



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

FOURTH SECTION

CASE OF WILCZYŃSKI v. POLAND

(Application no. 35760/06)

JUDGMENT

STRASBOURG

18 March 2008

FINAL

29/09/2008

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 Wilczyński v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 26 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 35760/06) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Andrzej Wilczyński (“the applicant”), on 14 August 2006.

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

3. On 18 January 2007 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.

THE FACTS

I THE CIRCUMSTANCES OF THE CASE

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

1. Main administrative proceedings

5. On 9 July 1998 demarcation proceedings involving the applicant’s land were instituted by the Head of the District Office of the Town of Dębica (*Kierownik Urzędu Rejonowego Miasta Dębica*).

6. On 1 January 1999 an administrative reform was introduced in Poland and the Mayor of the Czarna District (*wójt gminy Czarna*) became the competent body for examination of the demarcation proceedings. However, the District Office of the town of Dębica neither informed the Mayor about the proceedings nor transferred the case file to the Mayor.

7. On 16 August 2002 the Czarna District Office received another motion for instituting demarcation proceedings involving the applicant's land. The motion was transferred to the Mayor of the Czarna District.

8. On 14 October 2002 a second set of demarcation proceedings concerning the same piece of land was instituted by the Mayor of the Czarna District. Acting under Article 31 section 1 of the 1989 Geodetic and Cartographic Act (*ustawa z 1989 r. Prawo geodezyjne i kartograficzne*) the Mayor appointed a geodesist, Mr C.B., to conduct the demarcation proceedings. None of the parties to the proceedings informed the Mayor that the same proceedings had already been instituted in 1998.

9. On 24 January 2003 the Czarna District Office received the applicant's request for the adjournment of the demarcation proceedings because of his state of health. The appointed geodesist agreed to adjourn the proceedings and fixed the new date for 10 February 2003.

10. By letter of 31 January 2003 the Mayor of the Czarna District informed the applicant that due to the necessity of obtaining some additional information, the proceedings in respect of the applicant's motion for a stay of the demarcation proceedings and the exclusion of the geodesist C. B. had been adjourned until 11 February 2003.

11. On 11 February 2003 the Czarna District Office received the applicant's request for the adjournment of the demarcation proceedings fixed for 10 February 2003 because of the applicant's medical appointment at a hospital in Kraków. The applicant also requested that the conduct of the demarcation proceedings be adjourned until spring time. He submitted that, given his health problems, he could not take part in any demarcation proceedings conducted in winter.

12. Further, by letter of 12 February 2003 the Mayor of the Czarna District informed the applicant that due to the necessity of obtaining some additional information, the proceedings in the applicant's case had been adjourned once again until 4 March 2003.

13. On 14 February 2003 the applicant lodged a request with the Self-Government Board of Appeal to have the decision of 14 October 2002 declared null and void. The applicant submitted that the institution of the demarcation proceedings in 2002 was illegal as the same proceedings had already been instituted in 1998 and had not yet been terminated.

14. On 24 February 2003 the Self-Government Board of Appeal refused to examine the applicant's request of 14 February 2003 as it found that such a request was not available to the applicant.

15. On 7 March 2003, the applicant applied to the Self-Government Board of Appeal asking for a re-examination of his request of 14 February 2003.

16. On 9 April 2003 the demarcation proceedings that had been instituted on 9 July 1998 were discontinued at the request of another party. The applicant appealed to the Self-Government Board of Appeal against this decision.

17. On 22 April 2003 the Self-Government Board of Appeal re-examined the applicant's request of 14 February 2003 and dismissed it. The applicant lodged a complaint with the Regional Administrative Court.

18. On 5 June 2003 the Self-Government Board of Appeal quashed the decision of 9 April 2003 and remitted the case for reconsideration.

19. On 25 February 2005 the Regional Administrative Court (which had assumed the jurisdiction of the Supreme Administrative Court in the matter) dismissed the applicant's complaint against the decision of 22 April 2003. The applicant requested to have this judgment together with its written grounds served on him. He was requested by the Regional Administrative Court to pay court fees for receiving the written grounds of the judgment.

20. Subsequently, the applicant lodged several requests for exemption from court fees.

21. On 25 March 2005 the Regional Administrative Court refused to exempt the applicant from court fees. The applicant lodged an interlocutory appeal (*sprzeciw*) with the Regional Administrative Court.

22. On 10 June 2005 the Regional Administrative Court dismissed the applicant's interlocutory appeal. The applicant appealed against this decision.

23. On 18 October 2005 the Supreme Administrative Court dismissed the applicant's appeal.

24. On 10 May 2006 the Mayor's Office discontinued the proceedings instituted on 14 October 2002. In its reasoned grounds it justified its decision with reference to the Regional Administrative Court's refusal to "lend" the case file with the result that it could not be examined by the Mayor's Office. The applicant appealed.

25. On 25 July 2006 the Self-Government Board of Appeal quashed the decision of 10 May 2006.

26. On 17 January 2007 the Mayor discontinued the demarcation proceedings instituted on 14 October 2002.

27. On the same date the Mayor approved the demarcation border established by the geodesist C.B. in the course of the demarcation proceedings that has been instituted in 1998. The latter decision was not subject to appeal; however the party challenging the established border was entitled to request the Dębica District Court to examine the case. It results from the parties' submissions that the applicant availed himself of this

possibility. The proceedings before the Dębica District Court are still pending.

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

28. On 7 March 2003 the applicant lodged a complaint about the inactivity of the Mayor's Office with the Self-Government Board of Appeal.

