



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

FOURTH SECTION

CASE OF RATYŃSKA v. POLAND

(Application no. 12253/03)

JUDGMENT

STRASBOURG

21 October 2008

FINAL

21/01/2009

This judgment may be subject to editorial revision.

In the case of Ratyńska 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*

Having deliberated in private on 30 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 12253/03) 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 Barbara Ratyńska (“the applicant”), on 3 April 2003.

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

3. On 17 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 was born in 1931 and lives in Warszawa.

A. Background of the case

5. The applicant’s testators owned a piece of real property in Warsaw. By virtue of the 1945 Decree on the Ownership and Use of Land in Warsaw (*Dekret o własności i użytkowaniu gruntów na obszarze m. st. Warszawy*)

all land in Warsaw was nationalised. The applicant's testators filed an application for the grant of a right of perpetual use of the real property. On 6 July 1972 the Board of the Warsaw National Council (*Prezydium Rady Narodowej*) refused the application. On 12 February 1973 the competent Minister upheld that decision. Simultaneously, the applicant's testators lodged a claim for compensation. On 22 November 1972 the Board of the Warsaw National Council dismissed the claim as according to the 1957 Law on exclusion of detached houses and apartments in housing cooperatives' buildings from public management (*Ustawa o wyłączeniu spod publicznej gospodarki lokalami domów jednorodzinnych oraz lokali w domach spółdzielni mieszkaniowych*), the real property in question was not a detached house. Consequently, the 1965 Cabinet Resolution allowing for nationalised detached houses to be compensated was not applicable. The applicant's testators appealed unsuccessfully against this decision.

B. Administrative proceedings for compensation

6. On 24 February 1997 the applicant instituted administrative proceedings against the State Treasury for compensation for nationalised family real property.

7. It appears that on several occasions between 1997 and 2000 the applicant lodged complaints, alleging inactivity on the part of the first-instance authority.

8. On 25 February 2000 the Mayor of Warsaw District informed the applicant that the administrative proceedings were in their final stage and in the near future a decision would be issued ordering valuation of the real property. Consequently, the assessment of the amount of compensation would then be possible.

9. On an unspecified date the applicant lodged a complaint about inactivity on the part of the Mayor of the Warsaw District with the Supreme Administrative Court.

10. On 17 November 2000 the Supreme Administrative Court admitted that the proceedings in question had been lengthy and ordered the Mayor to deal with the case within two months of the judgment being served on the parties. The court stated that the relevant organ had not only failed to issue any decision as to the merits during the proceedings in question but had also failed to justify its delay.

11. On 9 February 2001 the Warszawa District Governor discontinued the relevant proceedings. He stated that the legal regime governing compensation for the expropriation of detached houses had not changed since 1957. Therefore, if a valid decision had been taken in 1972, a re-examination of the case between the same parties and about the same claim was inadmissible. The applicant appealed against this decision.

12. On 18 March 2002 the Mazowiecki Governor dismissed the applicant's appeal concluding in line with the contested District Governor's decision.

13. On 27 November 2003 the Supreme Administrative Court dismissed the applicant's cassation appeal.

C. Administrative proceedings for restoration of the plot of land

14. On 21 December 2004 the applicant instituted administrative proceedings in order to have a plot of land on which the real property was situated restored to her.

15. It results from the case file that the relevant proceedings are still pending before the Minister of Infrastructure.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. For a presentation of the domestic law concerning inactivity on the part of administrative authorities, see: *Kaniewski v. Poland*, no. 38049/02, 8 February 2006, and *Koss v. Poland*, no. 52495/99, 28 March 2006.

THE LAW

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

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 24 February 1997 and ended on 27 November 2003. It thus lasted 6 years and 9 months for three levels of jurisdiction.

A. Applicability of Article 6 § 1

20. The applicability of Article 6 § 1 to proceedings concerning claims arising against the background of the Decree on the Ownership and Use of

Land in Warsaw of 26 October 1945 has already been determined by the Court (*Potocka and Others v. Poland* (dec.), no. 33776/96, 6 April 2000; *Koss v. Poland*, no. 52495/99, § 29, 28 March 2006). The Government have not contested this in the instant case.

B. Admissibility

21. 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.

C. Merits

22. 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).

23. 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).

24. 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. The Court observes, in particular, that there was almost a 3-year period of inactivity in the proceedings before the Mayor of the Warsaw District between the date the applicant lodged her claim and the first decision issued in her 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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS FOR COMPENSATION

26. The applicant also complained under Article 6 § 1 of the Convention about unfairness of the proceedings for compensation.

27. The Court observes that the applicant’s family instituted two sets of proceedings for compensation.

28. The first set of proceedings was terminated in 1972 i.e. before 10 October 1994 when Protocol No. 1 became effective with regard to

Poland. It follows that in this part the applicant's complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

29. As to the second set of proceedings for compensation, the Court notes that it was validly discontinued in 2003 on the basis of the *res iudicata* principle. Domestic authorities disallowed the applicant's claim as the parties, subject matter and the legal regime governing compensation for expropriation were substantially identical to the parties, subject matter and the legal regime of the proceedings validly terminated in 1972.

30. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

31. In the present case the applicant did not allege any particular failure to respect his right to a fair hearing on the part of the relevant courts and authorities. Indeed, her complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly and considers that there is nothing to warrant a departure from the domestic authorities' findings.

32. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

33. Lastly, the applicant complained under Article 1 of Protocol No. 1 to the Convention that the nationalised real property owned by her family was not restored to them.

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.”

34. The Court notes that the proceedings are still pending (see paragraph 15 above).

It follows that this complaint is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 570,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

37. The Government did not express an opinion on the matter.

38. 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 considers that the applicant must have sustained non-pecuniary damage such as distress and frustration on account of the protracted length of the proceedings, which cannot be sufficiently compensated by the above finding of a violation. Making its assessment on an equitable basis the Court awards the applicant 1,800 euros under that head.

B. Costs and expenses

39. The applicant did not make any claim for costs and expenses.

C. Default interest

40. 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 complaint concerning the excessive length of the proceedings for compensation admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings for compensation;
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 1,800 (one thousand eight 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President