



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

FOURTH SECTION

CASE OF ISKRZYCCY v. POLAND

(Application no. 9261/02)

JUDGMENT

STRASBOURG

14 September 2010

FINAL

14/12/2010

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

In the case of Iskrzyccy 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,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 24 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 9261/02) 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 Polish nationals, Mr Tadeusz Iskrzycki and Mrs Janina Iskrzycka (“the applicants”), on 20 February 2002.

2. The applicants were represented by Mr Wojciech Gąsiorowski, a lawyer practising in Nowy Sącz. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the length of two sets of administrative proceedings in which they were involved, had exceeded a “reasonable time”.

4. The applicants and the Government each submitted observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Mr Tadeusz Iskrzycki and Mrs Janina Iskrzycka, were born in 1941 and 1949 respectively and live in Rabka.

A. Administrative proceedings for a building permit for a cemetery

6. On an unspecified date in 1992 the Grassroots Committee for the Construction of a Communal Cemetery in Ponice (*Komitet Czynu Społecznego Budowy Cmentarza Komunalnego w Ponicach*) applied to the Head of the Nowy Targ District Office (*Kierownik Urzędu Rejonowego*) for permission to build a cemetery in the applicants' neighbourhood.

7. On 18 May 1993 the Head of the Nowy Targ District Office granted permission.

8. On an unspecified date the applicants appealed against that decision.

9. On 7 July 1993 the Nowy Sącz Governor (*Wojewoda Nowosądecki*) upheld the decision of 18 May 1993.

10. On an unspecified date the applicants lodged a complaint (*skarga*) against that decision with the Supreme Administrative Court.

11. On 12 February 1996 the Supreme Administrative Court gave judgment and quashed both decisions.

12. Following an inspection of the site and having found that the building works were almost complete, on 9 July 1996 the Head of the Nowy Targ District Office ordered that the building works be suspended.

13. On 9 September 1996 the Head of the Nowy Targ District Office gave a decision ordering the investor to carry out some additional activities, including obtaining a report from a hydrological expert on the land around the cemetery and a survey of all the land within a 150-metre radius of the cemetery.

14. On an unspecified date the applicants appealed against that decision.

15. On 11 December 1996 the Nowy Sącz Governor upheld the challenged decision.

16. On an unspecified date the applicants lodged a complaint with the Supreme Administrative Court against the Mayor of Rabka (*Burmistrz*) about the non-enforcement of the Supreme Administrative Court's judgment of 12 February 1996. They relied on Article 31 of the Code of Administrative Proceedings in force at the relevant time and requested that a fine be imposed on the Mayor of Rabka.

17. On 12 November 1997 the Supreme Administrative Court rejected the complaint about the inactivity on the part of the administrative authorities, finding that the applicants had failed to lodge their complaint in accordance with procedural requirements.

18. The administrative authorities failed to carry out the duties imposed on them by the decision of 9 September 1996. Therefore, on 5 September 2003, the Nowy Targ District Inspector of Construction Supervision (*Powiatowy Inspektor Nadzoru Budowlanego*) gave a decision and ordered the demolition of the technical infrastructure of the cemetery (the fence, access ways and plots and the storm drainage system). The

demolition order did not concern the graves which were already in the cemetery.

19. On an unspecified date the Nowy Sącz Governor appealed against that decision.

20. On 12 January 2004 the Małopolski Inspector of Construction Supervision remitted the case for re-examination.

21. On 22 November 2004 the Nowy Targ District Inspector of Construction Supervision gave a decision allowing the Mayor of Rabka and the Grassroots Committee for the Construction of a Communal Cemetery in Ponice to use the cemetery in accordance with its purpose (*pozwolenie na użytkowanie*).

22. On 8 December 2004 the applicants appealed.

23. On 13 December 2005 the Małopolski Inspector of Construction Supervision declared the decision of 22 November 2004 null and void.

24. On 27 February 2006 the Chief Inspector of Constructor Supervision (*Główny Inspektor Nadzoru Budowlanego*) upheld the challenged decision.

25. On an unspecified date the Committee for the Construction of a Communal Cemetery in Ponice lodged a complaint with the Warsaw Regional Administrative Court.

26. On 4 October 2006 the Regional Administrative Court dismissed the Committee's complaint

27. The proceedings are pending before the District Inspector of Construction Supervision, who, on 19 February 2010, informed the applicants' lawyer that, following the Supreme Administrative Court's judgment of 4 October 2006, no measures to re-examine the case had been undertaken because "the case file had not yet been sent back from the appellate administrative authority".

