



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

FOURTH SECTION

CASE OF GRABIŃSKI v. POLAND

(Application no. 43702/02)

JUDGMENT

STRASBOURG

17 October 2006

FINAL

17/01/2007

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 Grabiński v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 26 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 43702/02) 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 a Polish national, Mr Aleksander Grabiński (“the applicant”), on 15 November 2002.

2. The applicant was represented by Mr W. Hermeliński, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

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

4. The applicant was born in 1949 and lives in Warsaw.

A. Background to the case

5. The applicant's family owned a plot of land with a surface area of 1,454 sq. m. situated in the centre of Warsaw, at the junction of Jerusalem Avenue and Marszałkowska Street. The applicant is one of the heirs of the owners of that property.

6. By virtue of the Decree of 26 October 1945 on the Ownership and Use of Land in Warsaw ("the 1945 Decree") the ownership of all private land was transferred to the City of Warsaw.

7. On 30 September 1948 the applicant's family filed an application for the grant of the right of temporary ownership (*własność czasowa*) of the plot of land pursuant to section 7 of the 1945 Decree ("the 1948 application"). On 14 September 1953 the Board of the Warsaw National Council (*Prezydium Rady Narodowej*) refused the application and ruled that, consequently, the ownership of all the buildings located on the plot of land at issue be transferred to the State. On 25 January 1954 the Minister of Municipal Administration (*Minister Gospodarki Komunalnej*) upheld that decision.

8. In the meantime, the Law of 20 March 1950 on the Local State Administration entered into force on 13 April 1950. According to section 32 § 2 of that Law, the ownership of all property previously held by the local governments was transferred to the State.

9. In 1955 the State constructed the Metropol Hotel on the part of the plot which was formerly owned by the applicant's family.

10. On an unspecified date the plot of land formerly owned by the applicant's family was divided into two separate parts.

11. Following the re-establishment of the local government in Poland, on 27 May 1990 the ownership of the first part of the original plot of land was transferred to the City of Warsaw by operation of the law. That part, with a surface area of 818 sq. m., constituted a part of a larger plot no. 39 with a surface area of 4,163 sq. m. The second part of the plot with a surface area of 636 sq. m remained with the State and was administered by the Warsaw District Office (*Starostwo Powiatu Warszawskiego*).

12. It appears that in July 2002, subsequent to the entry into force of the Law of 15 March 2002 on the status of the Capital City of Warsaw, the ownership of the second part of the original plot was transferred to the City of Warsaw.

13. On 29 June 1993 the Board of the Union of Warsaw Municipalities (*Zarząd Związku Dzielnic Gmin Warszawy*) issued a decision declaring that as of 5 December 1990 the "Syrena" Warsaw Tourist Company was granted the right of perpetual use of the plot of land no. 39 with a surface area of 4163 sq. m located at no. 45 Jerusalem Avenue. On the strength of the same decision the ownership of the buildings attached to that plot, including the Metropol Hotel, was transferred to the "Syrena" company against the

payment of a fee. On the relevant date the company was owned by the City of Warsaw.

B. Proceedings concerning the grant of the right of perpetual use of land

14. On 1 October 1992 S.P., another heir of the applicant's family and acting on their behalf, filed with the Minister of Planning and Construction (*Minister Gospodarki Przestrzennej i Budownictwa*) an application for annulment of the administrative decisions refusing the grant of temporary ownership. On 24 March 1993 the Minister quashed the decisions of the Board of the Warsaw National Council of 14 September 1953 and the Minister of Municipal Administration of 25 January 1954. Consequently, the competent administrative authorities were required to rule on the 1948 application for the grant of the right of perpetual use, which replaced the former temporary ownership. The applicant and other heirs of the previous owners were, as their legal successors, the parties to the subsequent proceedings.

15. Following the above decision, on 14 July 1994 the Minister of Planning and Construction awarded the applicant and other heirs compensation in the amount of PLZ 12,764,569,000. It appears that that decision has not been enforced.