29. On 23 April 2003 the Self-Government Board of Appeal discontinued the proceedings initiated by the applicant's complaint in view of the fact that the proceedings on the merits had been discontinued. The applicant lodged a complaint with the Supreme Administrative Court.

30. On 8 October 2003 the Supreme Administrative Court rejected the applicant's complaint against the decision of 23 April 2003 as it found that such complaint was not available in the applicant's case.

31. On an unknown date the applicant lodged another complaint about the inactivity of the Mayor's Office with the Self-Government Board of Appeal.

32. On 15 March 2006 the Self-Government Board of Appeal found the applicant's complaint well-founded and fixed a 30-day time limit for the administrative authorities to deal with the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Inactivity of administrative authorities

33. For a presentation of domestic law, see: *Kaniewski v. Poland*, n° 38049/02, 8 February 2006; *Koss v. Poland*, n° 52495/99, 28 March 2006.

2. Length of proceedings

34. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the Law of 17 June 2004 on complaints about a breach 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"), are stated 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 and the judgment in the case of *Krasuski v. Poland*, n° 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

35. 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...”

36. The Government contested that argument.

37. The period to be taken into consideration began on 9 July 1998 and has not yet ended. It has thus lasted 9 years and 6 months for 2 levels of jurisdiction.

A. Admissibility

38. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies available to him under Polish law, as required by Article 35 § 1 of the Convention. They maintained that from 17 September 2004, the date of entry into force of the 2004 Act, the applicant had a possibility of seeking redress for the damage resulting from the excessive length of proceedings before Polish courts, under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code.

39. Secondly, the Government submitted that another effective domestic remedy available to the applicant under section 17 of the Law of 11 May 1995 on the Supreme Administrative Court (“the 1995 Act”) was a complaint lodged with the Supreme Administrative Court concerning the inactivity of the Mayor of the Czarna District.

40. Further, the Government claimed 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 the applicant could have claimed compensation for damage sustained as a result of the non-enforcement of the judgment allowing his complaint under section 17 of the 1995 Act.

41. The applicant contested the Government’s arguments.

42. The Court notes that the applicant lodged two complaints alleging inactivity on the part of the administrative authorities with the respective higher authority, as provided by Article 37 § 1 of the Polish Code of Administrative Procedure of 1960. His second complaint was found to be

well-founded by the Self-Government Board of Appeal and a time-limit was fixed for dealing with the applicant's case (see paragraph 32 above). The remedy the applicant used was therefore adequate and sufficient to afford him redress in respect of the alleged breach and he cannot be reproached for not having lodged a further complaint about inactivity with the Supreme Administrative Court in order to fulfil his obligation under Article 35 § 1 (see, *Kaniewski*, cited above, § 36).

43. The Court further 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, *Kaniewski*, cited above, § 37).

44. The Court considers therefore that, having availed himself of one of 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 civil or another form of administrative action for compensation.

45. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

46. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions before the Court

47. 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.

48. The Government further submitted that the applicant's case was very complex because of uncertainty as to the validity and legal effects of the proceedings instituted on 14 October 2002; the change of jurisdiction after the proceedings had been instituted in 1998; and problems with gaining access to the case file due to the fact that the applicant had filed several interlocutory appeals and complaints with various administrative organs.

49. As to the conduct of the applicant, the Government submitted that the applicant made extensive use of his procedural rights by filing innumerable motions, complaints and appeals. By filing simultaneously

several appeals with different organs the applicant had significantly contributed to the delay in the proceedings. What is more, in the early stages of the case, after 14 October 2002 the applicant took part in the proceedings and lodged several motions concerning, for example, their stay, the exclusion of the geodesist and the adjournment of the demarcation proceedings. Finally, the Government stressed that the applicant, although he was informed about the institution of the proceedings by the Head of the District Office of the Town of Dębica in 1998, failed to inform the Mayor about this fact immediately.

50. As regards the conduct of the domestic authorities, the Government maintained that they had acted with due diligence.

2. *The Court's assessment*

51. 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], n°. 30979/96, § 43, ECHR 2000-VII).

52. 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).

53. 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.

54. In particular, the Court cannot accept the Government's argument that the applicant's case was very complex. It results from the case file and the parties' submissions that the proceedings in question were in fact standard demarcation proceedings. In fact, the Court notes that before the institution of the second set of demarcation proceedings in 2002, the original proceedings had already been pending for four years without any decision being taken.

55. Moreover, the Court cannot accept the Government's argument that the applicant was responsible for unduly prolonging the proceedings by lodging several motions for the adjournment of the demarcation proceedings during the period 2002/2003. Even if the Court was to accept that the applicant had contributed to certain delays by making use of his procedural rights, it considers that that of itself cannot justify the overall length of the proceedings of nine years and six months.

56. In respect of the conduct of the administrative authorities, the Court reiterates that between 9 July 1998 and 14 October 2002 no decision was taken in the applicant's case. In addition, it took the administrative authorities more than four years and three months to deal with the question of the validity and legal effects of the decision of 14 October 2002.

57. Having examined all the material submitted to it and 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.

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

II APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 2,000 euros (EUR) in respect of pecuniary damage and 10,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government contested these claims.

62. 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 applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

63. The applicant also claimed compensation for the costs and expenses incurred in connection with the proceedings before the domestic courts and the Court.

64. The Government left the matter to the Court’s discretion.

65. 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 applicant, who was not represented by a lawyer, the sum of EUR 100 under this head.

C. Default interest

66. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention EUR 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) in respect of costs and expenses, 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 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 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President