



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

FOURTH SECTION

CASE OF ORZECHOWSKI v. POLAND

(Application no. 77795/01)

JUDGMENT

STRASBOURG

24 October 2006

FINAL

24/01/2007

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 Orzechowski 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 3 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 77795/01) 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 Janusz Orzechowski (“the applicant”), on 14 August 2001.

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

3. On 26 August 2005 the Court decided to communicate the application 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 1946 and lives in Częstochowa, Poland.

5. On 30 December 1991 the applicant lodged an application with the Minister of Agriculture (*Minister Rolnictwa i Gospodarki Żywnościowej*), seeking annulment of the Minister’s decision of 3 February 1950 to expropriate the property of the applicant’s father.

6. The applicant complained several times to the Minister and the Ombudsman about lack of progress in the proceedings.

7. On 22 June 1995 the Minister informed the applicant that his application would be examined in the fourth quarter of 1995.

8. On 6 April 2001 the applicant lodged a complaint about the Minister's inactivity with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

9. On 15 January 2002 the Supreme Administrative Court ordered the Minister to deal with the applicant's case within 2 months.

10. The Minister failed to do so and, on 16 April 2002, the applicant lodged a further complaint with the Supreme Administrative Court about the Minister's inactivity. The court examined his complaint on 18 February 2003.

11. In the meantime, on 19 April 2002, the Minister stayed the proceedings. He found that it was necessary to obtain a geodetic expert opinion. The Minister upheld his decision on 10 July 2002.

12. On 10 March 2004, upon the applicant's request, the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) quashed both decisions as inadmissible in law.

13. On 27 September 2004 the Minister of Agriculture gave a decision. He found that the decision of 3 February 1950 was not in accordance with law. However, he refused to restore the property to the applicant.

14. On 18 October 2004 the applicant made an application to the Minister for the matter to be reconsidered (*wniosek o ponowne rozpatrzenie sprawy*).

15. The Minister upheld his original decision on 6 April 2005.

On 28 April 2005 the applicant lodged an application for compensation for the loss of his estate.

16. The Minister granted the request on 3 October 2005. The applicant was awarded 146,996 Polish zlotys in compensation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Complaint against inactivity of an administrative authority

17. On 1 October 1995, the Law of 11 May 1995 on the Supreme Administrative Court ("the 1995 Act") entered into force. Under section 17 of the 1995 Act the Supreme Administrative Court was competent to examine complaints about inactivity on the part of an authority obliged to issue an administrative decision or to carry out enforcement proceedings.

18. Section 26 of the Act provided:

"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."

19. Pursuant to section 30 of the 1995 Act, the decision of the Supreme Administrative Court ordering an authority to put an end to its inactivity

was legally binding on the authority concerned. If the authority had not complied with the decision, the court might, under section 31, impose a fine on it and might itself give a ruling on the right or obligation in question.

20. The 1995 Act was repealed and replaced by the Law of 30 August 2002 on Proceedings before Administrative Courts (“the 2002 Act”) which entered into force on 1 January 2004. Section 3 § 2 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 or to carry out enforcement proceedings 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.

B. State’s liability in tort

21. The relevant domestic law provisions are set out in the Court’s judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005–V (extracts).

THE LAW

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

22. The applicant complained that the length of the proceedings for annulment of the expropriation decision 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...”

23. The Government contested that argument.

24. The proceedings began on 30 December 1991. 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. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

25. The period in question ended on 6 April 2005. It thus lasted approximately 11 years and 11 months for 2 levels of jurisdiction.

A. Admissibility

1. *The Government's plea on inadmissibility on the ground of non-exhaustion of domestic remedies*

26. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that he had not lodged a complaint with the Supreme Administrative Court about the inactivity of the Minister of Agriculture. They recalled that since 18 December 2001, the date on which the judgment of the Constitutional Court took effect, the applicant had the possibility to lodge a civil claim under Article 417 of the Civil Code for compensation for damage suffered due to the excessive length of proceedings.

27. The applicant generally contested the Government's arguments.

28. The Court reiterates that it has previously ruled that the remedy mentioned by the Government can only be considered "effective" from 17 September 2004, the date when the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act") entered into force. Moreover, the 2004 Act refers only to compensation for the excessive length of judicial proceedings, not proceedings before administrative authorities (see, *Krasuski*, cited above, §§ 69-72).

29. The Court further notes that the applicant lodged a complaint with the Supreme Administrative Court about the inactivity of the Minister of Agriculture. The Supreme Administrative Court found the complaint well-founded and ordered the Minister to deal with the case. The applicant therefore cannot be reproached for not having availed himself of domestic remedies.

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

2. *Substance of the complaint*

31. 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

32. 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).

33. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

34. The Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. It notes that the applicant lodged a complaint about the inactivity of the Minister of Agriculture on 6 April 2001, which is nearly six years after this remedy had become available under Polish law (see paragraphs 8 and 17 above). However, having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 391,081.71 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

37. The Government contested these claims.

38. 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, the Court considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of his detention – which is not sufficiently compensated by the finding of a violation of the Convention. Considering the specific circumstances of the case, in particular the inactivity of the applicant at the initial stage of the proceedings (see paragraph 33 above) the Court awards the applicant 6,000 euros (EUR) under that head.

B. Costs and expenses

39. The applicant did not seek reimbursement of any costs and expenses.

C. Default interest

40. 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 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 6,000 (six 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, 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 amount 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 24 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President