



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

FOURTH SECTION

CASE OF ADAMCZUK v. POLAND

(Application no. 30523/07)

*This version was rectified on 25 May 2010 and 13 January 2011
under Rule 81 of the Rules of Court*

JUDGMENT
(revision)

STRASBOURG

15 June 2010

FINAL

04/10/2010

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of Adamczuk v. Poland (request for revision of the judgment of 17 July 2008),

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,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 30523/07) 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 Zdzisław Adamczuk (“the applicant”), on 10 July 2007.

2. In a judgment delivered on 17 July 2008, the Court held that there had been a violation of Article 6 § 1 of the Convention on account of the length of the civil proceedings. The Court also decided to award the applicant 14,400 euros (EUR) for non-pecuniary damage and dismissed the remainder of the claims for just satisfaction.

3. On 17 October 2008 the Government informed the Court that they had never received for comments any pleadings filed by the applicant concerning his claims for just satisfaction. They accordingly requested revision of the judgment pursuant to Rule 80 of the Rules of Court.

The Government further requested rectification of paragraph 72 of the judgment under Rule 81 of the Rules of Court. In this connection the Government observed that in their observations on the admissibility and merits they in fact had referred to the alleged violation of Article 13 of the Convention by submitting that no violation of this provision had occurred in the applicant's case.

4. On 24 April 2009 the Court considered the request for revision and decided to give the Government three weeks to submit their comments on the applicant's claims for just satisfaction. Those comments were received on 16 July 2009.

5. On 25 May 2010 the Chamber decided to rectify paragraph 72 of the judgment. It was further decided to revise the judgment as regards the award of just satisfaction.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1933 and lives in Szczecin.

A. Civil proceedings for dissolution of co-ownership

7. On 29 March 1989 M.B. instituted civil proceedings for the dissolution of a co-ownership before the Pruszków District Court.

8. On 21 March 1991 the case was transmitted to the Warsaw District Court.

9. On 12 August 1991 the parties to the proceedings (the applicant, A.A., M.A., W.A., J.N., ZB.A., ZD.A.) lodged with the court their proposal for the dissolution of the co-ownership.

10. On 15 April 1993 the court stayed the proceedings as M.B. had died. On 7 April 1995 M.B.'s representative requested the court to resume the proceedings since M.B.'s heirs had been determined by the Pruszków District Court's decision of 30 March 1995.

11. On 30 November 1995 the court summoned A.C. and A.C.R. ("the plaintiffs") to participate in the proceedings.

12. Several subsequent hearings, namely of 30 November 1995, 20 February, 10 April and 4 June 1996 were adjourned as some of the parties had not been properly summoned.

13. On 12 September 1996 the court held a hearing and heard evidence from an expert as to the technical condition of the real property and possibilities of dividing it, and from some other parties, including the applicant.

14. On 30 December 1996 the court decided to obtain another expert opinion.

15. On 17 April 1998 the expert, W.K., submitted an evaluation report on the real property in question.

16. Two subsequent hearings, scheduled for 23 September and 25 November 1998, were adjourned as some of the parties had not been properly summoned.

17. On 3 February 1999 a hearing was held. The applicant stated that the plaintiffs had erroneously declared their shares in the co-ownership and he evoked in this context the real property sale contract concluded in 1972 between M.B. and A.C. (sellers) and the members of the applicant's family (buyers). The court adjourned the hearing and obliged the parties to substantiate the above statement within twenty-one days.

18. On 11 June 1999 the court adjourned a hearing as the applicant and some other parties failed to appear, although they had been properly summoned.

19. On 24 September 1999 the court adjourned a hearing as some of the parties had not been properly summoned and the applicant submitted a medical certificate justifying his absence.

20. On 17 November 1999 the court held a hearing and heard evidence from some of the parties to the proceedings.

21. On 26 November 1999 the court issued a preliminary decision (*postanowienie wstępne*) wherein it determined the co-owners and their shares in the real property.

22. On 7 February 2000 the applicant appealed against the above decision.

23. On an unspecified date the court requested the applicant to rectify the formal lacunae in his appeal. On 22 March 2000 the applicant complied with the court's order.

24. On 12 September 2000 the Warsaw Regional Court held a hearing and quashed the impugned decision.

25. On 25 April 2001 the court adjourned a hearing as some of the parties had not been properly summoned.

26. Between 13 June 2001 and 26 September 2002 no actions were taken by the court apart from dealing with A.A.'s request for legal aid.

27. On 26 September and 25 November 2002 hearings were held and the court heard evidence from the plaintiffs and the applicant.

28. On 3 June 2003 the court adjourned a hearing as one of the plaintiffs failed to appear although he had been properly summoned.

29. The applicant requested an inspection of the real property.

30. On 26 September 2003 the court summoned A.C. to specify his and A.C.R.'s shares in the co-ownership.

31. On 23 October 2003 and 14 January 2004 A.C. complied with the court's order.

32. On 16 July 2004 the court adjourned a hearing at the request of one of the plaintiffs and the expert.

33. On 16 September 2004 the court held a hearing and again heard evidence from the expert and summoned the parties to indicate the way in which the co-ownership should be dissolved.