16. On 29 April 1995 the Minister of Planning and Construction instituted *ex officio* proceedings with a view to having his earlier decision of 24 March 1993 annulled. On 9 July 1996 the Minister declared the decision of 24 March 1993 null and void. On 20 July 1996 the applicant and S.P. made an application to the President of the Office for Housing and Urban Development (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*) for reconsideration (*wniosek o ponowne rozpatrzenie sprawy*) of the decision of 9 July 1996. On 28 February 1997 the President of that Office upheld the decision of 9 July 1996. The applicant appealed against that decision and the earlier decisions of the Minister of Planning and Construction to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*). On 15 May 1997 the Supreme Administrative Court ordered that the enforcement of the decision of 28 February 1997 be stayed.

17. On 11 December 1998 the Supreme Administrative Court quashed both contested decisions, considering that there were no grounds on which to hold that the decision of 24 March 1993 could be declared null and void. As a consequence of that judgment, the 1948 application for the grant of the right of perpetual use filed by the applicant's family had yet to be examined.

18. Initially, the applicant was a party to two sets of proceedings concerning the grant of the right of perpetual use of land which were conducted separately before the Board of the City of Warsaw (subsequently the Mayor of Warsaw) and the Warsaw District Office. That situation

stemmed from the fact that the plot of land formerly owned by the applicant's family had been divided into two separate parts which were respectively owned by the City of Warsaw and the State. As from July 2002, following amendments to the relevant laws, the City of Warsaw became the sole owner of the entire plot of land in question and the relevant proceedings were conducted exclusively before the Mayor of Warsaw.

19. On 11 June 1996 the Board of the City of Warsaw (*Zarząd Miasta Stolecznego Warszawy*) decided *ex officio* to stay the proceedings until the termination of the proceedings instituted by the Minister of Planning and Construction in 1995 (see paragraphs 16-17 above). The applicant appealed against that decision. On 29 August 1996 the Warsaw Local Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) quashed the decision of 11 June 1996.

20. On 19 August 1997 the applicant wrote a letter to the Board of the City of Warsaw, inquiring about the progress in the proceedings following the decision of the Board of Appeal of 29 August 1996. He demanded an explanation about the delays in the proceedings.

21. On 12 November 1997 the Board of the City of Warsaw decided to discontinue the proceedings, considering that they had become devoid of purpose. It observed that the 1948 application for the grant of the right of perpetual use had been already dismissed, and that the application for the annulment of the latter decision had failed. The applicant appealed against that decision.

22. On 24 March 1998 the Local Government Board of Appeal quashed the impugned decision and remitted the case for re-examination.

23. On 19 June 1998 the applicant filed with the Board of Appeal a complaint about the inactivity of the Board of the City of Warsaw.

24. On 14 July 1998 the Board of the City of Warsaw stayed the proceedings pending the termination of the proceedings before the Supreme Administrative Court concerning an appeal against the decision of the President of the Office for Housing and Urban Development of 28 February 1997.

25. On 13 August 1998 the Warsaw Local Government Board of Appeal ordered the Board of the City of Warsaw to issue a decision in the case by 30 September 1998.

26. On 16 January 1999, following the Supreme Administrative Court's judgment of 11 December 1998, the applicant requested the Mayor of Warsaw to grant him the right of perpetual use.

27. In January 1999 the Mayor of Warsaw began negotiations with the applicant and other heirs of the former owners with a view to renouncing their claims to the plot of land at issue in exchange for an alternative plot. On 23 March 1999 the applicant and other heirs accepted the Mayor's proposal. However, on 29 April 1999 the Deputy Mayor informed them that

he had to withdraw from the negotiations as there were grounds on which the 1948 application could be dismissed.

