



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

FOURTH SECTION

CASE OF FUCHS v. POLAND

(Application no. 33870/96)

JUDGMENT

STRASBOURG

11 February 2003

FINAL

11/05/2003

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 Fuchs v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 21 January 2003,

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

PROCEDURE

1. The case originated in an application (no. 33870/96) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Henryk Fuchs (“the applicant”), on 1 May 1995.

2. The applicant, who had been granted legal aid, was represented by Mr Wojciech Hermeliński, a lawyer practising in Warsaw, Poland. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that in two sets of administrative proceedings in which he had been involved the Polish courts had not respected his right to a “hearing within a reasonable time”.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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 the Court.

6. 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).

7. By a decision of 11 December 2001 the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1925 and lives in Ozorków, Poland.

9. The applicant is the owner of a plot of land in Ozorków. Since 1989 construction works have been carried out by the applicant's neighbours (J.C. and Z.W., F.W.) on their plots of land, adjoining his property.

A. Proceedings concerning the building permit.

10. On 4 July 1989 the Mayor of Ozorków (*Naczelnik Miasta*) issued a planning permission concerning the construction of an outhouse (*plan realizacyjny budynku gospodarczego*) in favour of J.C. The applicant appealed. On 30 August 1989 the Łódź Municipal Office dismissed the applicant's appeal. On 1 June 1990 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) quashed the contested decision.

11. On 16 October 1992 the Mayor of Ozorków (*Burmistrz*) granted J.C. a building permit concerning the construction of an outhouse, a garage, a vestibule and a toilet adjacent to the existing house.

12. On 18 June 1993 J.C. requested the Mayor of Ozorków to grant her a fresh building permit. This was granted on 23 June 1993. The new building permit was to "annul and replace" ("*unieważnia i zastępuje*") the one issued on 16 October 1992. Both the applicant and J.C. appealed against the building permit of 23 June 1993.

13. On 20 August 1993 the Łódź Governor (*Wojewoda*) quashed the decision of 23 June 1993 and remitted the case to the Mayor of Ozorków.

14. In the meantime, on 21 June 1993, the Zgierz District Office (*Urząd Rejonowy*) had inspected J.C.'s construction site. On 24 June 1993 it ordered that the construction works concerning the adjacent dwelling be stayed.

15. On 23 July 1993 the Łódź Governor reopened the proceedings relating to the building permit of 16 October 1992. On 17 September 1993 the Mayor of Ozorków issued two building permits in favour of J.C. The first permit allowed her to continue the construction of an adjacent dwelling and approved the planning permission. The second permit allowed J.C. to build an outhouse and a garage and approved the planning permission.

16. The applicant appealed against both these decisions. He failed, however, to pay the fees due for lodging an appeal. As a consequence, on 6 November 1993, the Łódź Governor returned the appeal to the applicant.

17. Later, the applicant appealed to the Minister of Construction (*Minister Gospodarki Przestrzennej i Budownictwa*). On 24 December 1993 the Minister set aside both decisions and ordered that the Łódź Governor

should examine the merits of the appeal, notwithstanding the applicant's failure to pay the fees. On 2 February 1994 the Łódź Governor upheld the contested decisions.

18. On 3 October 1994, upon the applicant's appeal, the Supreme Administrative Court quashed the decision relating to the issue of the building permit in respect of the adjacent dwelling and declared null and void the building permit relating to the outhouse and the garage. The court found that the original decision of 16 October 1992 was still in force as the decision of 23 June 1993 had been quashed on 20 August 1993.

19. As a consequence, on 15 February 1995, the Łódź Governor quashed the decision granting the building permit of 16 October 1992 and remitted the case to the Mayor of Ozorków.

20. On an unspecified date the applicant filed a complaint with the Łódź Governor, alleging inactivity on the part of the Mayor of Ozorków. On 1 June 1995 the Łódź Governor found that the applicant's complaint was indeed well-founded and obliged the Mayor of Ozorków to render a decision before 14 June 1995.

21. On 9 August 1995 the Mayor of Ozorków issued a building permit authorising J.C. "to continue the construction of the outhouse and the garage". The applicant appealed against this decision.

22. On 18 September 1995 the Łódź Governor set aside the impugned decision and discontinued the proceedings before the Mayor of Ozorków.

23. On 17 October 1995 the Mayor of Ozorków issued a decision authorising J.C. to use the adjacent dwelling. The applicant appealed against this decision.

24. On an unspecified date the applicant filed a complaint with the Supreme Administrative Court, alleging inactivity on the part of the Mayor of Ozorków. The complaint was dismissed on 10 January 1996.

