



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

FOURTH SECTION

CASE OF UTHKE v. POLAND

(Application no. 48684/99)

JUDGMENT

STRASBOURG

18 June 2002

FINAL

18/09/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Uthke v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 28 May 2002,

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

PROCEDURE

1. The case originated in an application (no. 48684/99) 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, Ms Anna Uthke (“the applicant”), on 7 December 1998.

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

3. The applicant alleged, *inter alia*, that the civil proceedings in her case exceeded a reasonable time.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 4 December 2001 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is an owner of an apartment house located in Warsaw. On 30 July 1992 the applicant's husband lodged with the Warsaw District Court an eviction claim against two of his tenants, T.M. and S.P. The first hearing took place on 18 December 1992. In 1993 hearings were held on the following dates: 15 January, 24 March, 6 and 18 May, 16 and 21 June, 16 July, 12 August, 24 September, 20 October, 17 and 30 November and 21 December.

8. On 22 December 1992 the applicant's husband died and, accordingly, on 24 March 1993 the court stayed the proceedings invoking Article 174 § 1 (1) of the Code of Civil Procedure.

9. On 6 May 1993 the applicant requested the court to resume the proceedings and her request was granted promptly afterwards. On 27 May 1993 the applicant revoked the power of attorney of her lawyer A.J. On 16 June 1993 she submitted all the documents requested by the defendants.

10. At the next hearing, held on 30 November 1993, the court fixed twenty-one days' time-limit for T.M., the defendant, to institute administrative proceedings to have her tenancy rights, apparently originating from an administrative decision given in the 1940s or 1950s, confirmed.

11. On 24 March 1994 the Mokotów Housing Administration, in reply to the court's query, informed it that relevant administrative proceedings had been instituted in respect of both defendants.

12. On an unspecified later date defendant T. M. appealed to the Supreme Administrative Court against a decision by which the relevant authorities had discontinued proceedings in which she had requested that an administrative decision be given awarding her administrative tenancy rights. Likewise, on an unspecified date S. P. filed an appeal with the same court against a decision by which his request for confirmation of his tenancy rights had been refused.

13. On 14 April 1994 the Warsaw District Court stayed the eviction proceedings until the end of the administrative proceedings instituted by the defendants and later on, by a decision of 14 July 1994, refused the applicant's request to resume the proceedings. On 28 July 1994 the applicant lodged an appeal against this decision. The case-file was forwarded to the Regional Court on 25 August 1994. The appeal was dismissed on 28 December 1994 by the Warsaw Regional Court.

14. On 31 January 1995 the second-instance administrative authority refused to confirm T.M.'s tenancy rights.

15. On 24 April 1995 the Warsaw District Court refused the applicant's further request of 18 February 1995 to resume the proceedings as the administrative proceedings concerning the tenancy entitlements of her tenants had not come to an end and remained pending before the Supreme Administrative Court.

16. On 26 June 1995 the Supreme Administrative Court informed the applicant that the administrative proceedings instituted by the defendants T.M. and S.P. could not be accelerated.

17. On 23 August 1995 the Warsaw District Court refused the applicant's next request to resume the proceedings, as the administrative proceedings concerning the administrative tenancy entitlements of her tenants remained pending before the Supreme Administrative Court. On 30 August 1995 the applicant complained to the President of the District Court about the excessive length of proceedings.

18. On 29 January 1996 the Supreme Administrative Court dismissed an appeal lodged by T. M. against a decision by which she had been refused, by way of an administrative decision, confirmation of the right to a lease of the apartment in question.

19. On 29 August 1996 the Warsaw District Court refused to resume the eviction proceedings as the second defendant S. P. had appealed to the Supreme Administrative Court against the first-instance administrative decision, which had been given in his case on 10 June 1996. The applicant lodged an appeal against this decision with the Warsaw Regional Court.

20. By a letter of 19 November 1996 the President of the Regional Court informed the applicant, in reply to her complaint, that the length of the proceedings had been caused by the fact that the administrative proceedings concerning the tenancy entitlements of S.P. were still pending.

