



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

FOURTH SECTION

CASE OF PIÓRO AND LUKASIK v. POLAND

(Application no. 8362/02)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Pióro and Łukasik v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 8362/02) 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 two Polish nationals, Mr Wiesław Pióro and Mrs Barbara Łukasik (“the applicants”), on 20 April 2001.

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

3. On 16 November 2006 the President of the Chamber to which the case has 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

4. The applicants, Mr Wiesław Pióro, and Mrs Barbara Łukasik, are siblings. They are Polish nationals who were born in 1930 and 1933 respectively. The first applicant died on 4 November 2003. His wife, two daughters and his grandson expressed a wish to continue the application in his stead. The second applicant lives in Warsaw, Poland.

I. THE CIRCUMSTANCES OF THE CASE

5. On 22 November 1944 the applicants’ father’s land “Terebella” was expropriated for the purpose of an agrarian reform programme. On 8 May 1946 the Lublin Regional Land Office (*Wojewódzki Urząd*

Ziemski) declared that the provisions on agrarian reform did not apply to the property in question, and therefore the applicants' father was entitled to compensation. On 29 January 1949 the Minister of Agriculture quashed this decision and declared that "Terebella" had been expropriated for the purpose of agrarian reform.

6. On 20 May 1994 the applicants filed a motion for annulment of the 1949 decision.

7. On 5 September 1996 the Minister of Agriculture refused to declare the decision of 1949 null and void. On 8 October 1996 the applicants appealed to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

8. On 27 April 1998 the Supreme Administrative Court rejected their appeal on the ground that they had failed to exhaust the available remedies i.e. they had not filed a request with the Minister for reconsideration of his decision.

9. On 15 May 1998 the applicants applied to the Minister of Agriculture for leave to file out of time a motion for reconsideration (*wniosek o ponowne rozpatrzenie sprawy*) of the decision of 5 September 1996.

10. On 22 March 2000 the applicants lodged a complaint with the Supreme Administrative Court alleging inactivity on the part of the Minister of Agriculture.

11. On 12 May 2000 the Minister upheld the decision of 5 September 1996. The applicants lodged an appeal against that decision with the Supreme Administrative Court. On 3 November 2000 the court quashed the Minister's decision of 12 May 2000 and remitted the case.

12. On 27 March 2001 the second applicant asked the Minister to comply with the judgment of 3 November 2000 and to give a decision without delay. On 24 May 2001 she complained to the Supreme Administrative Court alleging inactivity on the part of the Minister of Agriculture. On 19 October 2001 she again asked the court to proceed with her case.

13. On 14 November 2001 the Minister of Agriculture stayed the proceedings in the applicants' case awaiting a report of an expert in geology.

14. On 3 December 2001 the Supreme Administrative Court dismissed the applicants' complaint about the Minister's inactivity. On 10 January 2002 the second applicant lodged a complaint against the decision of the Minister of Agriculture to stay the proceedings.

15. On 7 February 2002 the Minister resumed the proceedings as the awaited expert report had been submitted.

16. On 25 June 2002 the Minister gave a decision on the merits upholding his previous decision of 5 September 1996.

17. On 23 July 2002 the second applicant appealed to the Supreme Administrative Court against the decision of 25 June 2002.

18. On 11 February 2004 the Warsaw Regional Administrative Court gave judgment quashing the challenged decision of the Minister.

19. On 30 April 2004 the Minister of Agriculture refused to annul the decision of 29 January 1949 on the ground that the contested decision had been issued in accordance with the law. The Minister upheld his decision on 18 November 2004.

20. Upon an appeal by the second applicant, on 24 May 2005 the Warsaw Regional Administrative Court quashed both decisions of the Minister.

21. On 3 November 2005 the Minister of Agriculture refused once more to annul the original decision of 1949.

22. On 20 April 2006 the Warsaw Regional Administrative Court quashed that decision on appeal.

23. By letter of 6 November 2006 the Minister of Agriculture asked the Lublin Voivodeship Office (*Urząd Wojewódzki*) for the clarification of certain issues concerning the “Terebella” land.

24. On 30 July 2007 the Minister of Agriculture acknowledged that the 1949 decision had been issued in breach of the procedural law but refused to declare it null and void on the ground that it had produced irreversible effects.

25. On 14 November 2007 the Warsaw Administrative Court upheld the above decision.

26. The authorities instructed the applicants to proceed with a claim for compensation for the unlawfully expropriated land under Article 160 of the Code of Administrative Procedure, applicable to the applicants’ case by virtue of Article 5 of the Act of 17 June 2004 on certain amendments to the Civil Code and other acts. The applicants were further instructed that, in the event they were not satisfied with the outcome of the administrative proceedings for compensation, they were free to file with a civil court an action for tort under Article 417 of the Civil Code.

27. On 25 January 2008 the applicants filed with the Minister of Agriculture a claim for compensation for the unlawfully expropriated land. The proceedings are currently pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Inactivity on the part of the administrative authorities

28. 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

29. 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 ADMINISTRATIVE PROCEEDINGS FOR ANNULMENT OF THE 1949 DECISION

30. The applicants complained that the length of the administrative proceedings for the annulment of the 1949 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..."

31. The Government contested that argument.

32. The period to be taken into consideration began on 20 May 1994 and ended on 14 November 2007. It thus lasted more than thirteen years.