25. On 29 February 1996 the Chief Inspector of the Construction Supervision (*Główny Inspektor Nadzoru Budowlanego*), of his own motion, declared the decision of 15 February 1995 null and void.

26. On 26 July 1996 the Łódź Regional Office (*Urząd Wojewódzki*), having regard to the latter decision, stayed two sets of proceedings instituted upon the applicant's appeal against the decisions of 9 August and 17 October 1995. The applicant appealed against these decisions but his appeals were dismissed on 29 and 30 August 1996 respectively.

27. On 14 November 1996, upon the applicant's request, proceedings leading to the verification of the validity of the decision of 29 February 1996 were instituted.

28. It appears that at the same time the applicant repeatedly requested the authorities to intervene with regard to the construction in question and to order a so-called "compulsory demolition" (*przymusowa rozbiórka*). On 9 December 1996 the Ozorków Municipal Office refused to take any steps in respect of the applicant's above request.

29. Apparently, the works were continued at least until 24 May 1997 when the Mayor of Ozorków ordered that they be stayed. The applicant appealed against this decision and requested that a demolition order be issued. On 13 June 1997 the Łódź Governor set aside the decision staying the construction and discontinued the proceedings.

30. On 28 May 1997, after having reopened the proceedings, the Mayor of Ozorków set aside the building permit issued on 16 October 1992 and discontinued the proceedings in this respect.

31. On 16 September 1997 the Łódź Governor decided, of his own motion, to resume two sets of appeal proceedings, which had been stayed on 26 July 1996. On 18 September 1997, the Łódź Governor set aside two decisions of the Mayor of Ozorków of 9 August and 17 October 1995. The Łódź Governor discontinued the proceedings in these two cases.

32. On 22 October 1997 the Mayor of Ozorków issued a building permit authorising J.C. to continue the construction of the outhouse and the garage.

33. On 25 October 1997 the Mayor authorised J.C. to use the adjacent dwelling.

34. On 26 January 1998 the Łódź Governor rejected the applicant's appeal against both decisions of the Mayor. The applicant filed two further appeals with the Supreme Administrative Court against the decisions of the Governor.

35. On 18 May 2001 the Supreme Administrative Court set aside the decision of the Łódź Governor and the earlier decision of the Mayor of Ozorków of 22 October 1997. The case was remitted to the Mayor of Ozorków.

36. It appears that the proceedings are pending.

B. Proceedings concerning the demolition order.

37. Z.W. and F.W. built a house under a building permit issued on an unspecified date before 1990. Apparently, they also built an outhouse (*budynek gospodarczy*), adjoining the applicant's dwelling house. On 7 March 1990 the Mayor of Ozorków ordered that the outhouse be demolished.

38. On 6 December 1990 the Mayor of Ozorków decided to reopen the proceedings relating to the demolition order and altered the decision of 7 March 1990. He authorised Z.W. and F.W. to use the outhouse.

39. On 6 March 1991, upon the applicant's appeal, the Łódź Governor quashed the contested decision and discontinued the proceedings. On the same date the Łódź Governor quashed the demolition order of 7 March 1990 and remitted the case to the first-instance organ.

40. On 17 January 1992 the Mayor of Ozorków granted Z.W. and F.W. a permit to use the outhouse and the garage.

41. On 17 March 1992, upon the applicant's appeal, the Łódź Governor quashed the contested decision and referred the case to the Zgierz District Office (*Urząd Rejonowy*).

42. On 28 April 1992 the Zgierz District Office ordered that the outhouse and the garage be demolished by 30 September 1992.

43. On 29 June 1992, upon an appeal filed by Z.W. and F.W., the Łódź Governor upheld the demolition order.

44. Since Z.W. and F.W. had not complied with the order, enforcement proceedings were instituted by the Zgierz District Office on 29 December 1992. On the same date the Zgierz District Office imposed a fine on Z.W. and F.W. for non-compliance with the order. The Łódź Governor dismissed their appeal against this decision on 30 March 1993.

45. On 16 April 1993 the Zgierz District Office again imposed a fine on Z.W. and F.W. Their appeal against this decision was dismissed by the Łódź Governor on 12 July 1993.

46. On 14 July 1993, upon Z.W.'s and F.W.'s request, the Łódź Governor reopened the proceedings concerning the construction of the outhouse and the garage and referred the case to the Mayor of Ozorków.

47. On 16 July 1993 the Mayor of Ozorków issued a decision authorising Z.W. and F.W. to use the outhouse as a dwelling. The applicant appealed against this decision.

