



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

FOURTH SECTION

CASE OF WESOŁOWSKA v. POLAND

(Application no. 17949/03)

JUDGMENT

STRASBOURG

4 March 2008

FINAL

04/06/2008

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 *Wesołowska v. Poland*,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Stanislav Pavlovski,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 17949/03) 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 Jarosława Wesołowska (“the applicant”), on 22 May 2003. She was represented before the Court by Ms B. Rojek, a lawyer 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 27 March 2006 the President of the Fourth Section 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.

THE FACTS**I THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1921 and lives in Olsztyn.

5. In June 1948 the applicant’s late husband inherited part of the “Kowalewko” property, located in Dąbrowa, from its previous owner W.P.

6. On 20 March 1948 the expropriation commission prepared a survey report according to which the property consisted of 45 hectares of arable land.

7. On 4 June 1948 another survey report was adopted according to which the “Kowalewko” property consisted of 53.13 hectares of arable land. The commission decided that the findings of the report of 20 March 1948 were erroneous, as part of the property had been flooded and had been considered in the earlier report to be swamps and not arable land.

8. By an administrative decision of the Warsaw Regional Office (*Urząd Wojewódzki*) of 3 September 1948 the property was expropriated pursuant to provisions of the Decree of 6 September 1944 on Agrarian Reform (“the 1944 Decree”).

9. On 16 October 1948 this decision was confirmed by the Minister of Agriculture, who upheld the findings of fact of the expropriation commission as to the surface area of the property concerned.

10. On 5 January 1993 the applicant lodged with the Ministry of Agriculture an application to have the expropriation decision declared null and void. The applicant maintained that the property should not have been subject to expropriation within the framework of the agrarian reform law as it did not attain the minimum threshold of 50 hectares of arable land. She referred to records dated 11 September 1948 and 11 January 1949 relating to the property.

11. On 15 November 1993 the applicant submitted the relevant documents in support of her claim.

12. On 9 December 1993 the Minister informed the applicant that her application would be examined towards the end of 1994.

13. On 21 December 1993 the applicant complained to the Cabinet Office about the inactivity of the Ministry of Agriculture and requested a speedy examination of her case.

14. On 7 January 1994 the Cabinet Office referred the complaint to the Ministry of Agriculture.

15. On 14 January 1994 the Minister of Agriculture requested the Ciechanów Regional Office to submit information concerning the current owners and possessors of the “Kowalewko” property.

16. On 28 March 1994 the Ciechanów Regional Office submitted the requested information.

17. On 9 September 1994 the applicant lodged a complaint with the Supreme Administrative Court about the failure of the Minister to issue a decision in her case.

18. By a judgment of 19 December 1994 the Supreme Administrative Court ordered the Minister of Agriculture to issue a decision concerning the applicant’s application within two months from the date of the judgment.

19. On 28 March 1995 the Minister decided to stay the proceedings on the grounds that the applicant had not submitted evidence required in support of her claim. The applicant appealed to the Supreme Administrative Court arguing that she had already submitted the relevant documents on 15 November 1993.

20. On 18 June 1996 the Supreme Administrative Court quashed the Minister's decision to stay the proceedings.

21. On 4 December 1996 the applicant again complained to the Supreme Administrative Court about the inactivity of the Minister.

22. On 26 March 1997 the Minister refused to declare null and void the decision of 1948. On 7 May 1997 the Minister upheld the decision of 26 March 1997. The applicant appealed to the Supreme Administrative Court.

23. On 9 April 1997 the Supreme Administrative Court rejected the applicant's complaint of 4 December 1996 about the inactivity of the Minister, since the Minister had already issued a decision on 26 March 1997.

24. On 3 February 1999 the Supreme Administrative Court quashed the Minister's decision of 7 May 1997. The court found that the Minister had not properly examined all relevant evidence in the case.

25. On 20 April 1999 the applicant complained to the Cabinet Office about the inactivity of the Minister of Agriculture. On 5 May 1999 the Cabinet Office replied that the Minister had taken steps to obtain information concerning the property. On 14 June 1999 the Cabinet Office transferred the applicant's reply to the Ministry of Agriculture.

26. On 30 June 1999 and 12 December 1999 the applicant inquired about her case.

27. On 10 April 2000 the applicant lodged a fresh complaint with the Supreme Administrative Court about the failure of the Minister to issue a decision in her case (under section 17 of the Supreme Administrative Court Act).

28. By a judgment of 15 February 2001 the Supreme Administrative Court ordered the Minister of Agriculture to issue a decision within one month from the date of the judgment. The court noted that seven years had passed since the applicant had lodged her motion with the Ministry and no decision on the merits had been delivered.

