



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

FOURTH SECTION

CASE OF BOSZKO v. POLAND

(Application no. 4054/03)

JUDGMENT

STRASBOURG

5 December 2006

FINAL

05/03/2007

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 Boszko v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 14 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 4054/03) 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 Jan Boszko on 17 January 2003. He was represented before the Court by Ms A. Zemke, a lawyer practising in Białystok.

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

3. On 11 March 2005 the Court decided to give notice of 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1954 and lives in Hajnówka.

5. On 15 February 1999 the applicant requested that administrative proceedings be instituted for the purpose of fixing compensation for a partial expropriation of his real property in 1995, involving two small plots designated for the construction of a road.

6. On 15 March 1999 the Head of the Hajnówka District instituted such proceedings. On 28 July 1999 the Head of the Hajnówka District fixed an amount of compensation to be paid by the Hajnówka Municipality for these

plots. The applicant contested the amount of compensation. On 24 September 1999 the Self-Government Board of Appeal quashed the decision and discontinued the proceedings. It was of the view that no purpose was served by continuing the proceedings. The applicant appealed.

7. On 5 June 2000 the Supreme Administrative Court quashed the contested decision, finding that the conclusion of the Board had no proper legal or factual basis.

8. On 29 September 2000 the Podlesie Governor quashed the first-instance decision of 28 July 1999 and refused to pay compensation. The applicant appealed.

9. On 14 February 2001 the Supreme Administrative Court quashed the Governor's decision. It considered that it was unlawful in that it had infringed the prohibition of *reformationis in peius* as it applied to administrative proceedings.

10. On 23 May 2001 the Podlesie Governor again quashed the decision of 28 July 1999 and remitted the case for re-examination. On 15 October 2001 the Head of the Hajnówka District refused to determine the amount of compensation. The applicant appealed.

11. On 27 November 2001 the Podlesie Governor quashed the decision given on 15 October 2001 and remitted the case for re-examination.

12. On 31 December 2001 the Head of the Hajnówka District again refused to determine the amount of compensation. The applicant contested this decision. On 14 February 2002 the Podlesie Governor upheld it. The applicant appealed against the Governor's decision.

13. On 14 November 2002 the Supreme Administrative Court quashed the Governor's decision of 14 February 2002 and remitted the case for re-examination. The court considered that the authorities had entirely disregarded its opinion on issues relevant to the case as well as instructions on how to proceed with the case, as contained in its earlier judgments.

14. By a decision of 26 May 2003 the Head of the Hajnówka District fixed at PLN 29,763 the amount of compensation to be paid to the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Inactivity of the administrative authorities

15. Under Article 35 of the Code of Administrative Procedure ("the Code") of 1960 an administrative authority should give a decision on the merits of a case within two months. If this time-limit has 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.

16. A party to administrative proceedings may make a complaint under Article 37 of the Code in order to urge the relevant administrative authority

to issue a decision within the time-limits fixed in the Code. Moreover, in cases where an authority persistently failed to do so, a party could lodge, under sections 17, 26 and 30 of the Supreme Administrative Court Act 1995 as in force at the material time, a complaint with the Supreme Administrative Court against the authority's failure to give a decision.

17. In cases where allegations of inactivity were well-founded, the Supreme Administrative Court could oblige that authority to issue a decision. Pursuant to section 30 of the 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 did not comply with the decision, the court could, under section 31 of the 1995 Act, impose a fine on it. It also could itself give a ruling on the merits of the administrative case.

18. Under section 17 of the 1995 Act, a party to administrative proceedings could, at any time, lodge a complaint with the Supreme Administrative Court about inactivity on the part of an authority obliged to issue an administrative decision.

19. 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 the law.”

20. As of 1 January 2004 the 1995 Act was replaced by the Act on Proceedings before Administrative Courts of 30 August 2002 which provides for similar remedies.

2. State's liability for a tort committed by its official

1. Provisions applicable before 1 September 2004

21. Articles 417 et seq. of the Civil Code (*Kodeks cywilny*) provide for the State's liability in tort.

In the version applicable until 1 September 2004, Article 417 § 1, which lays down a general rule, read as follows:

“1. The State Treasury shall be liable for damage caused by a State official in the course of carrying out the duties entrusted to him.”

22. Article 418 of the Civil Code, as applicable until 18 December 2001, provided for the following exception in cases where damage resulted from the issue of a decision or order:

“1. If, in consequence of the issue of a decision or order, a State official has caused damage, the State Treasury shall be liable only if a breach of the law has been involved in the issue of the decision or order and if that breach is the subject of a prosecution under the criminal law or of a disciplinary investigation, and the guilt of

the person who caused the damage in question has been established by a final conviction or has been admitted by the superior of that person.

2. The absence of the establishment of guilt by way of a criminal conviction or in a decision given in disciplinary proceedings shall not exclude the State Treasury's liability for damage if such proceedings cannot be instituted in view of the [statutory] exception to prosecution or disciplinary actions."