28. On 1 June 1999 the Board of the City of Warsaw refused the application. It observed that the plot of land of specific surface and shape, which had been the subject of the application, was not in existence at the time of the issuing of the present decision. Moreover, it noted that on part of the plot of land formerly owned by the applicant's family, the State had constructed the Metropol Hotel. Thus, it considered that it was not possible to delimit the plot of land which was the subject of the application. In addition, the Board of the City of Warsaw noted that the "Syrena" company had been granted the right of perpetual use of the plot of land which partly overlapped with the plot of land at issue by virtue of a decision of 29 June 1993.

29. On 21 June 1999 S.P., one of the heirs of the applicant's family, lodged an appeal against the decision of the Board of the City of Warsaw.

30. On 10 February 2000 S.P. lodged with the Supreme Administrative Court a complaint about the inactivity of the Warsaw Local Government Board of Appeal.

31. On 1 June 2000 the Warsaw Local Government Board of Appeal upheld the Board of the City of Warsaw's decision of 1 June 1999.

32. On 30 June 2000 S.P. lodged an appeal with the Supreme Administrative Court against that decision.

33. On 15 September 2000 the Supreme Administrative Court discontinued the proceedings on the complaint about the inactivity of the Warsaw Local Government Board of Appeal, given that the latter authority had issued its decision on 1 June 2000.

34. On 27 February 2002 the Supreme Administrative Court quashed the Board of Appeal's decision of 1 June 2000 and the earlier decision of the Board of the City of Warsaw. It considered that section 7 of the 1945 Decree laid down two requirements which had to be met in order to grant the right of perpetual use of land, i.e. the filing of the application in time and the compatibility of the intended use of the land with the local development plan. The Supreme Administrative Court observed that the relevant application had been lodged in time. However, the administrative authorities had not at all examined the second requirement laid down in the 1945 Decree, but had instead based their decisions on grounds which were not provided in the relevant law. Lastly, the Supreme Administrative Court instructed the administrative authorities to examine the heirs' intentions as to the use of the land at issue. It further emphasised that if the intended use was compatible with the local development plan, the administrative authorities were under an obligation to grant the application.

35. It appears that in July 2002, subsequent to the entry into force of the Law of 15 March 2002 on the status of the Capital City of Warsaw, the ownership of the second part of the plot formerly owned by the applicant's

family was transferred to the City of Warsaw. Consequently, the proceedings concerning the grant of the right of perpetual use in respect of the entire property of the applicant's family were conducted before the Mayor of Warsaw.

36. On 13 August 2002 the Board of the City of Warsaw informed the applicant and other heirs that due to the complex nature of the case a decision would be issued by 30 November 2002.

37. On 25 April 2003 the applicant lodged with the Warsaw Local Government Board of Appeal a complaint about the inactivity of the Board of the City of Warsaw.

38. On 30 May 2003 the applicant informed the Board that he intended to use the plot of land at issue in accordance with the local development plan.

39. On 9 December 2003 the Mayor of Warsaw, who in the meantime had assumed the competences of the Board of the City of Warsaw, issued his decision in the case. He refused the application, considering that the use of the plot by the heirs of the former owners would not be compatible with the local development plan adopted on 9 February 1993. In particular, the Mayor found that one part of the plot at issue was designated partly for walkways and green areas, and partly for the junction of Jerusalem Avenue and Marszałkowska Street which was an important area for public transport in the whole city centre. In respect of the other part of the plot at issue, the Mayor considered that the Metropol Hotel stood on it and that it was not feasible to detach from the existing larger plot a part which was owned by the applicant's family. He also had regard to section 31 of the Land Administration Act (*ustawa o gospodarce nieruchomościami*) which provided that in the case of a plot of land with a building situated on it, the grant of the right of perpetual use of the plot was to be effected with the simultaneous acquisition of the buildings located on the plot. However, the building of the Metropol Hotel was owned by the "Syrena" company and could not be split so as to reflect the borders of the estate formerly owned by the applicant's family. Furthermore, the application could not be granted because the right of perpetual use of the plot of land which partly overlapped with the plot at issue, had been awarded to the "Syrena" company on the strength of the decision of 29 June 1993.

