



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

FOURTH SECTION

CASE OF SERNAWIT AND OTHERS v. POLAND

(Application no. 61967/00)

JUDGMENT

STRASBOURG

6 November 2007

FINAL

06/02/2008

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 Sernawit v. Poland,

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

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 9 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 61967/00) 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”) on 24 November 1999 by Mr Julian Sernawit, Mr Stefan Sernawit and Mr Tadeusz Sernawit (“the applicants”). They were first represented before the Court by Mr W. Hermeliński, who was later replaced by Ms A. Metelska, lawyers practising in Warsaw.

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

3. On 7 November 2003 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

4. On 18 February 2002 the first applicant's wife, Mrs Wanda Sernawit, informed the Court's Registry that the applicant had died on 15 July 2000. On 18 August 2003 the second applicant's wife, Mrs Helena Sernawit, informed the Registry that her husband had died. They stated that they wished to continue the proceedings before the Court in their late husbands' stead.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

1. Prior to 1 May 1993

5. The applicants' parents owned a plot of land with a house in Warsaw. Pursuant to the provisions of the 1945 Decree on the Ownership and Use of Land in Warsaw (*Dekret o własności i użytkowaniu gruntów na obszarze m. st. Warszawy*) they were expropriated and the ownership of the property passed to the Warsaw municipality.

6. On an unspecified date between 1965 and 1967 the applicants' parents requested to be granted a right of perpetual use of the expropriated land. On 30 October 1968 the District Board of the local council dismissed their request.

7. On an unspecified date in 1975 the applicants' father died. On 18 April 1975 the ownership of the property in question passed from the Warsaw municipality to the State Treasury.

8. By a letter of 18 November 1977, the Office of the City of Warsaw consented to the sale of the property to a third party.

9. Pursuant to the order of the District Mayor (*Naczelnik Dzielnicy*), the land and the building were put up for sale and, on 19 April 1985, two-thirds of the property was sold to a certain B.K.

10. On an unspecified date in 1987 the applicants requested that the property be restored to them.

11. On 10 October 1987 the applicants obtained a partial restitution of their property. A right of perpetual use of one-third of the land and ownership of one-third of the building situated on that property were awarded to them.

12. On 5 February 1990 the applicants requested that the remaining two-thirds of the property be restored to them. In their letter to the District Office (*Urząd Dzielnicowy*) they complained that the local authorities, being aware of the applicants' claims to the property, had deliberately sold the property, taking an unfair advantage of the fact that the inheritance proceedings following the applicants' parents' death had not been terminated yet.

13. By a letter of 20 April 1990 the authorities indicated that since two-thirds of the original plot had been sold to third parties before the entry into force of a certain statute in 1985, only one-third of the plot could be restored to the applicants. Thus, restitution of the remaining two-thirds of the property was impossible and, in accordance with the 1985 law, any compensation claims had expired on the date of entry into force of this law.

14. On 7 May 1990 the applicants again requested the District Office to consider their claims. They challenged the lawfulness of the sale of the two-thirds of the property as the District Office had at that time been aware of their outstanding claims.

15. By a letter of 15 October 1990 the Town Office, Division of Architecture and Land Management (*Urząd Miasta Stołecznego Warszawy, Wydział Architektury i Gospodarki Gruntami*), reiterated the position of the District Office.

16. The applicants sent numerous letters of complaint to various authorities, including the Supreme Administrative Court. Following an inquiry of that court, the Regional Office in its letter of 16 April 1991 explained that the matter was under consideration and apologised for the delays in its examination, which were due to a serious backlog of cases and understaffing.

17. The Supreme Administrative Court regarded the applicants' subsequent complaints as a complaint about the inactivity of the administrative authorities and the failure to issue an administrative decision. By a judgment of 11 October 1991 the court obliged the District Mayor to issue a decision concerning the remaining two-thirds of the property. The court found that, when deciding on the return of the one-third of the property, the authorities had failed to determine the remainder of the applicants' claim. The court ruled that a decision be given within one month of the date of receipt of the applicants' case file.

18. On 20 March 1992 the District Mayor rendered a decision refusing to restore the two-thirds of the property to the applicants. The Mayor noted that by the decision of 15 October 1987 the applicants' motion had been allowed in respect of one-third of the property and that no decision had been issued in respect of the remaining two-thirds. Therefore, in view of the fact that the remaining two-thirds had been sold to third parties, the applicants' motion had to be dismissed. The applicants appealed.

19. On 30 June 1992 the City Mayor (*Prezydent Miasta*) dismissed their appeal. The applicant further appealed to the Supreme Administrative Court.

20. On 20 May 1993 the Supreme Administrative Court declared null and void the decision of 30 June 1992 and the preceding decision of the first instance. It found that the first-instance decision had not been duly signed and had therefore to be declared null and void *ex officio*. The matter was remitted to the District Mayor for re-examination.

