

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

FOURTH SECTION

CASE OF HOSZOWSKI v. POLAND

(Application no. 40988/09)

JUDGMENT

STRASBOURG

27 May 2014

This judgment is final but it may be subject to editorial revision.



In the case of Hoszowski v. Poland,

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

George Nicolaou, *President,*
Ledi Bianku,
Nona Tsotsoria, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 40988/09) 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 Paweł Hoszowski ("the applicant"), on 28 July 2009.

2. The applicant was represented by Mr K. Kozub-Ciembroniewicz, a lawyer practising in Kraków. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. On 18 September 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Kraków.

A. Civil proceedings for division of property

5. On an unspecified date the applicant became a party to proceedings for division of joint property.

6. On 18 December 1995 the Kraków–Śródmieście District Court *(Sąd Rejonowy)* gave a severance order and decided to examine the applicant's motion in separate proceedings.

7. From that date the proceedings have been pending before the first-instance court.

B. Proceedings under the 2004 Act

8. The applicant lodged three complaints 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").

9. In his complaint of 26 November 2008 he sought a finding that the length of the proceedings had been excessive and claimed 10,000 Polish zlotys (PLN) in compensation.

10. On 2 February 2009 the Kraków Regional Court *(Sąd Okręgowy*) examined the complaint. It found that the length of the proceedings had been partly attributable to the parties who had requested adjournment of three hearings. One hearing was adjourned due to the absence of one of the parties' lawyers. The court also considered that the impugned proceedings had been complex. At the same time, however, it found some periods of inactivity on the part of the Kraków District Court, acknowledged that the proceedings had indeed been lengthy and granted the applicant PLN 1,000 which it considered "adequate in view of the periods of inactivity found."

11. On 7 July 2010 the Kraków Regional Court allowed another applicant's complaint under the 2004 Act. The court held that the length of the proceedings had been excessive and awarded the applicant PLN 2,000 in compensation.

12. In 2012 the applicant again lodged a complaint under the 2004 Act. He sought a finding that the length of the proceedings had been excessive and claimed PLN 20,000 in compensation.

13. On 14 August 2012 the Kraków Regional Court held that the length of the proceedings had been excessive and awarded the applicant PLN 2,000 in compensation. In the Regional Court's view the trial court had failed to act in an effective and diligent manner, in particular in the light of the overall length of the proceedings in issue.

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 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. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

15. On 11 June 2013 the Government submitted a unilateral declaration requesting the Court to strike out the application in so far as it relates to the applicant's complaint under Article 6 § 1 of the Convention.

The applicant objected to the proposal.

16. Having studied the terms of the Government's unilateral declaration, the Court considers, in the particular circumstances of the case and in particular because the amount of compensation proposed is substantially lower than the amount the Court would have awarded in similar cases, that the unilateral declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see *Magoch v. Poland*, no. 29539/07, § 19, 2 February 2010; and *Dochnal v. Poland*, no. 31622/07, § 69, 18 September 2012).

17. This being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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 confined themselves to the statement set out in their unilateral declaration, acknowledging that the length of the proceedings in the applicant's case had not been compatible with Article 6 § 1 of the Convention.

20. The period to be taken into consideration began on 18 December 1995 and has not yet ended. It has thus lasted over eighteen years for one level of jurisdiction.

A. Admissibility

21. 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

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).

24. Having examined all the material submitted to it and, in particular, the overall length of the proceedings, 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

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 11,074.69 Polish zlotys (PLN) (approximately 2,768 euros (EUR)) in respect of pecuniary and PLN 80,000 (approximately EUR 20,000) in respect of non-pecuniary damage.

27. The Government contested the claim as excessive.

28. 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, and having regard to the amounts already awarded to the applicant under the 2004 Act (see paragraphs 10-13 above), it awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

29. The applicant also claimed EUR 800 (approximately PLN 3,200) for the costs of legal representation before the Court.

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

31. Regard being had to the documents in its possession and to its case-law, the Court considers that the sum claimed should be awarded in full.

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, EUR 7,500 (seven thousand five hundred euros) in respect of non-pecuniary damage and EUR 800 (eight hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State 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 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 27 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	George Nicolaou President