40. On 24 December 2003 the applicant appealed.

41. On 24 February 2004 the applicant lodged with the Supreme Administrative Court a complaint about the inactivity of the Warsaw Local Government Board of Appeal.

42. On 12 May 2004 the Local Government Board of Appeal quashed the Mayor's decision of 9 December 2003 and remitted the case. On 9 June 2004 S.P. requested the Mayor to accelerate the proceedings.

43. On 25 June 2004 the Supreme Administrative Court discontinued the proceedings on the complaint about the inactivity of the Warsaw Local

Government Board of Appeal, given that the latter authority had issued its decision on 12 May 2004.

44. It appears that on an unspecified date the Mayor of Warsaw stayed the proceedings pending the conclusion of the administrative proceedings concerning the grant of the right of perpetual use of land for the benefit of the “Syrena” company (see paragraphs 54-59 below). It appears that the proceedings are pending.

C. Proceedings conducted before the Warsaw District Office up to July 2002 which concerned the grant of the right of perpetual use of the plot of land owned by the State

45. On 5 February 1999 the applicant requested the Warsaw District Office to grant him the right of perpetual use of the plot of land owned by the State Treasury. On 11 March 1999 he lodged with the Warsaw Governor (*Wojewoda Warszawski*) a complaint about the inactivity of the Warsaw District Office.

46. On 23 March 1999 the Warsaw District Office asked the Board of the City of Warsaw to provide the relevant documents concerning the status of the property at issue. On 10 May 1999 the relevant documents were submitted to the District Office. On 25 May and 16 June 1999 the District Office requested the Warsaw-Centre Municipality to submit some additional documents.

47. On 9 July 1999 the applicant filed with the Warsaw Governor a second complaint about the inactivity of the District Office.

On 9 August 1999 the District Office requested the Warsaw-Centre Municipality to provide information relating to the use of the plot of land at issue as provided in the local development plan. The requested information was submitted on 17 August 1999.

48. On 30 August 1999 the Warsaw Governor ordered the Warsaw District Office to issue a decision in the applicant’s case within one month. On 8 October 1999 the District Office informed the applicant that due to the complex nature of the case a decision would be issued by 15 January 2000.

49. On 4 January 2000 the Warsaw District Office refused to grant the right of perpetual use in respect of the plot owned by the State Treasury, considering that that plot had been designated in the local development plan for public use. The applicant appealed against that decision.

50. On 7 September 2000 the Warsaw Governor upheld the decision of the Warsaw District Office. S.P. lodged an appeal against the decision of the Governor with the Supreme Administrative Court.

51. On 12 March 2002 the Supreme Administrative Court quashed the Warsaw Governor’s decision of 7 September 2000 and the earlier decision of the Warsaw District Office as they had been issued in breach of section 7 of the 1945 Decree. It considered that the use of the plot of land at issue by

the successors of the former owners would not be incompatible with the local development plan.

52. On 7 June 2002 the Warsaw District Office informed the applicant that it would not be possible to conclude the proceedings within the time-limit specified in Article 35 of the Code of Administrative Procedure due to the need to undertake further examination of the application.

53. It appears that in July 2002 the ownership of the plot held by the State was transferred to the City of Warsaw by operation of the law. Consequently, the proceedings concerning the grant of the right of perpetual use of land in respect of the entire property of the applicant's family were conducted before the Mayor of Warsaw (see paragraphs 35-44 above).

D. Proceedings concerning the grant of the right of perpetual use of land for the benefit of the “Syrena” company

54. On 10 May 1996 S.P., one of the heirs, filed with the Board of the City of Warsaw an objection against the auction for the sale of shares in the “Syrena” company.