2. Facts after 1 May 1993

21. On 16 September 1993 a new decision refusing to restore the two-thirds of the property to the applicants was issued. The applicants appealed. On 17 June 1994 the City Mayor quashed that decision finding

that the District Mayor should have been excluded from examining the issue as the District Office had been a party to the sale of that part of the property to third parties which was the subject matter of the case.

22. Between 1994 and 1996 the matter remained dormant. Following numerous interventions by the applicants and their complaints about the inactivity of the administration, the District Prosecutor intervened and filed a complaint with the Board of Appeal of the Local Government (*Samorządowe Kolegium Odwoławcze*). On 13 November 1996 the Board of Appeal found that this complaint was substantiated and it obliged the District Office to give a decision in the applicants' case before 15 December 1996.

23. In the meantime, on 23 October 1996 the District Office rendered a decision on the merits of the case. With reference to the previous decision finding that the District Office had not been competent to examine matters relating to transactions to which the given Office had been a party, the District Office found that as the relevant provision had meanwhile been amended there were no obstacles for that Office to issue a decision. The applicants' motion in respect of the restitution of the remaining two-thirds of the property was dismissed. The applicants appealed.

24. On 21 January 1997 the Board of Appeal of the Warsaw Local Government upheld the decision. The applicants filed an appeal with the Supreme Administrative Court. On 12 March 1999 the court dismissed their appeal and held that the two-thirds of the property could not be restored to them as third parties had been vested with the right of perpetual use in respect of this part of the property. On 7 June 1999 the applicants were served with this judgment.

B. Relevant domestic law

1. Decree on the Ownership and Use of Land in Warsaw

25. The Decree on the Ownership and Use of Land in Warsaw of 26 October 1945 expropriated owners of real property located in Warsaw and transferred the ownership of land to the municipality of Warsaw. The 1945 Decree provided, in so far as relevant:

“Section 7. (1) The owner of a plot of land ... can within six months after the taking of possession of the land by the municipality file a request to be granted ... the right to a perpetual lease (*wieczysta dzierżawa*) with a peppercorn rent (*czynsz symboliczny*).
...

(2) The municipality shall grant the request if the use of the land by the former owner is compatible with its function set forth in the development plan (*plan zabudowania*). ...

(4) In case the request is refused, the municipality shall offer the person entitled, as long as it has spare land in its possession, a perpetual lease of land of equal value, on the same conditions, or the right to construct on such land.

26. Pursuant to Article 33 § 2 of the Act on Local State Administration of 20 March 1950, the ownership of land located in Warsaw was assigned to the State Treasury. According to section 5 § 1 of the Law of 10 May 1990 the ownership of the land which had previously been held by the State Treasury and which was within the administrative territory of municipalities, was transferred to the latter.

2. Right of perpetual use

27. Under Article XXXIX of the Decree of 11 October 1946 introducing the Property Law (*prawo rzeczowe*) and the Law on Land and Mortgage Registers, the right to construct and the right to a perpetual lease could be transferred into temporary ownership (*własność czasowa*). Section 40 of the Law of 14 July 1961 on Administration of Land in Towns and Estates (*Ustawa o gospodarce terenami w miastach i osiedlach*) replaced temporary ownership with perpetual use (*użytkowanie wieczyste*).

28. The right of perpetual use is defined in Articles 232 *et seq.* of the Civil Code (*Kodeks Cywilny*). It is an inheritable and transferable right *in rem* which, for ninety-nine years, gives a person full benefit and enjoyment of property rights attaching to land owned by the State Treasury or municipality. It has to be registered in the court land register in the same way as ownership.

3. Inactivity of the administrative authorities

29. 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.

30. 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.

31. 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.

THE LAW

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

32. The applicants 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...”

33. The Government contested that argument.

34. The Court notes that 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.

35. The period in question ended on 7 June 1999. It thus lasted six years and one month for three levels of jurisdiction.

A. Applicability of Article 6 § 1

36. The applicability of Article 6 § 1 to proceedings concerning claims arising against the background of the Decree on the Ownership and Use of Land in Warsaw of 26 October 1945 has already been determined by the Court (*Potocka and Others v. Poland* (dec.), no. 33776/96, 6 April 2000).

B. Admissibility

37. The Government first argued that the application had been introduced outside the six-month period imposed by Article 35 § 1 of the Convention because the applicants had submitted their application form to the Court on 7 January 2000 whereas the proceedings had ended on 7 June 1999.

38. The applicants submitted that the date of their first letter to the Court was decisive for the assessment of whether they had complied with the six-month requirement.

39. The Court reiterates that where, as in the instant case, an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (*Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33). The date of the introduction of an application is the date of the first letter indicating an intention to lodge an application and giving some indication of the nature of the application (see, among many other authorities, *Chalkley v. the United Kingdom* (dec), no. 63831/00, 26 September 2002). In the present case the applicants submitted their first letter to the Court on 24 November 1999, after the final decision in their case had been served on them by the court on 13 September 1999.