B. Administrative proceedings to change the water supply (o nakazanie zmiany ujęcia wody)

28. On 4 June 1998 the Nowy Targ Sanitary Inspector (*Państwowy Terenowy Inspektor Sanitarny*) gave a decision and ordered the applicants to change their water supply by 30 June 1998.

29. On an unspecified date the applicants appealed against that decision.

30. On 30 June 1998 the Nowy Sącz Regional Sanitary Inspector (*Państwowy Wojewódzki Inspektor Sanitarny*) upheld the challenged decision.

31. On an unspecified date the applicants lodged a complaint against that decision with the Supreme Administrative Court.

32. On 7 October 2002 the Supreme Administrative Court quashed the challenged decision and the preceding decision of the first-instance administrative authority.

33. On 8 April 2003 the Nowy Targ Sanitary Inspector (*Państwowy Inspektor Sanitarny*) gave a decision and ordered the applicants to change their water supply to a source from outside the protection zone around the cemetery. The Inspector found that the applicants were using a well in close proximity to the cemetery.

34. On an unspecified date the applicants appealed against that decision.

35. On 11 June 2003 the Kraków Regional Sanitary Inspector (*Państwowy Wojewódzki Inspektor Sanitarny*) upheld the challenged decision.

36. On 14 November 2005 the Kraków Regional Administrative Court quashed the challenged decision as well as the earlier decision of the first-instance administrative authority.

37. On an unspecified date the Kraków Regional Sanitary Inspector lodged a cassation appeal with the Supreme Administrative Court.

38. On 18 January 2006 the applicants' lawyer lodged a reply to the cassation appeal with the Supreme Administrative Court and requested the court to dismiss it.

39. On the same day the applicants' lawyer complained to the Kraków Regional Administrative Court of inactivity on the part of the administrative authorities.

40. On 25 May 2006 the Supreme Administrative Court dismissed the cassation appeal.

41. On 5 September 2006 the Kraków Regional Administrative Court dismissed the complaint.

C. Civil proceedings for compensation

42. On 6 January 2003 the applicants lodged a claim against the Rabka Municipality (*Miasto i Gmina Rabka*). They sought an order of exhumation of the bodies buried in the cemetery or compensation in the amount of 2,000,000 Polish zlotys (PLN).

43. On 28 June 2004 the Nowy Sącz Regional Court (*Sąd Okręgowy*) dismissed the applicants' claim. It held that the way in which the Rabka Municipality had used their property (namely, by constructing a cemetery), although it had created some inconvenience for the applicants, could not be classified as “excessive” in respect of the normal use of a property.

44. On 30 July 2004 the applicants appealed.

45. On 4 February 2005 the Kraków Court of Appeal (*Sąd Apelacyjny*) dismissed the appeal.

46. On 25 May 2005 the applicants lodged a cassation appeal.

47. On 15 November 2005 the Supreme Court refused to examine their cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

48. The relevant domestic law concerning the remedies for the inactivity of the administrative authorities at the material time is set out in the Court's judgment in the case of *Grabiński v. Poland*, no. 43702/02, §§ 60-65, 17 October 2006.

49. 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 described 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 EXCESSIVE LENGTH OF BOTH SETS OF ADMINISTRATIVE PROCEEDINGS

50. 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...”

51. The Government contested that argument.

52. The overall period of the administrative proceedings began, in respect of the first set of the proceedings, on an unspecified date in 1992. 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. The period in question has not yet ended. It has thus lasted over seventeen years to date. As regards the second set of proceedings, the period to be taken into account began on 4 June 1998 and ended on 25 May 2006. It thus lasted seven years, eleven months and twenty-two days.

A. Admissibility

53. The Government submitted that the applicants had not exhausted the remedies available under Polish law in respect of the excessive length of administrative proceedings. They argued that the applicants had had the

possibility of lodging, with the Polish civil courts, a claim for compensation for damage caused by the excessive length of the administrative proceedings, under Article 417 of the Civil Code. To this end they submitted a judgment of the Kraków Court of Appeal which had awarded just satisfaction for the excessive length of civil proceedings to an applicant, K.M., who had based her claim on the relevant provisions of the Polish Civil Code concerning the protection of personal rights. The Government also submitted several other judgments in which just satisfaction had been awarded to applicants. Those judgments, however, contained no reasoning.

