



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

FOURTH SECTION

CASE OF UZAROWICZ v. POLAND

(Application no. 24523/08)

JUDGMENT

STRASBOURG

12 October 2010

FINAL

21/02/2011

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

In the case of Uzarowicz v. Poland,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Mihai Poalelungi,
Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 21 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 24523/08) 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 Uzarowicz (“the applicant”), on 19 May 2008.

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

3. On 31 August 2009 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 § 1).

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

4. The applicant was born in 1946 and lives in Warszawa.

5. The applicant inherited a property from his ancestors (now divided into two plots of land - no. 209/1 and no. 224/1) located in Podkowa Leśna, Poland, at the crossroad of 11 Listopada Street and Wiązowa Street. It appears that on an unspecified date after World War II the possession of the land was transferred to the State.

6. On 1 January 1999 the applicant's land, which had remained, as of 31 December 1998, in the possession of the State and which had been expropriated for the purposes of constructing roads became *ex lege* the property of the local self-government authority in accordance with section 73 of the Act of 13 October 1998 – introductory provisions concerning acts reforming public administration (*Ustawa - przepisy wprowadzające ustawy reformujące administrację publiczną*).

7. On 1 September 2003 the applicant asked the Podkowa Leśna Municipality Office (*Urząd Miejski*) for compensation for the expropriated land located at 11 Listopada Street. It appears that by this request the applicant claimed compensation for both plots of land, as the expropriated land is located at a junction where 11 Listopada Street crosses Wiązowa Street.

8. On 30 September 2003 the Podkowa Leśna Municipality Office informed the applicant that the legal status of the property in question had not yet been clarified. The applicant was also informed that compensation for expropriation would be paid following the adoption of the next year's budget.

9. On 6 July 2005 the applicant yet again requested compensation from the Podkowa Leśna Municipality Office.

10. On 9 August 2005 the Municipality Office informed the applicant that some uncertainty had arisen as to whether the compensation for the expropriated plots of land was to be paid by the Municipality or by the State Treasury. The applicant was further informed that the municipality had not yet lodged an application with the Governor (*Wojewoda*) for a decision confirming the transfer of ownership, which was necessary for the determination and payment of compensation.

11. On 6 February 2007 the applicant requested the Mazowiecki Governor to issue a decision confirming the transfer of ownership.

12. On 26 March 2007 the applicant complained to the Mazowiecki Governor about his inactivity and requested the Governor to deliver a decision in the proceedings.

13. On 2 May 2007 the Department of Geodesy of the Governor's Office informed the applicant that the Governor was not in possession of certain documents, necessary to take a decision.

14. On 8 May 2007 the Mazowiecki Governor Office referred the application for compensation to the Mayor of the Warsaw District Municipality (*Starosta Powiatu Warszawskiego*).

15. On 9 May 2007 the Mayor of the Warsaw Municipality referred the application to the Mayor of the Grodzisk Mazowiecki District Municipality (*Starosta Powiatu Grodzkiego*), being the competent authority to examine the case.

16. On 28 September 2007 the Mayor of the Grodzisk Mazowiecki District Municipality stayed the proceedings for compensation pending the termination of the above-mentioned proceedings confirming the transfer of ownership of the plots of land.

17. On 16 October 2007 the applicant requested the Mazowiecki Governor to accelerate the proceedings for delivery of the decision confirming the transfer of the ownership of the property.

18. On 18 October 2007 the applicant sent a letter to the Podkowa Leśna Municipality Office requesting them to supply the Governor with necessary documents.

19. On 22 November 2007 the applicant lodged a complaint with the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) about the inactivity of the Mazowiecki Governor.

20. On 14 December 2007 the Mazowiecki Governor gave a decision and confirmed that the ownership of the plot of land no. 209/1 had been transferred to the Podkowa Leśna Municipality.

21. On 17 December 2007 the Mazowiecki Governor gave a decision refusing to confirm the transfer of ownership of the plot of land no. 224/1.

22. On 9 January 2008 the applicant appealed against the decision of 17 December 2007.

23. On 11 January 2008 the Mayor of the Podkowa Leśna Municipality (*Burmistrz Gminy*) appealed against both decisions of the Governor.

24. On 22 February 2008 the Minister of Infrastructure (*Minister Infrastruktury*) quashed the Mazowiecki Governor's decisions of 14 and 17 December 2007 and remitted the case.

25. On 21 March 2008 the applicant requested the Mazowiecki Governor to consider speeding up the proceedings.

26. On 25 April 2008 the Mazowiecki Governor informed the applicant that his case would be examined once the case file was delivered from the Ministry of Infrastructure.

27. On 5 May 2008 the applicant yet again requested the Governor to accelerate the proceedings. He stressed that the Governor had significantly exceeded the time-limit laid down in the Code of Administrative Procedure (*Kodeks Postępowania Administracyjnego*) for handling a case.