21. On 16 December 1996 the court resumed the proceedings with respect to T.M. and on 22 January 1997 the proceedings were also resumed with respect to S.P., despite the fact that the administrative proceedings in respect of his tenancy rights remained pending. During the hearing held on 25 February 1997 the applicant was requested to specify her claim and to submit all necessary documentary evidence within one month. On 17 March 1997 the applicant's new lawyer specified her claims. On 24 April 1997 the next hearing was held before the Warsaw District Court.

22. In a letter of 1 July 1997 the President of the Civil Division of the District Court informed the applicant, in reply to her complaint about the length of proceedings, that the proceedings in her case did not appear to be excessively lengthy.

23. A hearing to be held on 3 July 1997 was adjourned as the summons to the defendant T.M. had not been duly served on him by the post.

24. In a letter of 7 July 1997 the President of the District Court informed the applicant that the proceedings would most probably come to end at the hearing scheduled for 16 October 1997, as the taking of the evidence had

almost been completed. Subsequently, a hearing was held on 16 October 1997.

25. In 1997 the applicant requested the Ombudsman to intervene in her case. The Ombudsman, by a letter of 12 November 1997, informed her that he lacked competence to intervene in pending civil cases as to the merits. However, as the applicant had complained about the excessive length of the proceedings, the Ombudsman had requested the president of the District Court to provide him with relevant information. In reply, the Ombudsman had been informed that the proceedings were about to be concluded, as the taking of the evidence had been completed and only the parties were still to be questioned by the court.

26. On 18 November 1997 the Supreme Administrative Court dismissed the appeal lodged by the second defendant S.P. against the administrative decision discontinuing the administrative proceedings to have his tenancy rights confirmed. The court considered that these proceedings had to be discontinued as under the Tenancy Act of 1994 tenancy contracts established by way of administrative decisions governed by administrative tenancies laws, previously in force, had ceased to exist. The court further observed that under applicable legal provisions any disputes as to the existence and scope of tenancy rights had to be brought before civil courts.

27. On 23 March 1998 and 7 July 1998 hearings were adjourned as the court had not received a postal confirmation that the summonses had been properly served on the defendants.

28. On 8 July 1998 the applicant complained about the length of the proceedings to the Ministry of Justice.

29. The next hearing was scheduled for 8 October 1998 and before 5 August 1998 the court received the postal confirmation that the summonses had duly been served on the defendants. Apparently, a hearing was held on that date.

30. In a letter of 5 August 1998 the President of the District Court stated, in reply to the applicant's complaint about the length of the proceedings, that she could not fully share the applicant's view.

31. On 16 October 1998 the applicant complained to the Minister of Internal Affairs about the excessive length of the proceedings. On 20 October 1998 her complaint was transmitted to the Ministry of Justice. On 22 October 1998 a similar complaint, lodged with the Bureau of the Council of Ministers, was transmitted to the same Ministry.

32. On 1 December 1998 the Warsaw District Court submitted a complaint to the Regional Bar Association about the unexplained absence of M.B., defendant S.P.'s lawyer, at a hearing.

33. On 12 December 1998 defendant T.M. died.

34. On 28 December 1998 another hearing took place before the Warsaw District Court. The defendant S.P.'s lawyer M.B. failed to attend it. The applicant withdrew her eviction claim with respect to T.M.

35. On 7 January 1999 the defendant S.P. lodged with the Warsaw District Court a claim asserting right of adverse possession of the apartment in question. Apparently on the same day, he lodged with the same court a request to re-open the hearings in the proceedings concerning the applicant's eviction claim, in which the hearings had been closed on 28 December 1998. S.P. argued that the outcome of the newly instituted proceedings would be decisive for the eviction proceedings, which should therefore be stayed again.

36. On 11 January 1999 the hearings in the eviction case were re-opened. On 7 April 1999 the Warsaw District Court stayed the eviction proceedings until the end of the proceedings instituted by the defendant S. P. claiming to assert the right of adverse possession, and discontinued the proceedings in respect of T. M. as the applicant had withdrawn her eviction claim. On 20 May 1999 the Warsaw Regional Court dismissed the applicant's appeal against that decision insofar as it concerned the order to stay the proceedings.

