



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

FOURTH SECTION

CASE OF HELWIG v. POLAND

(Application no. 33550/02)

JUDGMENT

STRASBOURG

21 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Helwig 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,

Mihai Poalelungi,

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. 33550/02) 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 Gerard Helwig (“the applicant”), on 3 September 2002.

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

3. On 13 April 2006 the President of the Chamber to which the case had been allocated decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

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

4. The applicant, Mr Gerard Helwig, is a Polish national who was born in 1936 and lives in Poznań, Poland.

A. Proceedings for annulment of expropriation decisions

5. In 1940 the applicant’s father, S.H, died.

6. On 27 February 1951 S.H.'s manufacturing works, Fr. Helwig Repair Works (*przedsiębiorstwo "Warszaty Reparacyjne Fr. Helwig"*), was placed under state administration. On 30 June 1958 the property was expropriated.

7. On 24 February 1992 the Kościan District Court (*Sąd Rejonowy*) gave a decision and declared that the applicant and his siblings should inherit S.H.'s property.

8. In 1988 the applicant's brother lodged a request for annulment of the 1951 and 1958 decisions.

9. On March 1995 the Ministry of Industry and Commerce (*Minister Przemysłu i Handlu*) gave a decision and declared the decision of 1951 null and void. The Minister stressed that there had not been any valid legal grounds to place the manufacturing works under state administration.

10. On 9 May 1995 the Ministry of Industry and Commerce transferred the case to the Ministry of Agriculture and Food Economy (*Minister Rolnictwa i Gospodarki Żywnościowej*).

11. On 8 October 1997 the Ministry of Agriculture asked the Leszno Governor's Office (*Urząd Wojewódzki w Lesznie*) to obtain evidence in the applicant's case. On 6 February 1998 the Ministry asked the Governor's office to supplement the documentary evidence that they had meanwhile submitted.

12. On 6 November 1998 the Ministry of Agriculture refused to institute proceedings relating to the annulment of the decision of 30 June 1958. The Ministry held that S.H.'s heirs had failed to submit documents confirming their title to the property in question. The applicant appealed against this decision.

13. On 21 May 1999 the Ombudsman upon the applicant's complaint asked the Ministry of Agriculture to proceed with the appeal.

14. On 16 June 1999 the Ministry of Agriculture issued a decision and upheld the decision of 6 November 1998.

15. On 14 July 1999 the applicant appealed against that decision to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

16. On 28 November 2000 the applicant complained to the Ombudsman about the unreasonable delay before the Supreme Administrative Court. He submitted that for many years he had been waiting for justice to be done, however to no avail.

17. On 4 December 2001 the Supreme Administrative Court gave judgment and quashed the Ministry's decisions of 6 November 1998 and 16 June 1999.

18. On 6 March 2002 the Ministry of Agriculture and Rural Development (*Ministerstwo Rolnictwa i Rozwoju Wsi*) discontinued the administrative proceedings. It considered that the applicant's father had not had a title to the property in question. The applicant complained about that decision.

19. He also sent letters to various institutions (the President of Poland, the Ombudsman, etc.) complaining about the length of the administrative proceedings.

20. On 19 December 2002 the Ministry of Agriculture informed the applicant that his appeal against the decision of 6 March 2002 had been lodged outside the prescribed time-limit and accordingly should be rejected.

21. On 8 January 2003 the applicant lodged a complaint with the Ministry of Justice (*Ministerstwo Sprawiedliwości*) alleging unfairness of the proceedings and complaining about their length.

22. On 16 May 2003 in reply to the applicant's complaints, the Poznań Regional Prosecutor stressed that the decisions of the Ministry of Agriculture had been issued in breach of law. It further confirmed that the Prosecutor General had appealed against the Ministry's decision of 6 March 2002.

23. On 24 September 2003 the Ministry of Agriculture and Rural Development issued a decision and declared the decisions of 6 March 2002 and of 30 June 1958 null and void, as they had been delivered in flagrant breach of the law.

B. Proceedings for compensation for expropriated land

24. On 12 November 2003 the applicant applied to the Ministry of Agriculture for compensation for unlawful expropriation of his late father's property. On 23 December 2003 the Ministry of Agriculture informed the applicant that the competent authority to consider his case was the Minister of Economy, Labour and Social Policy (*Minister Gospodarki, Pracy i Polityki Socjalnej*).