28. On 26 November 2008 the Governor requested the applicant and the administrative organs involved in the proceedings to supply documents necessary to issue a decision.

29. On 13 January 2009 the Warsaw Regional Administrative Court dismissed the applicant's complaint of 22 November 2007 about the inactivity of the Mazowiecki Governor.

30. On 23 January 2009 the applicant lodged a complaint with the Minister of Infrastructure about the inactivity of the Mazowiecki Governor.

31. On 12 March 2009 the Minister of Infrastructure dismissed the applicant's complaint, noting that the Governor had acted with due diligence.

32. As yet, no decision confirming the transfer of the ownership of the property has been given by the Governor. It appears that the proceedings concerning payment of compensation are stayed pending the Governor's decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions concerning inactivity of the administrative authorities

33. The relevant domestic law and practice concerning remedies for the excessive length of administrative proceedings, in particular the applicable provisions of the Code of Administrative Procedure and the Act on Proceedings before Administrative Courts, are described in the cases of *Grabiński v. Poland* no. 43702/02, §§ 60-65, 17 October 2006, *Koss v. Poland*, no. 52495/99, §§ 21-25, 28 March 2006, and *Kaniewski v. Poland*, no. 8049/02, §§ 22-28, 8 November 2005.

B. Provisions concerning the right to compensation for expropriated property

34. On 29 October 1998 the Act of 13 October 1998 – introductory provisions concerning acts reforming public administration (*Ustawa - przepisy wprowadzające ustawy reformujące administrację publiczną*), entered into force.

Section 73 of that Act provides as follows:

“Land which as of 31 December 1998 remained in the possession of the State Treasury or local self-government authorities, which is not owned by these entities and has been expropriated for the purposes of constructing roads shall become *ex lege*, the property of the State Treasury or the respective local self-government authorities, against payment of compensation, on 1 January 1999.

..

Compensation ...shall be fixed and paid according to the provisions on compensation for expropriated property, at the request of the property owner, which must be lodged between 1 January 2001 and 31 December 2005. On the latter date the claim for compensation expires.”

THE LAW

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

35. 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...”

36. The Government contested that argument.

37. The period to be taken into consideration began on 1 September 2003 and has not yet ended. It has thus lasted so far some seven years.

A. Admissibility

38. 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

1. The Government's submissions

39. The Government stressed that the proceedings have been very complex and that the Mazowiecki Governor had to establish many factual and legal circumstances, as well as the legal status of the property.

They further submitted that the applicant had been passive, as he could have lodged his complaint as early as January 2001 - that is almost three years before he had formally requested compensation for the expropriated property. They also pointed out that the applicant had been inactive in the period between 1 September 2003 and 6 July 2005.

40. Lastly, the Government submitted that the applicant failed to supply certain documents to the Mazowiecki Governor, as requested by his letter of 26 November 2008.

They concluded that having regard to the very complex nature of the case the administrative authorities had shown due diligence in handling the proceedings.

2. *The applicant's submissions*

41. The applicant submitted in general terms that the proceedings had been unreasonably lengthy.

He further stressed that he had responded to every single letter addressed to him by the administrative authorities.

Lastly he expressed the opinion that as long as he had requested compensation from the authorities within the time-limit prescribed by law, it could not be said that he had been inactive only because he had lodged his request in September 2003 and not as early as in January 2001.

3. *The Court's assessment*

42. 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).

43. 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).

44. The Court acknowledges that the proceedings are complex. However, 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 applicant was indeed free to lodge his request for compensation at any given time, as long as it had been lodged within the time-limit provided by law. Criticism cannot be made of the fact that he had remained inactive between January 2001 and September 2003.

45. Further, in so far as the Government claim that the applicant had been inactive between 1 September 2003 and 6 July 2005, the Court is of the opinion that following the letter of 30 September 2003 from the Podkowa Leśna Municipality Office, the applicant could legitimately expect that compensation for expropriation would be paid the following year (see paragraph 8 above).

46. Lastly, the Government have not provided any evidence in support of the alleged failure of the applicant to cooperate with the administrative authorities.

47. 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 1 OF PROTOCOL No. 1 TO THE CONVENTION

48. The applicant complained about the authorities' delay in payment of compensation for the expropriated property, alleging that this delay has resulted in a breach of his right to peaceful enjoyment of his possessions, as he had been deprived of his property without compensation. The applicant invoked Article 1 of Protocol No. 1 in this respect.

49. 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.

50. Having regard to its finding under Article 6 § 1 (see paragraphs 44-47 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 1 of Protocol No. 1 (see *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23; *Kroenitz v. Poland*, no. 77746/01, § 37, 25 February 2003).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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.”

52. The applicant did not submit a claim for just satisfaction or for costs and expenses.

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* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 12 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President