A. Admissibility

33. The Government raised a preliminary objection that the applicants had not exhausted all domestic remedies available to them under the Polish law, as required by Article 35 § 1 of the Convention. They maintained that the applicants had failed to lodge a compensation claim with a civil court in order to seek redress for the alleged damage which had resulted from the inactivity of the administrative authorities and courts. They relied on Article 417¹ § 3 of the Civil Code.

In addition, the Government argued that from 17 September 2004, the date of entry into force of the 2004 Act, the applicants had a possibility of seeking compensation 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.

34. The applicants contested the Government's submissions.

35. The Court observes that according to Article 417¹ § 3 of the Civil Code no claim for damages resulting from the unreasonable length of administrative proceedings may arise unless it was formally determined that there had been an unlawful failure to issue an administrative decision within the relevant time-limits. The Court also notes that the examples of domestic case-law furnished by the Government do not constitute evidence of sufficiently established judicial practice to show that a claim for compensation based on Article 417¹ § 3 of the Civil Code was an effective remedy and have thus failed to substantiate their contention (see *Grabiński v. Poland*, no. 43702/02, § 74, 17 October 2006). It follows that this part of the Government's objection must be rejected.

36. Regarding the remedy provided by the 2004 Act the Court notes that the law in question provides for a complaint about the unreasonable length of judicial proceedings and that proceedings before administrative authorities other than administrative courts are not covered by its provisions. The Court also observes that prior to the entry into force of the 2004 Act the applicants had resorted to remedies designed to accelerate the process of obtaining an administrative decision, such as an appeal under Article 37 § 1 of the Code of Administrative Procedure and two complaints lodged with the Supreme Administrative Court about the inactivity of the administrative authorities (see paragraphs 10, 12 and 14 above). Moreover, the Court observes that the proceedings complained of lasted over thirteen years. After the entry into force of the 2004 Act the proceedings were conducted by the Regional Administrative Court in three separate periods, none of which exceeded six months (see paragraphs 19-20, 21-22 and 24-25 above). Therefore, a domestic court dealing with a complaint under the 2004 Act would not be able to take into account the whole period of the administrative proceedings and find a violation of the applicants' right to a trial within a reasonable time. Consequently, in the present case a complaint under the 2004 Act cannot be regarded as an effective remedy with a sufficient degree of certainty.

37. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies 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

38. 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 applicants and the relevant authorities and what was at stake

for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

39. 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.

40. As regards the conduct of the applicants, the Court, having regard to the available evidence, does not find it established that the applicants substantially contributed to the delays in the proceedings. The Court acknowledges that the applicants lodged several appeals in the course of the impugned proceedings. However, following their appeals, the decisions given were several times quashed by the administrative courts and the case was remitted for further examination.

41. As regards the conduct of the relevant authorities, the Court notes that there were long delays in handling the case and some periods of inactivity. The Court observes that for the most part of the proceedings each authority which examined the applicants' case took on average two years to issue a decision on the merits. By way of example, there was a period of two years and three months between the applicants' initial motion for annulment of the 1949 decision and the Minister's decision of 5 September 1996 (see paragraphs 6-7 above) and a period of two years when the Minister was deciding on the applicants' motion for reconsideration (see paragraphs 9-11 above). Finally, there was a period of nineteen months of inactivity between 23 July 2002 when the applicants appealed against the decision of the Minister of Agriculture and 11 February 2004 when the Warsaw Regional Administrative Court quashed the challenged decision and remitted the case (see paragraphs 17-18 above).

42. The foregoing considerations are sufficient to enable the Court to conclude that the applicants' case has not been heard within a reasonable time. There has accordingly been a breach of Article 6 § 1.

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

43. The applicants also complained in general terms under Article 1 of Protocol No. 1 to the Convention that they had been deprived of their property. 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.”

44. The Court first observes that Poland ratified Protocol No. 1 to the Convention on 10 October 1994. In so far as the applicants’ complaint relates to the official decisions regarding their property rights given prior to that date, namely in 1944 and 1949, 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.

45. Secondly, the Court notes that, in so far as the applicants may be understood to have complained of the fact that their father’s property had not been restored to them, 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).

46. Lastly, the Court notes that the domestic proceedings to determine the applicants’ claim for compensation for the expropriated land are currently pending before the Minister of Agriculture. Therefore, in so far as the applicants’ complaint under Article 1 of Protocol No. 1 to the Convention relates to the fact that the applicants had not been compensated for the expropriated land, the Court considers that it would be premature to take a position on the substance of this complaint. It follows that this complaint is inadmissible for failure to exhaust domestic remedies.

47. Accordingly, this part of the application must be rejected under Article 35 § 1, 3 and 4 of the Convention on grounds of incompatibility and non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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.”

49. The applicants did not submit a claim for just satisfaction for pecuniary and non-pecuniary damage in relation to their complaint under Article 6 § 1 of the Convention. They explained that their goal in bringing the instant application to the Court was not to benefit from the malfunctioning of the State authorities and judiciary but only to obtain a payment equal in value to the land expropriated in 1944. Accordingly, the Court considers that there is no call to award the applicants any sum on the account of the violation of Article 6 § 1 of the Convention.

50. The applicants 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 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

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

Lawrence Early
Registrar

Nicolas Bratza
President