



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

FOURTH SECTION

CASE OF OLSZEWSKA v. POLAND

(Application no. 13024/05)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

18/03/2008

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 Olszewska 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 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 13024/05) 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 Halina Olszewska (“the applicant”), on 23 March 2005.

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

3. On 3 October 2006 the Court declared the application partly inadmissible and decided to communicate the complaint 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. It also gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1929 and lives in Białystok, Poland.

5. In 1940 the applicant's father had been arrested by NKVD (Soviet People's Commissariat for Internal Affairs) and was sent with his family to Kazakhstan. The applicant's mother died in 1940 and her father died in London in 1967. In 1946 the applicant and her siblings returned to Poland.

6. On 6 October 1948 the property belonging to the applicant's parents was taken over by the State.

7. In 1990 the applicant and her sister were designated jointly as their father's heirs.

8. On 29 November 2001 the applicant applied to the Podlaski Governor (*Wojewoda Podlaski*) to have the 1948 decision annulled and her parents' property returned to her. The case was transferred to the Ministry of Agriculture for consideration.

9. Subsequently, the applicant wrote to the Minister and other authorities complaining that the property had not been returned to her.

10. On 28 November 2003 she complained to the Minister about his inactivity. As she received no reply to her complaint, on 5 December 2003 the applicant, represented by a lawyer, lodged a complaint about the Minister's inactivity with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

11. Following her complaint, on 5 January 2004 the Supreme Administrative Court requested the Minister to provide it with the case file within thirty days. It appears that the Minister did not comply with this order. However, the Minister started examining the merits of the applicant's case and made several requests to various authorities asking them for documents.

12. On 20 May 2004 the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny*), to which the case was transferred, informed the applicant that despite its repeated requests the Minister had not complied with the order to provide the case file. The applicant was advised that she could therefore apply for a fine to be imposed on the Minister.

13. On 4 June 2004 the Minister gave a decision in which he stayed the proceedings. The applicant lodged an appeal in which she asked for the decision to be reconsidered and the proceedings to be resumed.

14. On 23 June 2004 the applicant followed the Regional Administrative Court's advice and applied to have a fine imposed on the Minister.

15. On 3 August 2004 the Warsaw Regional Administrative Court dismissed the applicant's complaint about the Minister's inactivity. The court found that since the Minister had stayed the proceedings the inactivity had ceased to exist. The applicant's lawyer lodged a cassation appeal against this decision with the Supreme Administrative Court. However, it was rejected on 8 October 2004 as the applicant's lawyer failed to pay court fees for the appeal.

16. After the decision of 3 August 2004, the applicant withdrew her application for the imposition of a fine, and on 17 September 2004 the Warsaw Regional Administrative Court discontinued the relevant proceedings.

17. On 6 April 2005 the Minister resumed the proceedings.

18. On 18 November 2005 the Minister of Agriculture gave a decision. He annulled the 1948 decision and returned a part of the property to the applicant.

19. On 7 December 2005 the Doroszkowski Agriculture Co-operative, which has been using the land in question, joined the proceedings as a party and lodged an appeal against the decision.

20. On 22 May 2006 the Minister upheld its decision of 18 November 2005. The Doroszkowski Agriculture Co-operative lodged an appeal against the decision.

21. On 11 October 2006 the Regional Administrative Court gave a judgment. It quashed the impugned decision of 22 May 2006 finding that the co-operative had no standing in the proceedings. The Doroszkowski Agriculture Co-operative appealed.

22. The proceedings are pending before the Supreme Administrative Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. 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.

24. 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 (“the 1995 Act”) as in force at the material time, a complaint with the Supreme Administrative Court against the authority's failure to give a decision.

25. 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.

26. 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.

27. On 15 May 2000 the Supreme Administrative Court gave a judgment in a case IV SAB 143/99 in which it held as follows:

“No matter how substantive was the delay in dealing with the case, a decision to stay the administrative proceedings means that the inactivity of an authority ceases to exist and that the [Supreme Administrative Court] cannot allow a complaint about the inactivity and order the authority to issue a decision within a given time-limit.”

28. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

29. 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...”

30. The Government contested that argument.

31. The period to be taken into consideration began on 29 November 2001 and has not yet ended. It has thus lasted so far almost 6 years.

A. Admissibility

32. The Government submitted that the applicant had not exhausted remedies available under Polish law in respect of excessive length of administrative proceedings. They argued that the applicant had a possibility of lodging with the Polish civil courts a claim for compensation for damage caused by the excessive length of the administrative proceedings before the Minister of Agriculture under Article 417 of the Civil Code. The Government also submitted that the applicant had failed to lodge an appeal with the Supreme Administrative Court against the decision of 3 August 2004 of the Regional Administrative Court.

33. The applicant did not comment on those arguments.

34. 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, *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003, and for administrative proceedings *Boszek v. Poland*, no. 4054/03, § 35, 5 December 2006). The Court sees no grounds on which to depart from these findings in the present case.

35. Secondly, the Court notes that the applicant lodged a complaint about the inactivity of the Minister of Agriculture in accordance with the domestic law (see paragraph 10 above). The complaint was dismissed by the Regional Administrative Court on 3 August 2004. This remedy was considered by the Court as designed to accelerate the process of obtaining an administrative decision enabling the applicant to put the issue of the length of the proceedings in question before the national authorities and to seek a decision terminating those proceedings “within a reasonable time” (see *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002, *Mazurek v. Poland* (dec), no. 57464/00, 7 September 2004 and *Kołodziej v. Poland* (dec), no 47995/99, 18 October 2005).

36. The Court also notes that the applicant failed to appeal against the Regional Administrative Court's decision of 3 August 2004 in compliance with procedural requirements. However, as explained by the Regional Administrative Court in the reasoning of its decision dismissing the applicant's complaint about inactivity, since the administrative proceedings had been stayed by the Minister, the inactivity of the Minister ceased to exist and the court could not oblige him to give a decision within a new time-limit. This interpretation of the domestic law reflects the case-law of the Supreme Administrative Court (see paragraph 27 above). The Court further notes that the Government's objection is confined to a mere statement that the applicant should have nevertheless lodged a complaint with the Supreme Administrative Court without any argument as to whether such complaint could possibly succeed. The Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). In the particular circumstances of the case, regard being had to the above-mentioned case-law of the Supreme Administrative Court, the Court finds that the Government's objection has not been substantiated.

37. The Court concludes that, having exhausted the available remedy provided by domestic law, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation. Accordingly, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

38. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It considers 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).

41. 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. Taking into account what was at stake for the applicant in the domestic proceedings and her age, almost six years of proceedings to obtain redress must be considered a very considerable period (see *Halka and Others v. Poland*, no. 71891/01, § 37, 2 July 2002). 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

42. 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

43. The applicant claimed 1,000,000 Polish zlotys (PLN) in respect of pecuniary and PLN 150,000 for non-pecuniary damage.

44. The Government contested these claims and considered them exorbitant.

45. 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 must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her 3,000 euros (EUR) under that head.

B. Costs and expenses

46. The applicant also claimed PLN 2,000 for the costs and expenses incurred before both the domestic courts and the Court.

47. The Government contested the claims and submitted that only costs actually incurred by the applicant before the Court should be taken into consideration.

48. 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 and considers it reasonable to award the applicant, who was not represented before the Court by a lawyer, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

49. 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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) for 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 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President