It follows that the application cannot be declared inadmissible for failure to comply with the six-month requirement within the meaning of Article 35 § 1 of the Convention.

40. The Government further submitted that the applicants had failed to exhaust relevant domestic remedies because after 1 May 1993, the date on which Poland's declaration recognising the competence of the Convention organs to examine individual applications became effective, they had failed to lodge with the Supreme Administrative Court a complaint under section 17 of the Supreme Administrative Court Act (see paragraphs 30-31 above). The applicants disagreed and submitted that they had had recourse to this remedy prior to 1 May 1993, but that in their case it proved ineffective, since after that date the proceedings had in any event lasted a further six years.

41. The Court reiterates that, whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge decisions already given. It normally requires also that the complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, *inter alia*, *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34; *Elçi and others v. Turkey*, nos. 23145/93 and 25091/94, § 604, 13 November 2003). The Court notes that it has held that the complaint under section 17 of the Supreme Administrative Court Act was an effective remedy in cases in which an applicant complains about the excessive length of administrative proceedings (see, *Zynger v. Poland* (dec.), no. 66096/01, 7 May 2002 and *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2001). It observes that the applicants did not use this remedy after 1 May 1993. However, the Court reiterates that nonexhaustion of domestic remedies cannot be held against an

applicant if, in spite of the latter's failure to observe the formal requirements prescribed by law, the competent authority has nevertheless examined the substance of the remedy (see, among other authorities, *Skalka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Uhl v. Germany* (dec.), no. 64387/01, 6 May 2004).

42. In this connection, the Court observes that in June 1995 the applicants complained to the District Prosecutor about the inactivity of the authorities. Subsequently, following the prosecutor's intervention (see paragraph 22 above), the Board of Appeal found, in its decision of 13 November 1996, that the applicant's complaint about the lack of progress in the proceedings was well-founded. Hence, the authorities dealt with the substance of the applicants' length complaint.

43. Therefore, the Court considers that the applicants have exhausted domestic remedies as required by Article 35 § 1 of the Convention.

44. Finally, the Government submitted that the application should be declared incompatible *ratione personae* with the Convention. The Government were of the opinion that the widows of the late applicants could not claim to be either parties to the proceedings before the Court or direct or even indirect victims of any violation of the Convention.

45. The first and second applicants' widows argued that their pecuniary interests were at stake and that they wished therefore to pursue the application lodged by their late husbands.

46. The Court reiterates that when an applicant dies during the Convention proceedings, her or his next-of-kin has a legitimate interest to justify the continuation of the examination of the case (see, for example, *mutatis mutandis*, *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 540, § 35; *Sildedzis v. Poland*, no. 45214/99, 24 May 2005, § 30).

The Court thus accepts that the widows of the first and second applicants have a legitimate moral interest to pursue the application on their late husbands' behalf. Accordingly, they have standing to continue the proceedings before the Court in those applicants' stead.

47. It follows that the Government's preliminary objections must be dismissed. 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.

C. Merits

48. The Government argued that the case had been complex both as to the facts and the law; that what had been at stake for the applicants was of a purely pecuniary character; and that the authorities had shown appropriate diligence when dealing with the case.

49. The applicants disagreed.

50. 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).

51. 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).

52. 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. The Court further notes that between 1994 and 1996 there was a period of total inactivity in the proceedings. The complaint about the inactivity of the authorities during that period was declared well founded by the Board of Appeal (see § 22 above). It observes that subsequently two years elapsed between the date of lodging the applicant's appeal to the Supreme Administrative Court and the date of delivery of the judgment given by that court (see § 24 above). 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.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

A. Admissibility and merits

54. The applicants also alleged that the length of the proceedings complained of had infringed their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1. That Article reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

55. The Court has already found that there has been a violation of Article 6 § 1 on account of the excessive length of the proceedings concerned. For that reason, while finding this complaint to be admissible, having regard to its reasoning under Article 6 § 1, the Court considers that it is not necessary to examine the complaint under Article 1 of Protocol No. 1 separately (see *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicants claimed 1,775,000 zlotys (PLN) in respect of pecuniary damage. In addition, they claimed 50,000 zlotys (PLN) in respect of non-pecuniary damage.

58. The Government contested these claims.

59. 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 awards the applicants jointly EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

60. The applicants also claimed EUR 2,500 for the costs and expenses incurred before the Court.

61. The Government contested the claim.

62. 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 applicants jointly the sum of EUR 500 for costs and expenses, together with any value-added tax that may be chargeable.

C. Default interest

63. 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* that it is not necessary to examine separately the applicants' complaint under Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 500 (five hundred 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Josep CASADEVALL
President