37. The subsequent hearings in the proceedings concerning S.P.'s claim to have the right of adverse prescription confirmed took place on 8 December 1999, 22 March 2000 and 6 July 2000.

38. On 17 July 2000 the Warsaw-Mokotów District Court dismissed S.P.'s claim, finding that the apartment where he lived had never constituted a separate tenement.

39. On 7 September 2000 S.P. appealed against the above decision to the Warsaw Regional Court. On 7 June 2001 the Warsaw-Mokotów District Court ultimately rejected S.P.'s appeal against that decision.

40. The eviction proceedings are still pending before the first-instance court.

II. RELEVANT DOMESTIC LAW

41. The Code of Civil Procedure provides:

Article 174 § 1 (1)

“The court shall stay the proceedings in case of the death of the party of the proceedings.”

Article 177 § 1 (3)

“The court may stay the proceedings if its decision on the merits on the case depends on an earlier decision of the administrative authority.”

Article 180 § 1 (4)

“The court shall resume the stayed civil proceedings if the final decision in administrative proceedings has been given. The court may however, according to the circumstances of the case, resume the civil proceedings before the final administrative decision is given.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

42. The applicant asserted that the civil proceedings in her case were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which in so far as relevant reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken in consideration

43. The Court first observes that the proceedings commenced in July 1992, when the applicant's late husband lodged an action with the Warsaw District Court, claiming eviction of his tenants. However, the period to be taken into consideration began not on that date, but later, on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. The proceedings are currently pending before the Warsaw District Court. Thus the proceedings have so far lasted nine years and ten months approximately, out of which the period of nine years falls to be examined by the Court.

44. The Court further notes that in order to determine the reasonableness of the length of time in question, regard must be had, however, to the state of the case on 1 May 1993 (see, among other authorities, the *Styranowski v. Poland* judgment of 30 October 1998, *Reports 1998-VIII*, § 46; *Zawadzki v. Poland*, no. 34158/96, 20.12.2001, § 69).

B. Arguments before the Court

45. The applicant asserted that the proceedings in her case have lasted too long.

46. The Government submitted that the civil case itself had not been complex. However, it had been rendered complex by the fact that the civil court was obliged to stay the eviction proceedings, having regard to other sets of proceedings, administrative and subsequently civil, that the defendants had instituted. This was so because the outcome of these proceedings would have been directly decisive for the determination of the eviction case.

47. The Government submitted that what was at stake for the applicant had not required special diligence on the part of the authorities. This was so because her claim for eviction had in part been satisfied in 1998, after T.M.,

one of the defendants, died, thereby vacating the apartment. Moreover, in any event, the outcome of the eviction proceedings would not have had any bearing on the applicant's housing situation as she resided in another apartment. They also stressed that the second defendant S.P. was 85 years' old and had been living in the apartment in question since 1948.

48. The Government argued that the judicial authorities had been diligent in dealing with the case. Before the proceedings had been stayed on 14 April 1994, hearings had been held at regular intervals. After the proceedings had been resumed on 22 January 1997, the court proceeded with the case with no delays. On 28 December 1998 the court had declared that the case was ready for a decision. However, as on 7 January 1999 S.P. had lodged a civil motion to assert a right of adverse prescription of the apartment in question, the court had had no choice but to stay the proceedings again.

49. The Government submitted that the public authorities could be held responsible only for the length of that part of the proceedings during which the courts had been proceeding with the civil case. However, no responsibility could be attributed to it for these periods during which the case remained dormant as the proceedings had been stayed pending the outcome of the administrative proceedings.

50. The Government asserted that the conduct of M.B., the lawyer of defendant S.P., had significantly contributed to the length of the proceedings. His unexplained absences had made it necessary for the court to adjourn hearings on numerous occasions. However, on 1 December 1998 the court had requested the Regional Bar to clarify the reasons for M.B.'s absence at the hearing scheduled for 8 October 1998. Therefore, the court had not remained inactive in this connection.