55. On 17 September 1996 the applicant made an application to the Warsaw Local Government Board of Appeal for annulment of the decision of the Board of the Union of Warsaw Municipalities of 29 June 1993 (see paragraph 13 above). On 31 October 1996 the Board of Appeal refused to institute the proceedings. On 20 November 1996 the applicant filed an application for reconsideration of that decision. On 30 December 1996 the Board of Appeal decided to stay the proceedings until the termination of the proceedings pending before the Minister of Planning and Construction (see paragraphs 16-17 above). On 7 October 1997 the Board of Appeal quashed its earlier decision of 31 October 1996. On 26 November 1997 it refused that application. The applicant filed an application for reconsideration of the matter. On 17 September 1998 the Board of Appeal quashed its earlier decision and refused to institute proceedings for the annulment. The applicant appealed against that decision to the Supreme Administrative Court.

56. On 19 November 1998 the Supreme Administrative Court stayed the proceedings pending the termination of the proceedings concerning the application for annulment of the Minister of Planning and Construction's decision of 24 March 1993. The proceedings were resumed on 27 September 2002. On 11 December 2002 the Supreme Administrative Court quashed the decision of the Board of Appeal of 17 September 1998 on procedural grounds. Consequently, the Board of Appeal had to examine the applicant's application for annulment again.

57. On 20 June and 20 December 2003 the applicant requested the Board of Appeal to expedite the proceedings.

58. On 10 December 2003 the Board of Appeal quashed its earlier decision of 26 November 1997 and declared null and void the decision of the Board of the Union of Warsaw Municipalities of 29 June 1993 granting the right of perpetual use of the plot of land no. 39 to the “Syrena” company. It considered that the decision of 29 June 1993 had been issued in a flagrant violation of the rights of the heirs of the former owners, as their application for the grant of the right of perpetual use was pending at the material time. It further observed that the heirs’ claims to the plot of land formerly owned by their family had to be examined prior to the decision on the use of land by the “Syrena” company.

59. On 5 July 2004 the Local Government Board of Appeal reopened the proceedings at the request of the “Syrena” company. On 9 December 2004 it refused the “Syrena” company’s request to quash its earlier decision of 10 December 2003. That decision was upheld on appeal on 18 April 2005. It appears that those proceedings are pending.

II. RELEVANT DOMESTIC LAW

A. Inactivity of the administrative authorities

60. Article 35 of the Code of Administrative Procedure lays down time-limits ranging from 1 month to 2 months for dealing with a case pending before an administrative authority. If these time-limits have not been complied with, the authority must, under Article 36 of the Code, inform the parties of that fact, explain the reasons for the delay and fix a new time-limit. Pursuant to Article 37 § 1, if the case has not been handled within the time-limits referred to in Articles 35 and 36, a party to administrative proceedings can lodge an appeal to the higher authority, alleging inactivity. In cases where the allegations of inactivity are well-founded, the higher authority fixes a new term for handling the case and orders an inquiry in order to determine the reasons for the inactivity and to identify the persons responsible for the delay. If need be, the authority may order that measures be applied to prevent such delays in the future.

61. On 1 October 1995 the Law of 11 May 1995 on the Supreme Administrative Court (“the 1995 Act”) came into force. According to the provisions of section 17 of the 1995 Act, a party to administrative proceedings may, at any time, lodge with the Supreme Administrative Court a complaint about inactivity on the part of an authority obliged to issue an administrative decision.

Section 26 of the Law provides:

“When a complaint alleging inactivity on the part of an administrative authority is well-founded, the Supreme Administrative Court shall oblige that authority to issue a

decision, or to perform a specific act, or to confirm, declare, or recognise a right or obligation provided for by law.”

62. Pursuant to section 30 of the Law, the decision of the Supreme Administrative Court ordering an authority to put an end to its inactivity is legally binding on the authority concerned. If the authority has not complied with the decision, the court may, under section 31 of the 1995 Act, impose a fine on it and may itself give a ruling on the right or obligation in question.