48. On an unspecified date, upon Z.W.'s and F.W.'s requests, the Zgierz District Office instituted proceedings concerning the discontinuation of the enforcement proceedings instituted under the demolition order of 28 April 1992. On 27 August 1993 these proceedings were stayed since the legality of the permit of 16 July 1993 had in the meantime been called in question by the Ozorków Municipal Office (of its own motion).

49. On an unspecified date the applicant lodged a complaint with the Supreme Administrative Court, alleging inactivity on the part of the Łódź Governor. The complaint was rejected on 3 October 1994.

50. On 4 October 1993 the Łódź Governor, acting of his own motion, declared the permit of 16 July 1993 null and void.

51. On 1 March 1995 the Chief Inspector of the Construction Supervision quashed the decision of the Łódź Governor of 4 October 1993 and discontinued the proceedings. The Chief Inspector found that since the applicant had appealed against the decision of 16 July 1993, his appeal should have been examined. On 9 June 1995 the Łódź Governor set aside the contested decision and discontinued the proceedings.

52. On 26 June 1995 Z.W. requested the Chief Inspector of the Construction Supervision to declare the demolition order null and void. On 25 November 1995 her request was dismissed. Z.W. appealed but on 6 February 1996 the Chief Inspector upheld his decision.

53. Later, Z.W. filed a further appeal with the Supreme Administrative Court. On 30 December 1997 her appeal was dismissed.

54. On an unspecified date the applicant requested the Zgierz District Office to enforce the demolition order. On 30 April 1998 the District Office informed him that his request could not be dealt with within a statutory time-limit of one month as the explanatory proceedings had to be carried out; however, the request would be dealt with by 30 May 1998.

55. On 7 May 1998 the Zgierz District Office imposed yet another fine on Z.W. and F.W. for non-compliance with the demolition order. On 22 October 1998 the Łódź Governor upheld the decision of 7 May 1998.

56. On an unspecified date in 1998 the applicant lodged a complaint with the Supreme Administrative Court, alleging inactivity on the part of the Head of the Zgierz District Office (*Kierownik Urzędu Rejonowego*) in enforcing the demolition order.

57. On 17 November 1999 the Zgierz Local Inspector of Construction Supervision (*Powiatowy Inspektor Nadzoru Budowlanego*) issued a writ of enforcement (*tytuł wykonawczy*) against Z.W. and F.W. It also imposed a fine on them.

58. On 23 February 2000 the Supreme Administrative Court dismissed the applicant's complaint about the inactivity of the Zgierz District Office in enforcing the demolition order. It found that the enforcement proceedings had lasted unjustifiably long and that they should be completed as soon as possible. However, the Supreme Administrative Court considered that the inactivity of the respondent authority was not established and that the District Office had recently taken decisions aimed at enforcement of the demolition order which could lead to its actual execution in the nearest future.

59. It appears that the proceedings are still pending.

THE LAW

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

60. The applicant complained that in both sets of the proceedings in which he had been involved the competent authorities had not respected his right to a "hearing within a reasonable time" and alleged a breach of Article 6 § 1 which, in its relevant part, reads:

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

61. The Government contested this view.

A. The Court's case-law

62. The Court recalls that 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, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, for instance, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999, unreported).

B. Proceedings concerning the building permit

1. Period to be taken into consideration

63. The proceedings started on 4 July 1989, when the Mayor of Ozorków issued a planning permission. However, the period to be taken into consideration began not on that date, but 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 apparently still pending. The total length of the applicant's case at the date of the adoption of this judgment accordingly amounts to 13 and a half years, of which the period of over 9 years and 8 months falls within the Court's jurisdiction *ratione temporis*.

64. The Court notes that in order to assess the reasonableness of the length of time in question, regard must be had to the stage reached in the proceedings on 1 May 1993 (see, among other authorities, *Humen v. Poland* cited above, §§ 58-59).

2. The arguments of the parties

65. The Government did not comment on the compliance of the length of proceedings with the "reasonable time" requirement.

66. The applicant contended that the length of the proceedings at issue was in breach of Article 6 § 1 of the Convention.

3. The Court's assessment

67. The Court observes that the applicant's case was certainly of more than average complexity. That, however, cannot justify the total, significant length of the proceedings.

68. The Court finds no evidence to demonstrate that at any subsequent stage of the proceedings the applicant showed dilatory conduct or otherwise disrupted the proper conduct of the trial. In view of that, the Court considers that his conduct did not contribute to the length of the proceedings.