25. Meanwhile, the applicant sent numerous letters to various authorities complaining about the way the case was being handled. In reply he was given various reasons for the delay.

26. On 30 March 2004 the Minister of Economy informed the applicant that his application of 12 November 2003 could not be considered a request for compensation, and that accordingly the applicant should lodge another application for compensation.

27. On 30 April 2004 the Minister of Economy informed the applicant that his letter of 12 November 2003 would be considered an application for compensation within the meaning of Article 160 of the Code of Administrative Procedure.

28. On 23 June 2004 the Minister of Economy informed the applicant that the documents necessary for issuing the compensation decision should be prepared by the end of the year.

29. On 28 July 2004 and 18 August 2004 the applicant complained to the Office of the Prime Minister. In reply he was informed that the

administrative authorities were independent and that the Prime Minister's Office could not intervene.

30. On 9 September 2004 the Minister of Economy replied to the applicant's complaints concerning the delays in the proceedings. It considered that the compensation proceedings constituted a separate set of proceedings and that a separate application should have been lodged. Since the applicant failed to specify that his application concerned compensation, the Ministry had to ask for clarification, which caused the delays.

31. On 10 December 2004 an expert report on the value of the expropriated property was submitted to the Ministry.

32. On 17 December 2004 the Minister of Economy officially instituted compensation proceedings, as required under Article 160 of the Code of Administrative Proceedings.

33. The documents concerning the compensation proceedings were sent to the applicant for comments. On 24 February 2005 the applicant submitted his comments.

34. On 12 May 2005 the Minister of Economy issued a decision awarding the applicant partial compensation in the amount of 35,480 Polish zlotys (PLN), constituting three-sixteenths of the real value of the property expropriated in 1958.

35. The applicant was not satisfied with the amount awarded and, on an unspecified date, he made a civil claim for compensation against the State Treasury with the Warsaw District Court (*Sąd Rejonowy*).

36. It appears that the claim was not examined on the merits due to the applicant's failure to comply with procedural requirements.

37. On an unspecified date the State Treasury instituted proceedings for a permit to make a court deposit in order to secure the compensation awarded in the decision of 12 May 2005 (*o zezwolenie na złożenie przedmiotu świadczenia do depozytu sądowego*). On 30 August 2006 the Poznań District Court authorised the security deposit, enabling the applicant to receive the money after submitting a copy of the final and enforceable decision of 12 May 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Inactivity on the part of the administrative authorities

38. The relevant domestic law concerning inactivity on the part of administrative authorities is set out in *Grabiński v. Poland*, no. 43702/02, §§ 60-65, 17 October 2006.

B. Remedy against the excessive length of judicial proceedings

39. 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 ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS FOR ANNULMENT OF THE EXPROPRIATION DECISION

40. The applicants complained that the length of the administrative proceedings for annulment of the expropriation decision had been incompatible with the "reasonable time" requirement, provided 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..."

41. The Government contested that argument.

42. The administrative proceedings for annulment of the expropriation decision commenced on an unspecified date in 1988. However, the period to be taken into consideration began on 1 May 1993, when Poland's declaration recognising the right of individual petition under the former Article 25 of the Convention took effect, and ended on 24 September 2003. Therefore, the proceedings in question lasted nearly fourteen years, of which more than ten years fall within the Court's jurisdiction *ratione temporis*.

A. Admissibility

43. 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, *inter alia*, that prior to 1 January 2004 the applicant could have asked the Supreme Administrative Court to impose a fine on the Ministry of Agriculture for the non-enforcement of the court's judgment of 4 December 2001. In addition

to that the applicant could have applied to the Ministry of Agriculture for compensation for failure to enforce the same judgment as regulated by Article 31 §§ 4 and 5 of the Act on the Supreme Administrative Court.

44. The Court observes that admittedly the applicant did not complain of inactivity on the part of the administrative authorities in compliance with the law (see, for example, *Futro v. Poland* (dec.), no. 51832/99, *Grabiński v. Poland* (dec.), no. 43702/02). However, in the particular circumstances of the case, he could not be required to have done so for several reasons. Firstly, the longest delay in the proceedings in question, that is two years and a half, occurred before the Supreme Administrative Court (paragraphs 15-17 above), where the applicant had no remedy to complain of the inactivity. Secondly, as regards the proceedings before the various Ministries, there were no significant delays before any particular authority when the applicant's complaint of inactivity would have had any prospects of success.