63. Under the same provision, a party to the proceedings who sustains damage as a result of a failure of the administrative body to act in compliance with the judgment of the Supreme Administrative Court given under Article 17 of the Act, is entitled to claim compensation from the administrative authority concerned, according to principles of civil liability as set out in the Civil Code. Such a claim should be first lodged with that authority. A decision on the compensation claim should be taken by that administrative authority within three months. If the authority concerned fails to give a ruling in this respect within this time-limit, or if the party is not satisfied with the compensation granted, a compensation claim against the administrative body can be lodged with a civil court.

64. The 1995 Act was repealed and replaced by the Law of 30 August 2002 on Procedure before Administrative Courts (“the 2002 Act”) which entered into force on 1 January 2004. Section 3 § 2(8) of the 2002 Act contains provisions analogous to section 17 of the 1995 Act. A party to administrative proceedings can lodge a complaint about inactivity on the part of an authority obliged to issue an administrative decision with an administrative court. Under section 149, if a complaint is well-founded, an administrative court shall oblige the authority concerned to issue a decision, or to perform a specific act, or to confirm, declare, or recognise a right or obligation provided for by law. Section 154 provides for a possibility of lodging a compensation claim against the administrative authority concerned if a party to the proceedings sustained damage as a result of a failure of that authority to act in compliance with the judgment of the administrative court.

65. Article 417¹ § 3 of the Civil Code entered into force on 1 September 2004. It provides for a possibility of lodging a compensation claim for damages resulting from the unreasonable length of administrative proceedings after it was formally determined in the relevant proceedings that there had been an unlawful failure to issue an administrative decision within the relevant time-limits.

THE LAW

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

66. The applicant complained that the length of the proceedings concerning the grant of the right of perpetual use of land 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...”

67. The Government contested that argument.

68. The Court notes that the proceedings commenced on 1 October 1992, when S.P., acting on behalf of the applicant’s family, filed an application for annulment of the administrative decisions refusing the grant of temporary ownership. 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. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted 13 years and over 4 months.

A. Admissibility

1. Applicability of Article 6 § 1 of the Convention

69. The Court recalls that it has already determined that Article 6 § 1 is applicable to proceedings concerning the grant of the right of perpetual use of land (cf. *Potocka and Others v. Poland* (dec.), no. 33776/96, 6 April 2000; *Szenk v. Poland* (dec.), no. 67979/01, 1 June 2004; *Koss v. Poland*, no. 52495/99, § 29, 28 March 2006).

2. The Government’s plea on non-exhaustion of domestic remedies

70. The Government submitted that the applicant had not exhausted remedies available under Polish law. Firstly, they submitted that the applicant could have requested the Supreme Administrative Court to impose a fine on the Board of the City of Warsaw for the non-enforcement of that court’s judgment of 11 December 1998.

71. However, the Court notes that the Supreme Administrative Court in its judgment of 11 December 1998 quashed two decisions issued by the Minister of Planning and Construction and the President of the Office for Housing and Urban Development relating to the annulment of the original

decision refusing the grant of temporary ownership. It further notes that the judgment in issue was not directed against the Board of the City of Warsaw and that that authority was not a party to the relevant proceedings before the administrative court. It observes that the judgment of 11 December 1998 was favourable to the applicant and paved the way for the Board of the City of Warsaw to examine the merits of the 1948 application for the grant of the perpetual use of land. In those circumstances, the Court cannot see how the applicant's failure to request the imposition of a fine on the Board of the City of Warsaw could have had any practical effect on the proceedings at issue. It follows that this part of the Government's objection must be rejected.

72. Secondly, the Government argued that the applicant had failed to lodge a compensation claim with a civil court in order to seek redress for the alleged damage which had resulted from the inactivity of the Board of the City of Warsaw (subsequently the Mayor of Warsaw). They relied on Article 417¹ § 3 of the Civil Code as amended by the Law of 17 June 2004 on Amendments to the Civil Code and Some Other Laws.