2. Provisions applicable as from 1 September 2004

23. On 1 September 2004 the Law of 17 June 2004 on amendments to the Civil Code and other statutes (*Ustawa o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw*) ("the 2004 Amendment") entered into force. While the relevant amendments have in essence been aimed at enlarging the scope of the State Treasury's liability for tort under Article 417 of the Civil Code – which included adding a new Article 417¹ and the institution of the State's tortious liability for its omission to enact legislation (the so-called "legislative omission"; "*zaniedbanie legislacyjne*") – they are also to be seen in the context of the operation of a new statute introducing remedies for the unreasonable length of judicial proceedings.

Following the 2004 Amendment, Article 417¹, in so far as relevant, reads as follows:

"3. If damage has been caused by failure to give a ruling (*orzeczenie*) or decision (*decyzja*) where there is a statutory duty to give them, reparation for [the damage] may be sought after it has been established in the relevant proceedings that the failure to give a ruling or decision was contrary to the law, unless otherwise provided for by other specific provisions."

24. However, under the transitional provisions of Article 5 of the 2004 Amendment, Article 417 as applicable before 1 September 2004 shall apply to all events and legal situations that subsisted before that date.

3. Compensation for damage caused by an administrative decision subsequently annulled or declared null and void

25. Article 155 of the Code of Administrative Procedure permits the amendment or annulment of any final administrative decision at any time where necessary in the general or individual interest, if this is not prohibited by specific legal provisions. In particular, pursuant to Article 156, a final administrative decision is subject to annulment if it has been issued by an authority which had no jurisdiction, or if it is without a legal basis or contrary to the applicable laws.

26. Article 160 of the Code of Administrative Procedure as applicable at the material time enabled persons who have sustained damage as a result of a final administrative decision which was declared null and void pursuant, *inter alia*, to Article 156, or as a result of such decision having been annulled, to submit a compensation claim to the administrative authority

which annulled this decision, and this within three years from the date on which the decision on annulment became final. An administrative decision in respect of the compensation claim can be appealed against in a civil court.

THE LAW

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

27. The applicant complained that the length of the proceedings 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...”

28. The Government contested that argument.

29. The period to be taken into consideration began on 15 February 1999 and ended on 26 May 2003. It therefore lasted four years and three months.

A. Admissibility

30. The Government first acknowledged that in the circumstances of the case the applicant could not be required to have had recourse to the complaint about inactivity of the authority obliged to give an administrative decision in his case.

31. They further submitted that the applicant had not exhausted other remedies available under Polish law in respect of excessive length of administrative proceedings.

32. They argued that the applicant had a possibility of lodging with the Polish civil courts a claim for compensation for damage occasioned by the excessive length of administrative proceedings under Article 417 of the Civil Code.

33. The Government further submitted that it was open to the applicant to have recourse to the remedy provided for by Article 160 of the Code of Administrative Procedure. They claimed that under this provision, as applicable at the material time, the applicant could have claimed compensation for damage he had allegedly sustained as a result of the protracted length of the administrative proceedings in his case.

34. The applicant contested these arguments.

35. The Court first notes that it has already examined whether after 18 December 2001 a compensation claim in tort as provided for by Polish civil law was an effective remedy in respect of complaints about the length

of proceedings. It held that no persuasive arguments had been adduced to show that Article 417 of the Civil Code could at that time be relied on for the purpose of seeking compensation for excessive length of proceedings or that such action offered reasonable prospects of success (see, *mutatis mutandis*, *Skawińska v. Poland* (dec.), no. 42096/98, 4 March 2003, and *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003). The Court sees no grounds on which to depart from these findings in the present case.

36. As to the remedy provided for by Article 160 of the Code of Administrative Procedure, the Court first observes that this remedy is intended to address situations in which final administrative decisions were annulled where it is necessary in the general or individual interest, or declared null and void as being flawed *ab initio*. It is further noted that no arguments have been advanced to show that this remedy was effective in respect of damage arising in the context of excessive length of administrative proceedings. In the absence of such information, the Court finds that the Government have failed to substantiate their contention that the remedy relied on was effective.

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

38. The Court notes that this complaint 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

39. 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).

40. 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). Having examined all the material submitted to it, 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.

41. In particular, the Court is of the view that the proceedings in the present case cannot be considered complex. It is further to be noted that the applicant did not contribute to any prolongation of the proceedings.

42. The Court further observes that the second-instance decisions given in the present case were quashed on three occasions by the Supreme

Administrative Court. That court indicated on each occasion that the decisions of the lower authorities were in breach of the applicable laws (see paragraphs 7, 9 and 13 above).

The Court considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower authorities, the repetition of such orders within one set of proceedings discloses a serious deficiency in the operation of the legal system (*mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

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

43. 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

44. The applicant claimed 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

45. The Government did not express an opinion on the matter.

46. 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 must have suffered some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,000 under that head.

B. Costs and expenses

47. The applicant also claimed PLN 4,000 for the costs and expenses incurred before the Court.

48. The Government did not express an opinion on the matter.

49. 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 considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

50. 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, the following amounts to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President