45. It follows that the Government's preliminary objection must be dismissed. 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

46. 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).

47. The Court observes that the case involved a certain degree of complexity. However, it considers that this in itself cannot justify the overall length of the proceedings.

48. As regards the conduct of the applicant, the Court, having regard to the available evidence, does not find it established that the applicant substantially contributed to the delays in the proceedings. The Court acknowledges that the applicant lodged several appeals in the course of the proceedings. However, following his appeals the case was either transferred to a different competent authority or decisions given were quashed by the administrative courts and the case was remitted for further examination.

49. As regards the conduct of the relevant authorities, the Court notes that there were frequent periods of inactivity and many delays. By way of example, the Court observes that there was a period of nearly two and a half years of complete inactivity between 9 May 1995, when the Ministry of Industry transferred the applicant's case to the Ministry of Agriculture, and

8 October 1997, when the Ministry of Agriculture asked for evidence (see paragraphs 10-11 above). Subsequently, there was a period of two and a half years of inactivity before the Supreme Administrative Court between 14 July 1999, when the applicant appealed against the decision of the Minister of Agriculture of 16 June 1999, and 4 December 2001, when the Supreme Administrative Court gave judgment (see paragraphs 15-17 above).

50. The foregoing elements, taken together with the overall length of the proceedings in question, the applicant's advanced age and what was at stake for him, are sufficient to enable the Court to conclude that the applicants' case has not been heard within a reasonable time and that there has accordingly been a breach of Article 6 § 1.

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

51. The Court notes that the applicant did not attempt to pursue the remedies designed to counteract the inactivity of the administrative authorities and therefore did not exhaust domestic remedies available to him under Polish law. By way of example, the applicant could have lodged an appeal under Article 37 of the Code of Administrative Procedure or a complaint with the Supreme Administrative Court about the inactivity of the administrative authorities.

52. In any event, the Court observes that the administrative proceedings for compensation lasted no longer than eighteen months and the most significant delay was caused by the applicant who himself had failed to indicate that his initial motion of 12 November 2003 had been a claim for compensation.

53. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

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

54. Finally, the applicant made a general complaint under Article 1 of Protocol No. 1 to the Convention that his property rights had been breached.

Article 1 of Protocol No. 1 to the Convention provides:

"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.”

55. The Court first observes that Poland ratified Protocol No. 1 to the Convention on 10 October 1994. In so far as the applicant could be understood as complaining about official decisions regarding his property rights given prior to that date, namely in 1951 and 1958, the Court reiterates that, in accordance with universally recognised principles of international law, a State can only be held responsible in respect of events after the ratification of the Convention. It follows that the Court is competent *ratione temporis* only in respect of events which occurred after that date.

56. Secondly, the Court notes that, in so far as the applicant complained of the fact that his father’s property had not been restored to him, this part of the application is incompatible *ratione materiae* since Article 1 of Protocol No. 1 to the Convention does not guarantee a right of restitution of property (see *Rucińska v. Poland* (dec.), no. 33752/96, 27 January 2000).

57. As regards the remainder of the application, the Court observes that in the instant case, on 24 September 2003 the Ministry of Agriculture and Rural Development declared the expropriation decision of 30 June 1958 null and void. Under the provisions of the Polish law such a decision provided, to the applicant as a legal successor of the former owner, the right to have the property restored to him, or, failing that, the right to compensation. The Court thus notes that the decision to set aside the final expropriation decision had consequences for the applicant which should be regarded as conferring on him a proprietary interest falling within the ambit of possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

58. The Court further notes that the applicant claimed compensation for the unlawfully expropriated land. As a result he was awarded compensation by virtue of the decision of the Minister of Economy of 12 May 2005. Even though the applicant contested the amount of the compensation awarded, he did not appeal against the Minister’s decision in compliance with the procedural law. The compensation decision became final and enforceable. On 30 August 2006 the Poznań District Court authorised the State Treasury to make a security deposit, enabling the applicant to actually receive the money.

The Court concludes that in the circumstances of this case the domestic law provided an effective framework by which the applicant could seek to have the economic value of his rights arising out of the 2003 decision of the Ministry of Agriculture recognised in practice and that the applicant in fact received compensation for the unlawful expropriation of his late father’s property.

59. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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.”

61. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

62. The applicant did not make any claim for costs and expenses involved in the proceedings.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings for the annulment of the expropriation decision 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 administrative proceedings for the annulment of the expropriation decision.

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