54. The applicants submitted that they could not have been expected to exhaust the remedy relied on by the Government. In their view, there was no well-established practice in that respect and the judgment of the Kraków Court of Appeal had constituted an exceptional approach by the Polish courts to the question of whether the right to have a case heard within a reasonable time was a “personal right” (*prawa osobiste*) under the Civil Code.

55. The Court first notes that it has already examined whether, after 18 December 2001, a compensation claim in tort as provided for by Polish civil law was an effective remedy in respect of complaints about the length of proceedings. It held that no persuasive arguments had been adduced to show that Article 417 of the Civil Code could at that time be relied on for the purpose of seeking compensation for the excessive length of proceedings or that such an action offered reasonable prospects of success (see *Małasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003, and, for administrative proceedings, *Boszek v. Poland*, no. 4054/03, § 35, 5 December 2006). The Court sees no grounds on which to depart from those findings in the present case. Indeed, it appears that the Kraków Court of Appeal's judgment submitted by the Government is of a rather exceptional character and does not reflect a well-established practice of the Polish courts. As regards the remaining judgments submitted by the Government, the Court notes that they contain no reasoning and thus it is impossible to examine in what factual circumstances the relevant judgments were given. In any event, none of the cases relied on by the Government concerned the excessive length of administrative proceedings.

56. Secondly, the Court notes that, in respect of the second set of proceedings the applicants lodged a complaint with the Regional Administrative Court alleging inactivity on the part of the administrative authorities and, in respect of the first set of proceedings they did not make use of that remedy. However, the length of both sets of administrative proceedings is attributable to the fact that the decisions were given and subsequently quashed, rather than to general inactivity on the part of the administrative authorities (see, *mutatis mutandis*, *Stevens v. Poland*, no. 13568/02, §45, 24 October 2006). What is more, both sets of proceedings were conducted by administrative authorities and, subsequently, by

administrative courts at a time when no remedy against the excessive length of judicial proceedings was available in domestic law, that is before the entry into force 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 decisions given in both sets of proceedings were remitted several times not only by higher administrative authorities but also by the administrative courts (see paragraphs 11, 20 and 32 above). As regards the remedies provided for by the 2004 Act, the Government admitted in their observations that they would not be applicable to the applicants' case.

In these circumstances the Court considers that the applicants did not have at their disposal any remedy against the excessive length of administrative proceedings which could reasonably be considered “effective” in the circumstances of the present case.

57. For these reasons, the Government's plea of inadmissibility on the grounds of non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

59. 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).

60. 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).

61. 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 both sets of administrative proceedings was excessive.

There has accordingly been a breach of Article 6 § 1 of the Convention in respect of both sets of administrative proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. The applicants also complained that the building of the cemetery in the neighbourhood had seriously affected the value of their property and the revenue from their business; they ran a guesthouse and organised holidays for children during the winter and summer school holidays.

63. The applicants further complained under Article 6 of the Convention of the unreasonable length of the civil proceedings in which they had been involved.

64. As regards the first complaint, the Court considers that even if it was to be examined under Article 1 of Protocol No. 1, it is in any event inadmissible as being premature; the relevant administrative proceedings are still pending. As regards the complaint concerning the excessive length of the civil proceedings, the Court notes that they terminated on 15 November 2005, that is after the entry into force of the 2004 Act. Pursuant to section 5 of the 2004 Act, it was open to persons such as the applicants in the present case to lodge a complaint about the unreasonable length of the proceedings with the relevant domestic court. The applicants did not make use of the remedy provided for under the 2004 Act. Accordingly, the complaint about the unreasonable length of the civil proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicants claimed 200,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

67. The Government considered this claim unjustified and exorbitant.

68. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them jointly 15,000 euros (EUR) under that head.

B. Costs and expenses

69. The applicants' lawyer claimed PLN 35,010 for costs and expenses. He submitted three copies of invoices issued in 1998, 2002 and 2003 for legal representation before the domestic administrative authorities. The lawyer did not make any claim as regards costs and expenses before the Court.

70. The Government considered that the costs and expenses claimed were not connected with the applicants' complaint concerning the excessive length of the proceedings and requested the Court to dismiss the claim.

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are 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.

C. Default interest

72. 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 complaints as regards the unreasonable length of both sets of administrative proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unreasonable length of both sets of administrative proceedings;
3. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable to the applicants, in respect of non-pecuniary damage, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President