



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

FIRST SECTION

CASE OF WCISŁO AND CABAJ v. POLAND

(Applications nos. 49725/11 and 79950/13)

JUDGMENT
(Just satisfaction)

Art 41 • Just satisfaction • Pecuniary damage suffered from violation of Art 1 P1 on account of the delay in payment of compensation for expropriation • Claim not premature despite separate domestic proceedings still pending regarding the amount of interest due to the applicants • Expropriation having occurred 25 years ago, unreasonable to wait for the outcome of those proceedings • No risk of double award • Award

STRASBOURG

6 August 2020

FINAL

06/11/2020

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

In the case of Wcisło and Cabaj v. Poland,

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

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Linos-Alexandre Sicilianos,

Aleš Pejchal,

Armen Harutyunyan,

Tim Eicke,

Jovan Ilievski, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 7 July 2020,

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

PROCEDURE

1. The case originated in two applications (nos 49725/11 and 79950/11) 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 three Polish nationals, Mr Krzysztof Wcisło (no. 49725/11 – “the first application”) and Ms Elżbieta Cabaj and Mr Jerzy Cabaj (no. 79950/13 – “the second application”) (“the applicants”). The applications were lodged on 27 July 2011 and 8 December 2013 respectively.

2. In a judgment delivered on 8 November 2018 (“the principal judgment”), with respect to the first application the Court found a violation of Articles 6 § 1 and 13 of the Convention and held that there was no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention.

3. With respect to the second application in the principal judgment the Court found a violation of Article 6 § 1 of the Convention on account of the excessive length of administrative proceedings relating to the applicants’ claim for compensation for their expropriated property. It further found a violation of Article 1 Protocol No. 1 to the Convention on the grounds that, because of the unreasonable length of the administrative proceedings, the applicants had not been paid compensation for their expropriated property. The Court held that this constituted an excessive burden which had upset the fair balance that had to be struck between the demands of the public interest and the protection of the right to peaceful enjoyment of possessions (see paragraphs 197-199 of the principal judgment). Lastly, it held that there had been a violation of Article 13 of the Convention on account of the fact that the applicants had not had access to an “effective remedy” in respect of their complaints under Article 6 § 1 of the Convention.

4. Under Article 41 of the Convention, the applicant in the first application was awarded just satisfaction in respect of non-pecuniary damage and his claim for pecuniary damage was rejected (see paragraph 203 of the principal judgment).

5. The applicants in the second application sought just satisfaction under Article 41 of the Convention in respect of both pecuniary and non-pecuniary damage. As regards pecuniary damage, they claimed 280,000 Polish zlotys (PLN) together with statutory interest in the amount of PLN 71,733.70. That amount constituted compensation for the expropriated land, as determined by a decision of the Mayor of Garwolin District (*Starosta Powiatu Garwolińskiego* – “the Mayor”) of 25 June 2014. They also claimed 15,000 euros (EUR) in respect of the non-pecuniary damage caused by the excessive length of the proceedings in their case.

6. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage in the second application only, the Court reserved it and invited the Government and the applicants to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 206 and point 9 of the operative provisions). However, the Court awarded the applicants EUR 10,400 in respect of non-pecuniary damage. It further rejected their claim for costs and expenses in the domestic proceedings and awarded them EUR 2,958 for the proceedings before the Court.

7. The applicants in the second application and the Government each filed observations.

THE LAW

8. 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.”

I. FURTHER DEVELOPMENTS AFTER THE ADOPTION OF THE PRINCIPAL JUDGMENT

9. The proceedings for compensation were terminated on 31 August 2018. On that date the Supreme Administrative Court dismissed the cassation appeal lodged by the Garwolin City Office, and the decision of the Mayor of 25 June 2014 awarding the applicants compensation for the expropriated property became final (see paragraphs 70 and 78 of the principal judgment).

10. On 7 September 2018 the Garwolin City Office transferred the compensation in question to the applicants. On 10 September 2018 they received PLN 217,752.34. As explained by the authorities, this sum constituted compensation for the expropriated land (PLN 280,000) together with statutory interest on that amount (PLN 17,452.05), from which the sum of PLN 79,699.71, allegedly owed by the applicants to the Garwolin City Office, had been offset.