34. On 29 September 2004 the applicant sought the withdrawal of the judge dealing with his case.

35. On 5 October 2004 the Pruszków District Court dismissed the applicant's request. The applicant lodged an interlocutory appeal against this decision.

36. On 22 March 2005 the Warsaw Regional Court dismissed the applicant's interlocutory appeal.

37. On 30 May 2005 a hearing was held at which some of the parties, including the applicant, requested the court to exempt them from court fees and appoint a legal-aid lawyer to represent them in future proceedings. The court ordered them to complete their request and submit information on their financial situation within seven days.

38. On 10 August 2005 the court dismissed the above request as neither the applicant nor the other parties had submitted any information on their financial standing.

39. On 21 October 2005 the court held a hearing. The applicant again challenged the ownership title of the plaintiffs.

40. On 28 November 2005 the court ordered another expert opinion. The applicant lodged an interlocutory appeal against this decision but it was rejected as inadmissible.

41. On 1 February 2006 the expert, A.S.M, submitted her opinion.

42. On 24 May 2006 the court granted the applicant's request for an inspection of the real property and adjourned the hearing, as in respect of one of the parties there was no proof that the summons had been served.

43. On the same date the court dismissed a request by the applicant motion to provide security for the claim by putting on deposit a sum equivalent to the rents collected from the current tenants of the property. The applicant's interlocutory appeal against this decision was rejected due to formal lacunae.

44. On 12 July 2006 an inspection of the real property took place.

45. Between 13 July 2006 and 7 July 2007 the court held three hearings at which it heard evidence from the parties and ordered them to indicate the manner in which the co-ownership should be dissolved.

46. On 27 July 2007 the court decided to obtain another expert opinion to establish the possibilities of creating individual premises in the disputed real property. The applicant appealed against this decision but his appeal was rejected as inadmissible.

47. On 5 September 2007 the expert returned the case file and informed the court that he would not be able to prepare the expert opinion for health reasons.

48. On 4 October 2007 the court sent the case file to another expert and ordered him to prepare an expert opinion within thirty days.

49. On 19 November 2007 the court allowed the expert's request for an extension of the time-limit for the submission of the expert opinion until 10 December 2007.

50. On 22 November 2007 the case file was sent to the Ministry of Justice in connection with the proceedings before the European Court of Human Rights.

51. On 11 December 2007 the expert submitted his opinion. The proceedings are pending.

B. Proceedings concerning the applicant's complaints about the excessive length of the civil proceedings¹

1. First complaint

52. On 1 December 2004 the applicant lodged a complaint 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”). On 9 February 2005 the Warsaw Regional Court confirmed that the proceedings in question had indeed been lengthy. The court considered that an award of 3,000 Polish zlotys (PLN) would be adequate (approx. 738 euros (EUR), according to the exchange rate at the relevant time). The court stated, *inter alia*, that the measures taken by the District Court on 26 September 2003 and 31 May, 16 September and 20 December 2004 not only infringed the relevant provisions of the civil procedure code but also appeared to be futile, as some of them had had to be taken for a second time. The court further stated that the fact the District Court had failed to establish the scope of the claim for fifteen years could only be explained by the fact that the court had contributed to the excessive length of the proceedings.

2. Second complaint

53. As the proceedings continued to be lengthy, on 24 February 2006 the applicant lodged a second complaint under the 2004 Act. On 4 April 2006 the Warsaw Regional Court confirmed that the proceedings in question had been lengthy and ordered the Warsaw District Court to conduct an immediate examination of the applicant's motion for the inspection of the real property in question.

3. Third complaint

54. As the proceedings continued to be lengthy, on 5 April 2007 the applicant filed another complaint under the 2004 Act. On 22 May 2007 the Warsaw Regional Court dismissed the applicant's complaint on the ground that there had been no undue delay in the proceedings between 4 April 2006

1. Rectified on 13 January 2011: “criminal proceedings” was changed to read “civil proceedings”.

(the date of the previous decision ascertaining that there had been an undue delay) and the time of the lodging of the complaint by the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

55. 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; *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

56. 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... ”

57. The Government contested that argument.

58. The Court notes that the proceedings commenced on 29 March 1989. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. Nevertheless, 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 has not yet ended. It has thus lasted fifteen years for one level of jurisdiction (the case was on one occasion remitted to the first-instance court which had given only a partial decision).

A. Admissibility

59. The Court notes that the Government raised a preliminary objection that this complaint had been lodged outside the six-month time-limit. They maintained that more than two years had elapsed between the Warsaw Regional Court decision of 9 February 2005 allowing the applicant's first

complaint under the 2004 Act and the same court's decision of 4 April 2006 allowing the applicant's second complaint under the 2004 Act, and the date on which the applicant lodged his application with the Court.

60. The Court notes that the applicant lodged his application with the Court on 10 July 2007. The proceedings complained of are still pending. Consequently, the applicant complied with the six-month rule as required by Article 35 § 1 of the Convention.

