



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

FOURTH SECTION

CASE OF WÓJCICKA-SURÓWKA v. POLAND

(Application no. 33017/03)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

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 Wójcicka-Surówka v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 33017/03) 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 Ms M. Wójcicka-Surówka (“the applicant”) on 29 September 2003. The applicant was represented by Mr Z. Cichoń, a lawyer practising in Kraków.

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

3. On 13 December 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of two sets of proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the remainder of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1936 and lives in Kraków.

1. Main proceedings

5. On 10 June 1997 the Mayor of the City of Kraków (*Prezydent Miasta Krakowa*) issued a building permit to the applicant's neighbour. The applicant appealed, submitting that, according to the construction project, the proposed building would encroach on her land. She also requested that the construction work be stopped.

6. On 22 August 1997 the Kraków City Office instituted administrative demarcation proceedings at the applicant's request in order to establish a boundary between the two properties.

7. On 28 July 1997 the Governor of the Kraków Region (*Wojewoda Krakowski*) upheld the decision of 10 June 1997. On 28 August 1997 the applicant appealed to the Supreme Administrative Court.

8. On 5 September 1997 the Construction Supervision Department of the Kraków City Office (*Wydział Nadzoru Budowlanego Miasta Krakowa*) conducted an inspection on the applicant's neighbour's building site.

9. On 12 December 1997 the administrative demarcation proceedings were discontinued by the Kraków City Office as the parties had not reached a settlement as to the boundary in dispute.

10. On 2 April 1998 an inspection on the applicant's neighbour's building site was again conducted by the Construction Supervision Department of the Kraków City Office.

11. On 3 April 1998 the applicant's neighbour was summoned to appear at the Kraków City Office on 9 or 14 April 1998. The applicant's neighbour failed to appear on the dates indicated. He eventually appeared at the Kraków City Office on 4 May 1998.

12. On 28 April 1998 the Supreme Administrative Court quashed the decisions of 10 June 1997 and 28 July 1997 as it found that the building permit had been issued contrary to the law and that it was necessary to establish the disputed boundary before deciding on whether to grant a permit.

13. On 5 March 1998 the applicant informed the Kraków Regional Office (*Urząd Wojewódzki w Krakowie*) that, in spite of the Supreme Administrative Court judgment of 28 April 1998, the construction work was being carried out on the disputed land.

14. On 28 May 1998 the applicant lodged a complaint with the Kraków Regional Office, claiming that no steps had been taken by the authorities to prevent the construction work being carried out by her neighbour.

15. On 30 July 1998 the Kraków Regional Office informed the applicant that it had not been obliged to stop the construction work prior to the Supreme Administrative Court's judgment. The applicant was also informed that following the judgment, failure by her neighbour to comply with it would result in the Kraków City Office being obliged to take appropriate measures.

16. On 2 September 1998 the Kraków City Office decided to stay the proceedings concerning the applicant's neighbour's construction work in view of the fact that the issue of the boundary between the lands had not yet been settled.

17. The proceedings concerning the suspension of the construction work are still pending.

2. Proceedings concerning a complaint about the excessive length of the main administrative proceedings

18. On 4 October 2002 the applicant lodged with the Supreme Administrative Court a complaint, under section 17 of the Supreme Administrative Court Act of 11 May 1995, about inactivity on the part of administrative organs. She submitted that, in spite of the Supreme Administrative Court judgment, the Kraków Regional Office had taken no steps to halt the construction work on the disputed land.

19. On 2 June 2004 the Kraków Regional Administrative Court (which had taken over the jurisdiction of the Supreme Administrative Court) rejected the complaint as it found that the applicant had not exhausted relevant remedies, of which she should have availed herself prior to lodging the complaint (namely, she had not lodged a complaint with the competent minister).

20. On 14 September 2004 the applicant lodged a cassation appeal with the Supreme Administrative Court against this decision.

21. On 23 March 2005 the applicant lodged with the Supreme Administrative Court a complaint under the Law of 17 June 2004 on complaints about breaches 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”), in respect of the proceedings instituted on 4 October 2002.

22. On 6 April 2005 the Supreme Administrative Court dismissed the applicant's complaint. In reasoned grounds it stated that the length of the proceedings had been a consequence of the court's heavy workload and that the State was not responsible for that delay. It stated as follows:

“(...) the order of examination of cases is established according to the date on which the application is lodged with the court. The number of cases lodged with the court explains why a plaintiff has to wait for the first hearing. (...). Having regard to the above, the Supreme Administrative Court considers that in these circumstances any excessive length of the proceedings cannot be attributed to the State.”

