



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

FOURTH SECTION

CASE OF SKIBIŃSCY v. POLAND

(Application no. 52589/99)

JUDGMENT
(Just Satisfaction)

STRASBOURG

21 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Skibiński 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,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi, *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. 52589/99) 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 two Polish nationals, Ms Urszula Skibińska and Mr Henryk Skibiński (“the applicants”), on 2 March 1999.

2. In a judgment delivered on 14 November 2006 (“the principal judgment”), the Court held that there had been a violation of Article 1 of Protocol No. 1 of the Convention. It held that the applicants’ right to the peaceful enjoyment of their property had been breached since the land they owned had been designated for expropriation at some undetermined future date. As a result, they had been refused final construction permits and under domestic legislation were not entitled to any compensation for this interference with their ownership.

3. Under Article 41 of the Convention the applicants sought just satisfaction for pecuniary damage in the amount of 1,160,500 Polish zlotys (PLN).

4. The applicants further sought compensation for non-pecuniary damage in the sum of PLN 200,000¹.

5. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary and non-pecuniary damage, the Court reserved it. However, it awarded the applicants EUR 1,647 (one

¹ Approximately EUR 50,000.

thousand six hundred and forty seven euros) in respect of costs and expenses.

6. The Court further invited the Government and the applicants to submit, within six months of the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they might reach (*ibid.*, point 2 of the operative provisions).

7. The applicants and the Government each submitted observations.

THE LAW

8. 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

1. Pecuniary damage

9. In their submissions prior to the adoption of the principal judgment the applicants sought compensation in the amount of PLN 1,160,500.

This amount was broken down as follows:

- (i) PLN 8,635 in respect of real estate taxes which the applicants had had to pay for the property from 1995 until the end of 2004;
- (ii) PLN 9,000 in respect of reimbursement of maintenance costs of the property;
- (iii) PLN 100,000 in respect of material damage which the property sustained during the material time;
- (iv) PLN 5,000 in respect of damage resulting from repeated burglaries at the property;
- (v) PLN 837,884 corresponding to the price which the applicants could have obtained if their plan to have their property divided into smaller construction plots and sold to private parties had been brought to fruition, with the capital thus obtained being paid into their bank account plus interest accruing from February 1995 to July 2003.

10. After the principal judgment had been adopted, the Government argued that the applicants had not suffered any pecuniary damage. In any event, the Court should take into consideration, when fixing the amount of just satisfaction, that it had found that the interference complained of had been both lawful and pursued a legitimate aim. In the light thereof, any

compensation to be awarded should be limited to the actual damage. They further referred to the Court's judgments in which it had accepted that the need for protection of the State's financial security in periods of transition of its political and economic system could justify reduction or even a total lack of compensation for damages suffered by the applicants (*Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, ECHR 2005-VI). Such considerations, in the Government's view, were also relevant for the purposes of the present case. They further submitted that also the temporary character of the restrictions imposed on the applicants, which had come to an end on 31 December 2003, supported a conclusion that the applicant's claim for pecuniary damages should be dismissed.

11. The Government further submitted that the restrictions complained of applied only to a part of the applicants' property. There had been a number of plots which remained unaffected.

12. The Government argued that in any event the applicants' rights were only slightly affected by the measures complained of. Under the 1979 local land development plan certain plots were designated for agricultural purposes. The adoption of the amendments to that plan in 1994 did not affect these plots. As to the land designated for construction purposes, the actual right to start the construction could only be derived from the initial approvals for developments (*decyzja o warunkach zabudowy*). The applicants obtained such approvals on 17 December 1991, but they were valid only for a period of one year. The applicants failed to start any building projects during this period. Hence, there were no grounds on which to accept that they had suffered any pecuniary damage as a result of the adoption of the 1994 amendments to the land development plan.

13. The Government further submitted that throughout the period concerned the applicants' land could have been used for commercial or other business operation not requiring any building projects. Further, the applicants were able to continue to use parts of their real estate for agricultural purposes.

14. As to the scope of damage which should be covered by just satisfaction for the violation of the Convention, the applicants submitted that the current legislation, the 2003 Local Planning Act, provided that entitlement to compensation arose immediately when a given property was reserved for a future expropriation. In their case not only had they not had any right to compensation, but this state of affairs had lasted for nine years. This factor necessarily had to be taken into account when fixing just satisfaction, which should also include lost profits.

15. The applicants further submitted that their claim for just satisfaction related only to those plots which had been affected by the changes made to the 1979 plan in 1994. During the period concerned the plots designated under the 1979 plan as amended in 1994 for building purposes could not be sold or put to any other use as prospective buyers had lost interest upon

learning about the pending construction of the ring-road in the vicinity. Likewise, the state of legal uncertainty as to the fate of the real estate made it impossible for them to use it in a commercially profitable way. Potential buyers and business partners abandoned their intentions after studying the local land development plan. Hence, the Government's argument that they had not suffered any damage was, in the applicant's view, clearly erroneous.

16. The applicants submitted that under the 1979 plan a part of their land had been designated for building purposes. In 1991 they had obtained an initial approval for a development project on that part and a permit to divide it into smaller plots suitable for construction. The fact that they had not proceeded with the construction within one year of obtaining the initial approval was immaterial for the assessment of just satisfaction. This was so because they had derived their right to build on the land from the 1979 plan, not from the decisions given in 1991, and this right had been taken away from them on the strength of the changes made to it in 1994.

17. The applicants further argued that even assuming that it might be legitimate to rely on the fundamental transition of the country as justification for the interference - an assumption which the applicants challenged - it should be noted that the prolongation of the periods during which they had no right to compensation had resulted from a widespread inability of local municipalities to conduct proper planning policies and to adopt and update land development plans. Such a situation obtained also in the municipality of Częstochowa, which had not to date applied a new land development plan since the one adopted in 1979 had ultimately expired on 31 December 2003.