69. The Court notes that since 1 May 1993, when Poland recognised the right of individual petition, there were periods of lack of progress in the proceedings. In particular, the Court underlines that the number of decisions concerning the legality of the building permit of 16 October 1992 demonstrates that the authorities did not act with due diligence (see paragraphs 11-18 above). Furthermore, the Court observes that there were periods of inactivity in the proceedings before the Supreme Administrative Court, following the applicant's appeals against the Governor's decisions of 26 January 1998. In the first set of these proceedings, after a delay of three years and a half, the Supreme Administrative Court gave judgment on 18 May 2001 and remitted the case to the Mayor of Ozorków. The second set of the proceedings seems to be pending before the Supreme Administrative Court. The lack of progress in the trial resulted in a delay of almost five years (see paragraphs 34 and 35 above). As no explanation has been provided for these periods of inactivity the delays have to be attributed to the national authorities.

70. Having regard to the circumstances of the case and taking into account the overall duration of the proceedings, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied in the present case. There has therefore been a violation of that provision.

C. Proceedings concerning the demolition order

1. Period to be taken into consideration

71. The proceedings started on 7 March 1990, when the Mayor of Ozorków issued the first demolition order. However, the period to be taken into consideration began not on that date, but 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 apparently still pending. The total length of the proceedings in the applicant's case at the date of the adoption of this judgment accordingly amounts to over 12 years and 10 months, of which the period of over 9 years and 8 months falls within the Court's jurisdiction *ratione temporis*.

72. The Court notes that in order to assess the reasonableness of the length of time in question, regard must be had to the stage reached in the proceedings on 1 May 1993 (see, among other authorities, *Humen v. Poland* cited above, §§ 58-59).

2. *The Arguments of the parties*

73. The Government did not comment on the compliance of the length of proceedings with the “reasonable time” requirement.

74. The applicant contended that the length of the proceedings at issue was in breach of Article 6 § 1 of the Convention.

3. *The Court’s assessment*

75. The Court considers that the case is not of particular complexity. It does not find any indication that the applicant’s conduct caused any discernible delays in the proceedings. However, the Court notes that certain delays are attributable to the applicant’s neighbours. It observes that they lodged several appeals against the decisions imposing fines on them for non-compliance with the demolition order (see paragraphs 44-45 and 55 above).

76. The Court also observes that there was a period of inactivity of one year and a half following the *ex officio* decision of the Łódź Governor of 4 October 1993 which was quashed on 1 March 1995 by the Chief Inspector of the Construction Supervision. In addition, the Court notes that the Supreme Administrative Court in its judgment of 23 February 2000 considered that the enforcement proceedings had lasted unduly long (see paragraph 58 above). Finally, the Court observes that as the case file stands today it appears that the demolition order issued on 28 April 1992 has not been yet enforced.

77. Having regard to the circumstances of the case and taking into account the overall duration of the proceedings, the Court finds that the “reasonable time” requirement laid down in Article 6 § 1 of the Convention was not complied in the present case. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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**

79. The applicant did not claim any pecuniary damage. However, under the head of non-pecuniary damage, he asked the Court to award him PLN 100,000 [approximately EUR 25,000].

80. The Government considered that the amount claimed was inordinately excessive.

81. The Court accepts that the applicant has certainly suffered non-pecuniary damage, such as distress and frustration resulting from the undue prolongation of his cases. Making its assessment on equitable basis, the Court awards the applicant EUR 8,000 under this head.

B. Costs and expenses

82. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought reimbursement of 1,500 US dollars for costs and expenses incurred in the proceedings before the Court.

83. The Government maintained that this claim was excessive.

84. The Court has assessed the claim in the light of the criteria laid down in its case-law (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II; *Baranowski v. Poland*, no. 28358/95, § 85, ECHR 2000-III; and *Kudła v. Poland* [GC], no. 30210/96, § 168, ECHR 2000-XII).

Applying the said criteria to the present case and making its assessment on an equitable basis, the Court considers it reasonable to award the applicant EUR 1,500 for his costs together with any value-added tax that may be chargeable, less the EUR 630 received by way of legal aid from the Council of Europe.

C. Default interest

85. 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 (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/97, § 124, to be published in ECHR 2002-...).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention on the account of the excessive length of the proceedings concerning the building permit;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on the account of the excessive length of the proceedings concerning the demolition order;

3. *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, the following amounts:

(i) EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 870 (eight hundred seventy euros) in respect of costs and expenses, plus any tax that may be chargeable;

(iii) any tax that may be chargeable on the above amounts;

(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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 February 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President