29. On 12 March 2001 the Minister of Agriculture issued a decision refusing to institute proceedings for annulment of the expropriation decision on the grounds that the applicant had not proved that she had a title to the property.

30. The Minister upheld the decision on 23 April 2001. The applicant appealed to the Supreme Administrative Court.

31. On 21 January 2002 the Supreme Administrative Court quashed both decisions. The court found that the decisions had been issued in flagrant breach of administrative procedure and were inconsistent with the evidence obtained in the case. The court criticised the Minister for not complying with the instructions and legal opinion included in the previous judgments of the Supreme Administrative Court. Further, the court observed that in its judgment of 3 February 1999 it had quashed only the decision of 7 May

1997; consequently, the decision of 26 March 1997 remained valid and the Minister should have replied to the applicant's appeal instead of issuing new decisions. Accordingly, the Minister could not have issued a decision refusing to institute the proceedings for annulment, since a decision on the merits had already been delivered.

32. On 28 May 2004 the Minister refused to declare the decision of 1948 null and void, upholding the decision of 26 March 1997.

33. On 2 December 2004 the Regional Administrative Court quashed the Minister's decisions of 28 May 2004 and 26 March 1997. It observed that the Minister had still not complied with the court's instructions; in particular the Minister had not allowed other heirs of W.P. (indicated by the applicant) to take part in the proceedings, although the Minister was clearly obliged to do so by the Supreme Administrative Court's judgment of 21 January 2002.

34. On 9 August 2005 the applicant again lodged a complaint with the Regional Administrative Court about the failure of the Minister to issue a decision (under the provisions of the Law on Procedure before Administrative Courts).

35. By a judgment of 5 December 2005 the Regional Administrative Court ordered the Minister of Agriculture to issue a decision within one month from the date of the judgment. The court noted that the Minister had not taken any action in the case since the court's judgment of 2 December 2004. Moreover, the authorities had summoned the applicant to complete unnecessary formalities, such as providing the address of a person whose death certificate had been included in the case file.

36. On 24 June 2006 the Minister of Agriculture stayed *ex officio* the proceedings for annulment and requested the parties to institute court proceedings to determine entitlement to the estate of a certain J.W.P. (one of the parties to the proceedings who had died).

37. On 18 January 2007 the Minister upheld the decision.

38. On 14 June 2007 the Regional Administrative Court quashed both decisions of the Minister.

39. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Inactivity of the administrative authorities

40. Article 35 of the Code of Administrative Procedure lays down time-limits ranging from one month to two months for dealing with a case pending before an administrative authority. If these time-limits have 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. Pursuant to Article 37 § 1, if the case has not been handled

within the time-limits referred to in Articles 35 and 36, a party to administrative proceedings can lodge an appeal to the higher authority, alleging inactivity. In cases where the allegations of inactivity are well-founded, the higher authority fixes a new term for handling the case and orders an inquiry in order to determine the reasons for the inactivity and to identify the persons responsible for the delay. If need be, the authority may order that measures be applied to prevent future delays.

41. On 1 October 1995 the Law of 11 May 1995 on the Supreme Administrative Court (“the 1995 Act”) came into force. According to the provisions of section 17 of the 1995 Act, a party to administrative proceedings may, at any time, lodge with the Supreme Administrative Court a complaint about inactivity on the part of an authority obliged to issue an administrative decision.

Section 26 of the Law provides:

“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.”

42. Pursuant to section 30 of the Law, the decision of the Supreme Administrative Court ordering an authority to put an end to its inactivity is legally binding on the authority concerned. If the authority has not complied with the decision, the court may, under section 31 of the 1995 Act, impose a fine on it and may itself give a ruling on the right or obligation in question.

43. Under the same provision, a party to the proceedings who sustains damage as a result of a failure of the administrative body to act in compliance with the judgment of the Supreme Administrative Court given under section 17 of the Act, is entitled to claim compensation from the administrative authority concerned, according to principles of civil liability as set out in the Civil Code. Such a claim should be first lodged with that authority. A decision on the compensation claim should be taken by that administrative authority within three months. If the authority concerned fails to give a ruling in this respect within this time-limit, or if the party is not satisfied with the compensation granted, a compensation claim against the administrative body can be lodged with a civil court.

44. The 1995 Act was repealed and replaced by the Law of 30 August 2002 on Procedure before Administrative Courts (“the 2002 Act”) which entered into force on 1 January 2004. Section 3 § 2(8) and section 149 of the 2002 Act contains provisions analogous to section 17 and 26 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 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. Section 154 provides for

a possibility of lodging a compensation claim against the administrative authority concerned if a party to the proceedings sustained damage as a result of a failure of that authority to act in compliance with the judgment of the administrative court. The principles of the Civil Code shall apply accordingly.