73. However, the Court notes that the provision relied on by the Government entered into force on 1 September 2004. It also observes that prior to that date the applicant resorted to remedies designed to accelerate the process of obtaining an administrative decision, such as an appeal under Article 37 of the Code of Administrative Procedure and a complaint lodged with the Supreme Administrative Court about the inactivity of the administrative authorities.

74. The Court further observes that according to Article 417¹ § 3 of the Civil Code no claim for damages resulting from the unreasonable length of administrative proceedings may arise unless it was formally determined that there had been an unlawful failure to issue an administrative decision within the relevant time-limits. The Court also notes that the Government provided no evidence of any judicial practice to show that a claim for compensation based on Article 417¹ § 3 of the Civil Code was an effective remedy and have thus failed to substantiate their contention. It follows that this part of the Government's objection must be rejected.

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

75. The Court notes that the application 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 parties' submissions*

76. The Government refrained from expressing their opinion on the merits of the applicant's case. At the same time, they pleaded the particular complexity of the case which had involved complicated legal and factual issues. They further submitted that continuous changes on the part of the heirs of the applicant's family during the course of the proceedings had contributed to the delays. The Government also maintained that the authorities had shown due diligence in the proceedings.

77. The applicant argued that the "reasonable time" requirement laid down in Article 6 § 1 was not complied with, referring to the long periods of unexplained inactivity on the part of the administrative authorities and the Supreme Administrative Court. He also contested the Government's submission that the proceedings in his case had been particularly complex. Lastly, the applicant argued that his conduct had not caused any discernible delays in the proceedings. He submitted that between 1993 and 2004 the list of the parties to the proceedings on the applicant's side had changed only once and that had had no impact on the proceedings.

2. *The Court's assessment*

78. 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; *Beller v. Poland*, no. 51837/99, §§ 68-70, 1 February 2005).

79. The Court observes that the case involved a certain degree of complexity on account of the legal and factual issues arising in cases concerning land in Warsaw (*Beller v. Poland*, cited above, § 70; *Koss v. Poland*, cited above, § 34). However, it considers that this in itself cannot justify the overall length of the proceedings.

80. As regards the conduct of the applicant, the Court, having regard to the available evidence, does not find it established that the applicant contributed to the delays in the proceedings.

81. As regards the conduct of the relevant authorities, the Court notes that there were frequent periods of inactivity. By way of example, the Court observes that there was a period of fourteen months of inactivity between 29 April 1995 when the Minister of Planning and Construction instituted *ex officio* proceedings with a view to having his earlier decision annulled and 9 July 1996, when he issued his decision. Subsequently, there was a period of twenty-one months of inactivity between 28 February 1997 when the

President of the Office for Housing and Urban Development issued his decision and 11 December 1998 when the Supreme Administrative Court gave judgment. The Court observes that there were other unexplained periods of inactivity in the subsequent proceedings, such as a period of eleven months between 30 June 1999 when the appeal was lodged against the Board of the City of Warsaw's decision issued on 1 June 1999 and 1 June 2000 when the Local Government Board of Appeal upheld that decision. The Court further notes that there was a period of nearly twenty months of inactivity between 30 June 2000 and 27 February 2002 in the proceedings before the Supreme Administrative Court, following an appeal against the Board of Appeal's decision of 1 June 2000.

82. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage.

85. The Government contested these claims.

86. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration on account of the protracted length of the proceedings, which cannot be sufficiently compensated by the above finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a total sum of 10,000 euros ("EUR") under that head.

B. Costs and expenses

87. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic authorities and EUR 2,500 for those incurred before the Court.

88. The Government contested these claims.

89. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were 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 for lack of relevant supporting documents. On the other hand, it considers it reasonable to award the sum of EUR 1,000 for the work of the applicant's representative in the proceedings before the Court.

C. Default interest

90. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President