18. The Court reiterates that where it has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences. If national law does not allow - or allows only partial - reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest. In particular, if one or more heads of damage cannot be calculated precisely, the Court may decide to make a global assessment (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

19. In its principal judgment in the present case the Court found that there had been a violation of the general rule of peaceful enjoyment of possessions, enshrined in the first sentence of Article 1 § 1 of Protocol No. 1 to the Convention, in that the applicants' land had been designated for expropriation at some undetermined future date. The measures complained of significantly reduced the effective exercise of that right. Not only were the applicants prevented from bringing their construction projects to fruition, their property was also to be expropriated at some undetermined future date, without there being any provision for compensation under the

applicable laws (§ 79). Moreover, even after the relevant legislation was repealed in 2003, the currently applicable legislation did not provide for any retrospective right to compensation for the prejudice suffered (§ 95).

20. The Court notes in this connection that in the principal judgment it found that there was an interference with the applicant's right to the peaceful enjoyment of their possessions (paragraphs 74-84 of the principal judgment). It further observes that as early as 1994 the national legislator found it necessary to ameliorate the situation of owners by creating for them a right to compensation for damage resulting from expropriations to be carried out at a future undetermined point of time (see paragraphs 33-34 of the principal judgment). It was the mere fact of such an expropriation being pending which entitled the owners, under the Local Planning Act 1994, either to have their plots bought by the municipality or replaced by other plots, or to obtain compensation. The Local Planning Act 2003 maintained these compensation entitlements (paragraphs 44 and 51-53 of the principal judgment). Hence, the legislature accepted that the prospect of a future expropriation was sufficient to give rise to compensation.

21. In disputing the award of pecuniary damage to the applicants, the Government rely on the need for protection of the State's financial security when its political and economic system is in a period of transition. The Court recalls that it addressed a similar argument in the principal judgment, in which it observed that difficulties facing legislatures in having to deal with the complex issues involved in a period of transition could not exempt Member States from their obligations stemming from the Convention or its Protocols (see paragraph 96 of the principal judgment). The Court notes, in any event, that notwithstanding the economic and other difficulties that it faced, the legislature itself accepted in the Acts of 1994 and 2003 that owners of land designated for future expropriation should in principle be compensated for the pecuniary damage thereby suffered.

The Court cannot accordingly accept the Government's view that the applicants should not be awarded any sum by way of pecuniary damage or that a distinction should be drawn in this respect between "actual" damage and loss of profits sustained by the applicants.

22. Having regard to its findings made in the principal judgment, the Court is of the view that the applicants cannot be deemed to have lost title to their property and that the compensation to be awarded by this Court in such cases is confined to losses emanating from the restrictions on control, use and enjoyment of his property.

23. In this connection, the Court observes that the applicants listed as damage the amounts which they had paid in real estate taxes, for maintenance costs and in respect of damage resulting from repeated burglaries on the property. The Court fails to see any causal link between these amounts and the violation found in the principal judgment. In so far as the applicants refer to the amount of material damage which the property

sustained during the material time, the Court notes that it has not been shown or quantified precisely what kind of damage the property suffered.

24. The Court further notes that the applicants claimed PLN 837,884¹, corresponding to the price which, according to their submissions, they could have obtained if their plan to have their property divided into smaller construction plots and sold to private parties had been brought to fruition, with the capital thus obtained being paid into their bank account plus interest accruing from February 1995 to July 2003. However, the Court is of the view that this claim for loss of profit is based on the assumption that the applicants would have sold all the plots concerned, whereas from 1992 until 1994, when the amendments to the plan were adopted, the applicants sold only five of them. As such, it is speculative and unsubstantiated.

25. However, the Court is of the view, having regard to the circumstances of the case seen as a whole, that the applicants suffered pecuniary damage which, under the applicable domestic law, cannot be compensated. Having regard to the above considerations and to the great disparity in the parties' positions the Court, making its overall assessment on an equitable basis, awards to the applicants EUR 15,000 in respect of all pecuniary damage.

2. Non-pecuniary damage

26. The Government referred to the Court's judgment in *Rosiński v. Poland*, no. 17373/02, 17 July 2007, where the applicants were awarded EUR 5,000 for non-pecuniary damage suffered in a similar case. They submitted that any award to be made in the present case under this head should correspond to that award.

27. The applicants submitted that their case was different in that their property was much bigger. They also argued that, in contrast with the *Rosiński* case which concerned a small plot of land, they had, being owners of a large property situated in a big town, based their life prospects on plans of deriving considerable profit from it. Their projects had been frustrated both by the adoption of the 1994 amendments and by the fact that they had no right to compensation.

28. The Court reiterates that it has found in a number of cases concerning similar factual and legal situations that applicants who only claimed non-pecuniary damages had sustained such damage on account of a violation of Article 1 of Protocol No. 1 to the Convention (see *Rosiński v. Poland*, no. 17373/02, 17 July 2007; *Skrzyński v. Poland*, no. 38672/02, 6 September 2007; and *Buczkiewicz v. Poland*, no. 10446/03, 26 February 2008). It finds no grounds on which to hold otherwise in the present case and accordingly awards the applicants EUR 5,000.

¹ Approximately EUR 250,313.

B. Costs and expenses

29. The applicants have not made a claim for costs sustained in connection with the proceedings after the principal judgment had been adopted.

C. Default interest

30. 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. Holds**

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with 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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

2. Dismisses unanimously the remainder of the applicants' 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