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

1. Provisions applicable before 1 September 2004

45. 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.”

46. 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

47. 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. It introduced a new Article 417¹. Article 417¹ § 3 provides for a possibility of lodging a compensation claim for damages resulting from the unreasonable length of administrative proceedings after it was formally determined in the relevant proceedings that there had been an unlawful failure to issue an administrative decision within the relevant time-limits.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

48. 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...”

49. The Government contested that argument.

50. The Court notes that the proceedings commenced on 5 January 1993 when the applicant lodged with the Ministry of Agriculture an application to have the expropriation decision declared null and void. 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. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question has not yet ended. It has thus lasted 14 years and nearly 9 months.

A. Admissibility

1. The Government’s plea of non-exhaustion of domestic remedies

51. The Government acknowledged that the applicant had lodged several complaints about inactivity of the Minister with the administrative courts. However, they argued that the applicant had not exhausted all remedies available under Polish law.

52. Firstly, the Government submitted that the applicant could have requested the administrative court to impose a fine on the Minister of Agriculture for the non-enforcement of that court’s judgments. They produced, as an example, a judgment of the Supreme Administrative Court of 18 February 2003 delivered in another case, imposing a fine of PLN 10,000 on the Minister of Agriculture for failure to issue a decision within the time-limit set by the court.

53. The applicant submitted that the imposition of a fine would not have guaranteed a more effective handling of the case, in particular in the light of the fact that the proceedings had been pending for over fourteen years and during that time the examination of the case had been supervised by several different ministers.

54. Secondly, the Government submitted that it was open to the applicant to have recourse to the remedy provided for by section 31 §§ 4 and 5 of the Supreme Administrative Court Act and later by section 154 §§ 4 and 5 of the Law on Procedure before Administrative Courts. They argued that under these provisions, as applicable at the material time, the applicant could have claimed compensation for damage allegedly sustained as a result of non-enforcement of the judgment upholding her complaint about inactivity of the Minister.

55. The Government further argued that the applicant had a possibility of seeking redress for the alleged damage resulting from the Minister's inactivity by lodging a compensation claim directly with the civil courts under Article 417 of the Civil Code and, after 1 September 2004, under Article 417¹ § 3 of the Civil Code.

56. The applicant contested these arguments. She argued, *inter alia*, that according to the relevant provisions the award of compensation depended on the aggrieved party proving that she/he had sustained pecuniary loss and that there was a causal link between the loss and the conduct of the administrative authorities for which they could be held responsible. According to the applicant, it would be extremely difficult to prove that such a loss had been sustained solely as a result of the excessive length of the proceedings.

2. The Court's assessment

57. The Court reiterates at the outset that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52).

58. The Court further reiterates that Article 35 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; *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII; *Skawińska v. Poland* (dec.), no. 42096/98, 4 March 2003).

59. The Court notes that the Government have failed to substantiate their argument that a fine would have had a practical effect on the proceedings.

Although they referred to a judgment of 18 February 2003, the Government did not provide any information as to the effect that that judgment had had on the length of the proceedings in question. Thus, the Court cannot see how the imposition of a fine on the Minister could have had an impact on the instant proceedings, and it is obviously not capable of redressing the violation. It follows that this part of the Government's objection must be rejected.

60. As regards the remedies provided by Polish civil law the Court notes that it has already examined whether a compensation claim in tort as provided by 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 the relevant 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, *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003, and for administrative proceedings *Boszko 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.

61. The Court further notes that according to Article 417¹ § 3 of the Civil Code no claim for damages resulting from the unreasonable length of administrative proceedings may arise unless it was formally determined that there had been an unlawful failure to issue an administrative decision within the relevant time-limits. The Court observes in this connection that the Government provided no evidence of any judicial practice to show that a claim for compensation based on Article 417¹ § 3 of the Civil Code was an effective remedy and have thus failed to substantiate their contention (see *Grabiński v. Poland*, no. 43702/02, § 74, 17 October 2006).

62. As to the compensation claim provided by the administrative provisions, the Court observes that that remedy addresses situations where damage has been sustained as a result of non-enforcement of a judgment upholding a complaint about inactivity of an administrative body. Thus, the success of such a claim depends on prior establishment of the existence of damage and not merely the fact that the proceedings had been unreasonably lengthy. No arguments have been advanced to show that this remedy was effective in the context of excessive length of administrative proceedings.

63. The Court further notes in the above connection that the Government's objection is confined to the mere statement that such a remedy is provided for by law. No further information as to relevant juridical practice has been furnished. In the absence of such information and having regard to the above-mentioned principle, the Court finds that the Government have failed to substantiate their contention that the remedy at issue is an effective one.