23. On 19 May 2005 the Supreme Administrative Court dismissed the applicant's cassation appeal against the Kraków Regional Administrative Court's decision of 2 June 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Inactivity of administrative authorities

24. The relevant domestic law concerning remedies for the inactivity of administrative authorities is set out in the case of *Koss v. Poland* (n° 52495/99, 28 March 2006).

B. Length of proceedings

25. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are set out in the Court's decisions in the cases of *Charzyński v. Poland* (n° 15212/03 (dec.), §§ 12-23, ECHR 2005-V) and *Ratajczyk v. Poland* (n° 11215/02 (dec.), ECHR 2005-VIII).

THE LAW

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

26. 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...”

27. The Government contested that argument.

A. The proceedings concerning the applicant's neighbour's building permit

1. Period to be taken into consideration

28. The proceedings began on 10 June 1997 and have not yet ended. They have thus lasted to date ten years and three months for three levels of jurisdiction.

2. The Government's preliminary objections on non-exhaustion

(a) The Government's arguments

29. The Government submitted that the applicant had not exhausted the remedies available under Polish law.

30. They maintained that the applicant had failed to avail herself of a remedy provided for by section 37 § 1 of the Code of Administrative Procedure, namely a complaint to a superior administrative authority (in this case the competent minister).

31. The Government further maintained that as the Code of Administrative Procedure did not provide any time-limit for lodging a complaint about inactivity, the applicant could have lodged such a complaint with a competent authority even after her complaint had been rejected by the Kraków Regional Administrative Court's judgment of 2 June 2004. They also maintained that the applicant had failed to avail herself of any domestic remedies in the period between 1998 and 2002.

(b) The applicant's arguments

32. The applicant contested the Government's arguments. She reiterated that on 28 May 1998 she had lodged her complaint with the Kraków Regional Office. She claimed that if the Kraków Regional Office had considered that it was not competent to examine her case, it should have transferred her complaint to a competent authority.

33. As to the Government's argument that she could have availed herself of further remedies to complain about inactivity, the applicant stated that, in the light of the Court's jurisprudence, it sufficed to have recourse to one available remedy in order to satisfy the requirement of exhaustion of domestic remedies.

(c) The Court's assessment

34. The Court recalls that the aim of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford Contracting States an opportunity to put matters right through their own legal system before having to answer for their acts before an international body. However, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that recourse should be had to remedies that are inadequate or ineffective (see *Egmez v. Turkey*, n° 30873/96, ECHR 2000-XII, §§ 65 et seq.).

35. The Court reiterates that, in the context of Article 13 and remedies for excessive length of proceedings, it has already held that such a remedy, or the aggregate of remedies, in order to be "effective" must be capable either of preventing the alleged violation of the right to a "hearing within a

reasonable time” or its continuation, or of providing adequate redress for a violation that had already occurred (see, *mutatis mutandis*, *Kudła v. Poland*, [GC], n°. 30210/96, § 158 et seq. ECHR 2000-X).

36. Examining the instant case in the light of these criteria, the Court notes that the domestic courts are better placed to interpret national law; therefore the Court sees no reason to disagree with the Kraków Regional Administrative Court's ruling of 2 June 2004 that the applicant should have lodged a complaint with a competent minister. However, the Court further notes that it took the domestic courts over two years (from 4 October 2002 to 19 May 2005) to examine the applicant's complaint about the inactivity of the administrative organs. Consequently, the said complaint could not have prevented, in the Court's opinion, the alleged violation of the right to a “hearing within a reasonable time” and as a result was not effective in the applicant's case.

37. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

38. The Court notes that this part of 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.

3. *Merits*

(a) **The submissions before the Court**

39. The Government submitted that the applicant had significantly contributed to the length of the proceedings, in particular, by failing to bring a civil action for demarcation of land.

40. As regards the conduct of the domestic authorities, the Government maintained that they had acted with due diligence and that the District Court had “made efforts to ensure that the process of obtaining evidence followed its proper course”.

41. The applicant submitted that the case was a simple one. She argued that the domestic courts were solely to blame for the delay. She submitted that she had been under no obligation to bring a civil action for demarcation of land and that, in fact, Polish law did not allow such actions unless the remedies available under administrative law had been exhausted.

(b) **The Court's assessment**

42. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see,

among many other authorities, *Frydlender v. France* [GC], n° 30979/96, § 43, ECHR 2000-VII, and *Humen v. Poland* [GC], n° 26614/95, § 60, 15 October 1999).

43. The Court considers that the case involved a certain degree of complexity. However, the overall length of the proceedings cannot be explained by their complexity.

44. As regards the conduct of the applicant, the Court finds that the applicant did not remain passive as she had requested demarcation of the land in administrative proceedings, which, however, did not result in any decision.