11. It was only later, on 22 January 2019, that the Garwolin City Office issued a decision concerning the offsetting of the PLN 79,699.71. It was noted that on 30 March 2009, as a result of a different set of administrative proceedings relating to consolidation of land, the Garwolin City Council had ordered the applicants to pay PLN 40,174 to cover the difference in value between the exchanged plots. Since that sum had never been paid by the applicants, it had been deducted from the compensation paid to them (together with statutory interest in the amount of PLN 39,525.71).

12. The applicants appealed, and on 5 November 2019 the Warsaw Regional Administrative Court annulled the above-mentioned decision. The judgment became final on 16 January 2020.

13. Meanwhile, on 18 March 2019 the Mayor issued a writ of enforcement in favour of the applicants against the Garwolin City Office in respect of the outstanding compensation. Following appeals, on 28 January 2020 the Mayor amended the writ of enforcement and held that the sum of PLN 217,752.34 should be counted as part of the principal amount of compensation and had not included any interest. Consequently, the Garwolin City Office was ordered to pay the applicants PLN 62,247.66. It was also noted that the amount of interest due to the applicants would be determined in a separate set of proceedings.

14. On 8 April 2020 and 15 May 2020 the remainder of compensation was transferred to the applicants in two instalments: PLN 59,146.33 and PLN 3,101.37 respectively.

15. Meanwhile, on 9 January 2020 the Mayor gave a decision determining the amount of interest to be paid to the applicants at PLN 82,590.86. Following an appeal lodged by the Garwolin City Office, on 1 April 2020, the Mazowiecki Governor annulled this decision and remitted the case. The proceedings are still pending before the Mayor.

II. DAMAGE

A. The parties' submissions

1. *The applicants*

16. The applicants originally claimed PLN 280,000 in respect of pecuniary damage, together with statutory interest in the amount of PLN 71,733.70 calculated from 28 November 2014 until 11 May 2018 (the

date of their observations on the merits of the case), PLN 351,733.70 in total. This amount corresponded to the value of the expropriated land as calculated in the valuation report of 4 February 2014 (see paragraph 70 of the principal judgment).

17. In their observations following the adoption of the principal judgment, the applicants confirmed that on 10 September 2018 they had received PLN 217,752.43 in compensation for the expropriated property. However, that sum had also included PLN 76,888.77 corresponding to statutory interest. They therefore asked to be awarded the remaining compensation, that is to say PLN 139,136.43 together with statutory interest on that amount calculated from 11 September 2018 to the date of payment of compensation. This amount constituted the pecuniary damage resulting from the violations found by the Court in the principal judgment, in particular as regards the violation of Article 1 of Protocol No. 1 to the Convention.

18. The applicants maintained that the Garwolin City Office had wrongly deducted the sum of PLN 79,699.71 from the total amount of compensation. That decision had not had any legal basis and their appeal proceedings in the matter were still pending.

19. In their additional submissions of 30 January 2020, the applicants specified that the outstanding compensation due to them from the Garwolin City Office was PLN 62,247.66 (280,000 minus 217,752.34) and that the total statutory interest on that amount (as at 9 January 2020) was PLN 82,590.86. They therefore asked to be awarded PLN 144,838.52.

2. *The Government*

20. The Government submitted that the applicants' claim for pecuniary damage resulting from a violation found in the principal judgment should be dismissed, as the compensation for the expropriated plots of land had been transferred to them on 7 September 2018, 8 April 2020 and 15 May 2020. In total the applicants had received PLN 280,000.

21. Lastly, they stressed that the administrative proceedings relating to the applicants' claim for due interest were still pending and that the issue of compensation for pecuniary damage was therefore premature.

B. The Court's assessment

22. With reference to the Government's objection that the application was premature since the domestic proceedings relating to the applicants' claim were still pending, the Court notes that, in view of the fact that the compensation together with due interest has not been paid after more than twenty-five years from the date of expropriation, it would be unreasonable to wait for the outcome of any further domestic proceedings (see *Galea and Others v. Malta*, no. 68980/13, § 51, 13 February 2018). Furthermore,

there is no risk that the applicants will receive pecuniary compensation twice, as the national jurisdictions would inevitably take note of the Court's award when deciding the case (see *Serrilli v. Italy* (just satisfaction), no. 77822/01, § 17, 17 July 2008; *Silva Barreira Júnior v. Portugal*, nos. 38317/06 and 38319/06, § 40, 11 January 2011; and *Frendo Randon and Others v. Malta*, no. 2226/10, § 77, 22 November 2011).

