



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

FOURTH SECTION

CASE OF CIEŚLAK v. POLAND

(Application no. 32098/05)

JUDGMENT

STRASBOURG

3 June 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 Cieślak 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 13 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 32098/05) 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 Marianna Cieślak (“the applicant”), on 10 August 2005.

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

3. On 27 September 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, Ms Marianna Cieślak, is a Polish national who was born in 1923 and lives in Bobolice.

A. Proceedings for expropriation and civil proceedings for repossession

5. The applicant's mother-in-law died on 6 October 1975. During the proceedings for division of inheritance, on 30 October 1980 the Mayor of Warsaw's Wola District (*Naczelnik Dzielnicy Warszawa Wola* – hereafter, “the Mayor”) expropriated part of the land belonging to the applicant's family.

6. On 22 February 1981 the applicant's husband inherited the plot of land in Warsaw. On 17 August 1988, after his death, the applicant became the co-owner of the land.

7. The applicant instituted proceedings for annulment of the Mayor's decision. On 22 March 1991 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) decided that the expropriation decision had been taken in flagrant infringement of the law.

8. On 29 February 1996 the Warsaw Governor's Office (*Urząd Wojewódzki*) quashed the Mayor's decision and dismissed an application by the Polish Allotment Association (*Polski Związek Działkowy*) for expropriation of the land. The Association appealed. On 20 January 1998 the Supreme Administrative Court upheld the Warsaw Governor's Office's decision.

9. On 10 March 1995 the applicant and two other plaintiffs lodged with the Warsaw District Court (*Sąd Rejonowy*) a claim for repossession of the expropriated land. The case was transmitted to the Warsaw Regional Court (*Sąd Okręgowy*).

10. On 21 November 2000 the Regional Court gave a preliminary judgment (*wyrok wstępny*). It decided that the property should be returned, and the parties should retain possession of the land until financial claims had been completed. The applicant appealed.

11. On 18 January 2002 the Warsaw Court of Appeal (*Sąd Apelacyjny*) quashed the Regional Court's judgment on the right to retain possession until the completion of financial claims.

12. On 25 February 2004 the Regional Court gave judgment. It decided that the property should be returned. The Polish Allotment Association appealed.

13. On 20 December 2005 the Court of Appeal dismissed the appeal. On 15 June 2006 it issued a writ of enforcement.

B. Proceedings under the 2004 Act

14. On 22 January 2005 the applicant lodged with the Warsaw Court of Appeal a complaint under the provisions of the 17 June 2004 Act on complaints about a breach of the right to a fair trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w*

postępowaniu sądowym bez nieuzasadnionej zwłoki – “the 2004 Act”), which entered into force on 17 September 2004.

15. On 23 March 2005 the Court of Appeal dismissed the applicant’s complaint. The court held that the 2004 Act had legal effect from its date of entry into force. It found that during the relevant part of the proceedings there had been no inactivity or undue delay on the part of the domestic court. In that connection, the court held that there had been no breach of the right to a fair trial within a reasonable time in the period after 17 September 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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 the 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

17. 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...”

18. The Government contested that argument.

19. The period to be taken into consideration began on 10 March 1995 and ended on 20 December 2005. It thus lasted ten years, nine months and fourteen days for two levels of jurisdiction.

A. Admissibility

20. 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

21. 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).

22. 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). Furthermore, the Court observes that, in dismissing the applicant's complaint that the proceedings in her case had exceeded a reasonable time, the Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

23. 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 1 OF PROTOCOL No. 1 TO THE CONVENTION

24. The applicant also complained that the length of the proceedings had infringed her right to peaceful enjoyment of her possession, as guaranteed by Article 1 of Protocol No. 1.

25. The Court notes that this complaint is linked to the one examined above and must therefore be declared admissible.

26. However, in view of the circumstances of the case and the conclusion reached in paragraph 23 above, the Court considers it unnecessary to determine also the complaint based on Article 1 of Protocol No. 1 (see *Zanghi v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant claimed 43,306 Polish zlotys (“PLN” – equivalent to 12,000 euros (EUR)) in respect of pecuniary damage and PLN 13,000 (EUR 3,650) in respect of non-pecuniary damage.

29. The Government contested those claims.

30. 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 3,650 in respect of non-pecuniary damage.

B. Costs and expenses

31. The applicant also claimed 524,35 PLN (EUR 150) for the costs and expenses incurred before the Court.

32. The Government contested the claim.

33. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the sum claimed should be awarded in full.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine separately the complaint under Article 1 of Protocol No. 1 to 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 according to Article 44 § 2 of the Convention, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 3,650 (three thousand six hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 150 (one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Lawrence Early
Registrar

Nicolas Bratza
President