45. The applicant challenged the building permit granted to her neighbour and, as a result, the decision granting this permit was quashed by the Supreme Administrative Court judgment of 28 April 1998. In the reasoned grounds for this judgment the court found that the building permit had been issued contrary to the law. Having regard to the information given to her on 30 July 1998, she could have reasonably expected that proper measures would be taken by the authorities to secure her legitimate interests by suspending the work being carried out on the strength of the unlawful building permit.

46. The applicant attempted to expedite the proceedings in many ways: on 5 March 1998 she complained to the Kraków Regional Office; on 28 May 1998 she lodged a formal complaint with the Kraków Regional Office; on 4 October 2002 she lodged a complaint about inactivity with the Supreme Administrative Court; on 14 September 2004 she lodged a cassation appeal against the Kraków Regional Court's decision rejecting her complaint about inactivity; and, finally, on 23 March 2005 she lodged a complaint under the 2004 Act.

47. In view of the above, the Court finds that the applicant did not contribute to the length of the proceedings.

48. With regard to the conduct of the domestic authorities, the Court notes that the applicant's complaint about inactivity on the part of the administrative authorities was examined by the domestic court for over two years. Moreover, the applicant's complaint under the 2004 Act was not successful in expediting the proceedings. Notwithstanding all the steps taken by the applicant, the suspension of the construction work has not yet been ordered. The Court notes that the Government did not provide any explanation for this delay.

49. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of ten years and three months cannot be regarded as a reasonable time.

50. There has accordingly been a violation of Article 6 § 1 of the Convention.

B. The proceedings before the Kraków Regional Administrative Court concerning the inactivity of an administrative organ

1. Period to be taken into consideration

51. The proceedings began on 4 October 2002 and ended on 19 May 2005. They thus lasted two years and seven months, of which one year and eight months before the Kraków Regional Administrative Court.

2. Admissibility

52. The Court reiterates that according to its case-law, Article 6 of the Convention is applicable to the present case (see *Pelli v. Italy* (dec.), n° 19537/02, 13 November 2003).

53. The Court notes that this part of 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.

3. Merits

(a) The submissions before the Court

54. As to the criterion of “what is at stake for the applicant” the Government indicated that the applicant's dispute was of a purely pecuniary nature and as such could not be regarded as exceptionally important for her material status.

55. The Government further submitted that the applicant had failed to claim before the Kraków Regional Administrative Court that there had been reasons to justify a priority examination of her case.

56. As regards the conduct of the domestic authorities, the Government maintained that they had acted with due diligence. The Government also pointed out that, precisely during the examination of the applicant's case, a reform of the administrative judiciary was taking place which could have slightly contributed to the overall length of the proceedings before the Kraków Regional Administrative Court.

(b) The Court's assessment

57. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], n° 30979/96,

§ 43, ECHR 2000-VII, and *Humen v. Poland* [GC], n° 26614/95, § 60, 15 October 1999).

58. The Court finds that the case was not complex.

59. Concerning the applicant's conduct, the Court finds that no periods of delay are imputable to her.

60. On the other hand, the Court notes that there are substantial delays attributable to the authorities. It observes, in particular, that there was a 20-month period of inactivity in the proceedings before the Regional Administrative Court between the date the applicant lodged her complaint about inactivity on the part of administrative organs and the date of adoption of the decision. The Court can accept that some delays in the procedure before the Regional Administrative Court could be explained by the fact that at the material time a reform of the administrative judiciary was taking place and the Regional Administrative Court had to deal with an increased workload (see, *Kępa v. Poland* (dec.), n° 43978/98, 30 September 2003). Nevertheless, in the present case the applicant's cassation appeal lay dormant in the Regional Administrative Court for 20 months, which constitutes an unreasonable delay (see *Domańska v. Poland*, n° 74073/01, § 32, 25 May 2004; *a contrario Kępa v. Poland* (dec.), n° 49978/98, ECHR 30 September 2003).

61. Having regard to the circumstances of the instant case and to what was at stake for the applicant, the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

62. There has accordingly been a violation of Article 6 § 1 in respect of these proceedings.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

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

65. The Government did not comment.

66. The Court awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant claimed EUR 1,000 for lawyer's fees in respect of the domestic proceedings and EUR 2,000 for lawyer's fees in respect of the proceedings before the Court.

68. The Government did not comment.

69. 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 in respect of the domestic proceedings and considers it reasonable to award the sum of EUR 2,000 on account of the lawyer's fees in respect of the proceedings before the Court.

C. Default interest

70. 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 in respect of both sets of proceedings;
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 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage and EUR 2,000 (two 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 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President