64. In any event, the Court also reiterates that, 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, in cases where the national law provides for several parallel remedies in various branches of law, the person concerned, after an attempt to obtain redress through one such remedy, must necessarily try all other means (see, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001).

65. The Court considers therefore that, having exhausted the possibilities available to him within the administrative procedure system, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Kaniewski v. Poland*, no. 38049/02, §§ 36-39, 8 November 2005).

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

67. 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

68. 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).

69. 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 *Zynger*, cited above).

70. 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. 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. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

71. Having regard to the applicant's allegation that despite her numerous complaints about inactivity of the Minister the impugned proceedings have been pending for over fourteen years, the Court considered it appropriate to

raise of its own motion the issue of Poland's compliance with the requirements of Article 13 of the Convention.

This provision provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

72. 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

1. The parties' submissions

73. The applicant argued that on several occasions she made use of the remedies available to her within the administrative procedure system but they had proved ineffective. She emphasised that despite the judgments of the administrative courts the proceedings were still pending before the Minister of Agriculture.

74. The Government maintained that the applicant had at her disposal the remedies to which they had earlier referred in their plea of inadmissibility on the ground of non-exhaustion of domestic remedies. They thus concluded that the applicant had an effective remedy as required under Article 13.

2. The Court's assessment

75. The Court recalls that it has already held, in the context of Article 13 and remedies for excessive length of proceedings, 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^o. 30210/96, § 158 *et seq.* ECHR 2000-X).

76. The Court has already found 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 2002). The same applies

to the analogous remedy introduced by sections 3 and 149 of the Law on Procedure before Administrative Courts.

77. The Court first observes that the applicant did not contest the availability of this remedy. She claimed, however, that in her case this remedy had proved ineffective (see paragraphs 71 and 73 above).

78. In this connection the Court reiterates that the existence of effective remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII; *Cocchiarella v. Italy* [GC], no. 64886/01, § 40, ECHR 2006-...).

79. The Court further notes that the applicant lodged several complaints about inactivity on the part of the Minister, invoking the administrative provisions in force at the relevant time (see paragraphs 17, 21, 27 and 34 above). On each occasion the Supreme Administrative Court and the Regional Administrative Court found that the complaints had been well-founded, criticised the Minister and ordered the authorities to issue a decision without any further delay (see paragraphs 18, 28 and 35 above).

80. Nevertheless the Ministry did not abide by the administrative courts' judgments and the impugned proceedings have been pending for nearly fifteen years, despite the successfully lodged complaints.

81. Examining the instant case in the light of the criteria laid down in its case-law the Court considers that the complaint about inactivity of administrative bodies, although in theory capable of accelerating the process of obtaining an administrative decision (see *Bukowski*, cited above), in practice did not satisfy the requisite criteria. Consequently, it cannot be regarded as an "effective" remedy within the meaning of Article 13 of the Convention.

82. Insofar as other remedies relied on by the Government are concerned, the Court has already found, when examining the Government's plea of non-exhaustion, that the Government had not proved their effectiveness in respect of excessive length of administrative proceedings (see paragraphs 51-63 above).

83. Accordingly, there has been a violation of Article 13 in the present case.

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

84. The applicant lastly complained under Article 1 of Protocol No 1 about her prolonged inability to assert her rights to the property in question. This provision provides 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.”

85. The Court observes that the domestic proceedings to determine the applicant’s claim are currently pending. Therefore, in so far as the applicant relies on Article 1 of Protocol No. 1 to the Convention, the Court considers that it would be premature to take a position on the substance of this complaint. The complaint must therefore be declared inadmissible for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention. In so far as the applicant complains about the length of those proceedings and its impact on her right to property, this matter has been addressed under Article 6 and no separate issue arises under Article 1 (see, for example, *Zanghi v. Italy*, Series A no. 194-C, § 23, *Di Pede v. Italy*, *Reports of Judgments and Decisions 1996-IV*, p. 17, § 35; *Szenk v. Poland* no. 67979/01, § 63).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed PLN 40,000¹ in respect of non-pecuniary damage.

88. The Government contested these claims.

89. The Court considers that the applicant must have sustained non-pecuniary damage and that it should award the full sum claimed.

B. Costs and expenses

90. The applicant, who received legal aid from the Council of Europe in connection with the presentation of her case, did not make additional claim for costs and expenses involved in the proceedings.

¹ Approx. EUR 11,200

C. Default interest

91. 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 complaints concerning the excessive length of the proceedings and lack of an effective remedy admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *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 11,200 (eleven thousand two hundred 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;

Done in English, and notified in writing on 4 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President