject-matter and referred the case to the Katowice Regional Court.

11. The first hearing in the case was held on 26 January 2005.

12. On 16 May 2007 the Katowice Regional Court gave judgment and granted the applicants’ claim in part.

13. Both parties lodged appeals against the first-instance judgment.

14. On 8 November 2007 the Katowice Court of Appeal dismissed both appeals.

15. It appears that both parties lodged cassation appeals and the case is pending before the Supreme Court (*Sąd Najwyższy*).

## 2. *Proceedings under the 2004 Act*

16. On 21 December 2004 the applicants lodged a complaint under section 5 of the 2004 Act. They particularly referred to the Gliwice and Katowice Regional Courts' inactivity between the date the claim had been filed with the Gliwice Court and the date the first hearing had been scheduled. They sought just satisfaction in the amount of 20,000 Polish zlotys (PLN), that is, PLN 10,000 each.

17. On 10 March 2005 the Katowice Court of Appeal dismissed the applicants' complaint. The court held that the 2004 Act had legal effect as from its entry into force on 17 September 2004. It found that during the relevant part of the proceedings, there had been no inactivity or undue delay on the part of the authorities. In that connection, the court held that there had been no breach of the right to a fair trial within a reasonable time in the period after 17 September 2004.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

18. 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 ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

19. The applicants 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..."

20. The Government refrained from expressing their opinion on that matter.

21. The period to be taken into consideration began on 25 November 2002 and has not yet ended. It has thus lasted almost six years for two levels of jurisdiction.

#### **A. Admissibility**

22. In the present case the Court of Appeal dismissed the applicants' complaint against the excessive length of proceedings, holding that after the entry into force of the 2004 Act no unreasonable delays in the proceedings could be discerned (see paragraph 17 above). Having regard to the criteria for determining victim status in respect of length of proceedings complaints as set out in the judgment *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

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 applicants and the relevant authorities and what was at stake for the applicants 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). Furthermore, the Court considers that, in dismissing the applicant's complaint that the proceedings in his case exceeded a reasonable time, the Katowice Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

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. In particular, the Court notes that the case showed no factual complexity which would explain the delays in the proceedings and that no hearing was held during two years and two months from the date of the lodging of the claim by the applicants. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The Court raised of its own motion a complaint about the lack of an effective remedy under Article 13 of the Convention, which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

27. The Government refrained from making any comments in that connection.

28. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. However, the “effectiveness” of a “remedy” within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, §§ 154 et seq., ECHR 2000-XI, §§ 156-157).

29. While the subsidiarity principle underlying the Convention system requires the Contracting States to introduce a mechanism addressing complaints about the excessive length of proceedings within the national legal system, they are afforded – subject to compliance with the requirements of the Convention – some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision. In particular, where the State has introduced a compensatory remedy, the Court must leave to it a wide margin of appreciation and allow it to organise the remedy – including the interpretation and application of the notion of “damage” in a given case – in a manner consistent with its own legal system, traditions and the standard of living in the country concerned (*Scordino (no. 1)*, cited above, §§ 188-189).

30. The fact that in the present case the applicants’ claim for just satisfaction failed and was dismissed does not in itself render the remedy under the 2004 Act incompatible with Article 13, although it does have consequences for the Court’s assessment of their victim status in respect of the alleged breach of the reasonable-time requirement (see paragraph 21 above, with references to the Court’s case-law, and, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, §§ 49-52, 4 July 2006).

31. As stated above, the expression “effective remedy” used in Article 13 cannot be interpreted as a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits

of a complaint (see paragraph 31 above, and, also, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

32. In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicants' right to an effective remedy under Article 13 of the Convention has not been respected.

33. 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.

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. Lastly, the applicants complained about the outcome and length of the proceedings for compensation for seizure of property.

35. The Court notes that those complaints are substantially the same as the complaints lodged by the first applicant on 14 June 2003 subsequently declared inadmissible by the Committee's decision of 12 December 2006<sup>1</sup>.

36. It follows that these complaints must be rejected in accordance with Article 35 § 2 (b) of the Convention.

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

37. 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

38. The applicants claimed 300,000 euros (EUR) and PLN 1,214,985 in respect of pecuniary and non-pecuniary damage.

39. The Government considered the applicants' claims unreasonable as to quantum and requested that they be rejected.

40. 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 applicants EUR 3,500 jointly in respect of non-pecuniary damage.

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<sup>1</sup> Rectified on 7 April 2009. The original version read as follows: 14 June 2003.

## B. Costs and expenses

41. The applicants did not make any claim for costs and expenses incurred in the proceedings.

## C. Default interest

42. 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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) jointly in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement<sup>1</sup>, 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 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President

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<sup>1</sup> Rectified on 5 May 2009. The following clause has been added: "to be converted into Polish zlotys at the rate applicable at the date of settlement".