23. The Court further reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore, as far as possible, the situation existing before the breach (see *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 19, ECHR 2001-I). The nature and extent of the just satisfaction to be afforded by the Court under Article 41 of the Convention directly depend on the nature of the breach (see *Shesti Mai Engineering OOD and Others v. Bulgaria*, no. 17854/04, § 101, 20 September 2011).

24. The Court notes that its finding of a violation of Article 1 of Protocol No. 1 to the Convention in the present case was based on the unreasonable length of the proceedings for compensation for expropriated property. The taking of land in the applicants' case was not unlawful and did not lack public interest. It was therefore not the inherent unlawfulness of the taking of the land that was at the origin of the violation found under Article 1 of Protocol No. 1, but rather the delay in awarding compensation for the expropriated land. The Court therefore considers that the compensation in the present case should – as in other similar cases (see, for example, *Frendo Randon and Others v. Malta*, (just satisfaction), no. 2226/10, § 20, 9 July 2013) – be based on the guidelines established in *Schembri and Others v. Malta* ((just satisfaction), no. 42583/06, § 18, 28 September 2010). The sum to be awarded to the applicants should therefore be calculated on the basis of the value of the land at the time of taking, converted to the current value to offset the effects of inflation, plus simple statutory interest applied to the capital progressively adjusted.

25. The applicants did not contest the sum of PLN 280,000 finally awarded to them in compensation for the expropriated land and the Court is prepared to accept that that amount was adequate.

26. The Court further observes that on 10 September 2018 the applicants received PLN 217,752.43 in compensation for the expropriated property. That sum reflected the market value of the land at the time of expropriation as determined by the Mayor on 25 June 2014, reduced by the amount owed by the applicants to the Garwolin City Office (see paragraphs 10 and 11 above). Subsequently, on 8 April 2020 the applicants received PLN 59,146.33 and on 15 May 2020 PLN 3,101.37 (see paragraph 14 above). Thus the total sum of compensation: PLN 280,000 was already paid to them. The amount of interest is to be determined in a separate set of proceedings, which are still pending (see paragraphs 13 and 15 above).

27. However, the Court notes that the applicants objected to the authorities' decision to deduct from the compensation awarded to them the sum which they had allegedly owed the Garwolin City Office and asked to be paid the remaining compensation. In that connection, the Court reiterates that there must be a clear causal connection between the damage claimed by the applicants and the violation of the Convention (see, among many authorities, *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06 § 81, 12 March 2014). It observes that in the present case the deduction was made in the context of a different set of administrative proceedings, which had resulted from the Garwolin City Council's resolution of 30 March 2009 on consolidation and division of land. These proceedings were not the subject of the principal judgment and were mentioned for the first time in the applicants' submissions on pecuniary damage of 8 May 2019. In any event, the decision on deduction was eventually annulled and the applicants received the total amount of compensation (see paragraph 14 above).

28. In view of the above, the Court considers that there is no causal link between the applicants' claim to be paid the outstanding sum of compensation and the breach found in the principal judgment. Accordingly, the Court rejects the applicants' claim in that respect.

29. At the same time, the Court observes that the applicants have not yet been paid any interest on the sums awarded to them. In that connection, it reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicants, as far as possible, in the position they would have been in had the breach not occurred. It further notes that on 9 January 2020 the Mayor determined the amount of interest to be paid to the applicants at PLN 82,590.86 (approximately 20,000 EUR) (see paragraph 15 above). This calculation was not contested by the applicants (see paragraph 19 above).

30. Having regard to all the above factors, and, making its assessment on an equitable basis, the Court considers it reasonable to award the applicants in the second application, jointly, 20,000 EUR in respect of pecuniary damage, plus any tax that may be chargeable on that amount.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds*

- (a) that the respondent State is to pay the applicants in the second application, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 August 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Ksenija Turković
President