51. The Government acknowledged that the applicant's conduct had not contributed to the prolongation of the proceedings.

C. Reasonableness of the length of the proceedings

52. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among other authorities, the *Proszak v. Poland* judgment of 16 December 1997, *Reports* 1997-VIII, § 32).

53. The Court, having regard to the necessity to consider both civil and administrative legal provisions when deciding about the defendants' tenancy rights, considers that the case can be considered complex. On the other hand, in the present case the court had at its disposal complete documentary evidence, as the applicant had submitted it to the court early on in the proceedings.

54. The Court further considers that there are no grounds on which to consider that the applicant contributed to the length of the proceedings.

55. As to the conduct of the authorities, the Court's attention has been drawn to the fact that the taking of the evidence was already completed in July 1997 (see § 24 above). The Court further notes that no hearing was held in the case between 16 October 1997 and 8 October 1998.

56. The Court also observes that the courts stayed the proceedings on three occasions. Firstly, the proceedings remained stayed from 22 December 1992 to 14 April 1993 as the applicant's husband, who was a plaintiff, had died and accordingly the court was obliged to stay the proceedings until his legal successors were established. In the Court's view, that decision is not open to criticism.

57. Secondly, from 14 April 1994 the civil proceedings likewise remained stayed until the end of administrative proceedings instituted by the defendants, i.e. until 16 December 1996 in respect of T.M. and until 22 January 1997 in respect of S.P.

The Court considers that the length of the civil proceedings cannot be assessed separately from the length of the administrative proceedings, which were held before the domestic authorities and were closely intertwined with the civil law issues involved in the civil case. The Court observes in this connection that on 31 January 1995 the administrative authority issued the second-instance decision, which explicitly indicated that the defendant T.M. did not have any legal title to the apartment (see § 14 above). It should be emphasised that under the provisions of the Code of Civil Proceedings it was open to the court to resume the civil proceedings, which had been stayed due to the administrative proceedings, before the final decision in administrative proceedings was given. Thus, having obtained the decision of the administrative authority of the second instance, the Warsaw District Court should have more carefully examined the possibility of resuming the eviction proceedings earlier, instead of waiting for the administrative case to come to end.

58. In the Court's view, it is also relevant to note that the court first twice refused to resume the eviction proceedings, relying on the fact that the administrative proceedings in respect of S.P. were pending, but ultimately resumed them without waiting for a final judgment of the Supreme Administrative Court. This, in the Court's opinion, seems to indicate that it was not necessary to wait for the judgment of that court in order to give the decision on the merits of the eviction case. No convincing arguments to the contrary were advanced by the Government.

59. The eviction proceedings were also stayed by a decision of 7 April 1999. The court stayed the proceedings, having observed that the second defendant S.P. had instituted, right after the hearings in the present eviction case had been closed on 28 December 1998, another set of proceedings in which he asserted a right of adverse prescription in respect of the apartment

in question. As a result, the eviction proceedings are still pending before the first-instance court.

60. Having regard to all the circumstances of the case and, more particularly to its overall length, and, also, to the fact that after almost ten years they remain stayed and are still pending before the first-instance court, the Court considers that the total duration of the proceedings has been excessive. The Court concludes therefore that the case of the applicant was not heard within a “reasonable time”. Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. ARTICLE 41 OF THE CONVENTION

61. 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.”

62. The applicant claimed 100,000 Polish zlotys (PLN) (approximately EUR 27,745.37) for pecuniary damage arising out the length of proceedings, which, in the applicant's argument, resulted in a serious deterioration of the applicant's house.

63. The Government did not make any comments on the applicant's claim.

A. Damage

64. The Court considers that the applicant must have suffered a certain amount of distress, having regard to the total length of the civil proceedings. Having regard to the overall length of the proceedings and ruling on an equitable basis, the Court awards the sum of EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicant did not claim reimbursement of legal costs.

C. Default interest

66. Having regard to the fact that the award is expressed in euros, the Court finds it appropriate to apply a rate of interest of 7,25%.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand 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 simple interest at an annual rate of 7,25% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President