61. As to the Government's argument that the applicant cannot be considered a "victim", within the meaning of Article 34 of the Convention, of a deprivation of his right to a hearing within a reasonable time, this issue falls to be determined in the light of the principles recently established in the Court's case-law (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-107, ECHR 2006-...; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006 - ...; and *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

62. Insofar as the applicant's first complaint under the 2004 Act is concerned, the Warsaw Regional Court analysed the course of the impugned proceedings in the light of the criteria which the Court itself applies. It concluded that the District Court had infringed the applicant's right to a hearing without unjustified delay and awarded the applicant the equivalent of EUR 738 in respect of the length of the proceedings. The just satisfaction awarded by the Regional Court remains well below the maximum limit provided by the 2004 Act and amounts to approximately 6.1% of what the Court would be likely to have awarded the applicant at the time in accordance with its practice, taking into account the particular circumstances of the proceedings (*inter alia* the fact that the proceedings were stayed *ex lege* between April 1993 and April 1995). The Court concludes that the redress provided to the applicant at domestic level, considered on the basis of the facts of which he complains before the Court, was insufficient.

63. Insofar as the applicant's third complaint under the 2004 Act is concerned, the Warsaw Regional Court dismissed it on the ground that there had been no undue delay in the proceedings between 4 April 2006 (the date of the previous decision ascertaining that there had been an undue delay) and the time of the lodging of the complaint by the applicant. The domestic court did not take into consideration the overall period of the examination of the case by the domestic courts as required by the Court's constant case-law (see, *Majewski v. Poland*, cited above, § 35-36).

In these circumstances, the argument that the applicant has lost his status as a "victim" cannot be upheld.

64. The Government further submitted that the applicant had not exhausted all remedies available under Polish law. They maintained that he had not lodged a claim with the civil courts for compensation for damage

suffered due to the excessive length of the proceedings. Such a claim was provided for by Article 417 of the Civil Code.

65. The Court has already examined and rejected the Government's arguments in this respect on many occasions (see *Cichla v. Poland* no. 18036/03, § 21-26, 10 October 2006; and *Jagiello v. Poland*, no. 59738/00, § 24, 23 January 2007). 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.

66. 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.

67. 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

68. 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).

69. 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).

70. 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. It suffices to note that the proceedings commenced on 29 March 1989 are still pending before the first-instance court.

71. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. Regarding the applicant's allegations that his complaint about a breach of his right to a trial within a reasonable time was not effective, the Court considered it appropriate to raise of its own motion the issue of Poland's compliance with the requirements of Article 13 of the Convention

on account of indications that the applicant had no effective domestic remedy in respect of the protracted length of proceedings in his case. Article 13 reads:

“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.”

74. The Government submitted that there was no violation of Article 13 of the Convention in the applicant's case.¹

75. 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).

76. 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 (see *Kudła* *ibid.*; and *Scordino (no. 1)*, cited above, §§ 188-189).

77. The fact that in the present case the applicant's claim for just satisfaction failed and that the redress obtained from the domestic court was not sufficient for Convention purposes does not in itself render the remedy under the 2004 Act incompatible with Article 13, albeit that it has consequences for the Court's assessment of his victim status in respect of the alleged breach of the reasonable-time requirement (see paragraph 60 above, with references to the Court's case-law, and, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, §§ 49-52, 4 July 2006).

1. This sentence had been omitted from the judgment delivered on 17 July 2008. On 25 May 2010 the Court rectified this omission pursuant to Rule 81 of the Rules of Court by including the Government's response.

78. 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 *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

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

80. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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. Revision of the judgment of 17 July 2008

82. The applicant claimed that he was not able to assess the amount of pecuniary and non-pecuniary damage sustained and left the matter to the Court's discretion.

83. The Court notes that in paragraph 81 of its judgment adopted on 17 July 2008 it stated that the Government did not express an opinion on the applicant's claims under Article 41 of the Convention. The Government argued that they had never received any pleadings filed by the applicant concerning his claims for just satisfaction. They had not therefore been given an opportunity to present their position on the applicant's claims for just satisfaction. The Court observes that the applicant's claims for just satisfaction had indeed been received in due time but by omission had not been sent to the Government for comments. In these circumstances, the Court considers that in this part the judgment of 17 July 2008 should be revised by adding the wording set out in paragraph 84 below.

84. On 16 July 2009 the Government submitted their comments on the applicant's claims for just satisfaction. The Government argued that the applicant's claims were not supported by any evidence of the physical or mental harm allegedly suffered and as such should be rejected. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and

having regard to national economic circumstances. Finally, they requested that any just satisfaction awarded to the applicant should not exceed the threshold indicated in the 2004 Act, i.e. PLN 20,000.

85. 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 on account of the protracted length of the proceedings which cannot be sufficiently compensated by the above finding of a violation. Making its assessment on an equitable basis and having regard to the sum awarded by the domestic authorities, the Court awards the applicant EUR 14,400.

B. Costs and expenses

86. The applicant did not make any claim for costs and expenses involved in the proceedings before the Court.

C. Default interest

87. 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. *Decides* to revise the judgment of 17 July 2008 (see paragraph 84 above) and, uphold the operative provisions of that judgment, namely:
2. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 14,400 (fourteen thousand four hundred euros) in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President