



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

FOURTH SECTION

CASE OF CHMIELECKA v. POLAND

(Application no. 19171/03)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of Chmielecka 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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 19171/03) 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 Danuta Zofia Chmielecka (“the applicant”), on 6 June 2003.

2. The applicant was represented by A. Chmielecki, a lawyer practising in Olsztyn. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 7 September 2007 the President of the Fourth Section 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 was born in 1940 and lives in Olsztyn.

A. Facts before 1 May 1993

5. The applicant's mother owned a mill situated in Rogoźno, Poland. By virtue of Ordinance no. 425 issued on 6 December 1955, the Minister of Purchase (*Minister Skupu*) nationalised the mill.

6. On 7 June 1990 the applicant's mother instituted administrative proceedings before the Minister of Agriculture and Food Economy (*Minister Rolnictwa i Gospodarki Żywnościowej*) and the Minister of the Internal Market (*Minister Rynku Wewnętrznego*). She asked the authorities for restitution of her property.

7. On an unspecified date the Minister of Agriculture and Food Economy transferred the case file to the Minister of the Internal Market who, on 9 May 1991, gave a decision. It was challenged by the applicant and, on 3 June 1991, the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) gave judgment and quashed the decision.

8. On 17 January 1992 the Minister of Industry and Commerce (*Minister Przemysłu i Handlu*), who had assumed the competencies of the Minister of the Internal Market, transferred the case to the Minister of Agriculture and Food Economy.

9. On 19 October 1992 the Supreme Administrative Court gave judgment and obliged the Minister of Agriculture and Food Economy to give, within 14 days, a decision on the motion lodged on 7 June 1990.

B. Facts after 1 May 1993

10. In April 1995 the applicant's mother died.

11. On 18 April 1996 the Olsztyn District Court (*Sąd Rejonowy*) gave a decision declaring that the applicant had acquired her late mother's inheritance.

12. On 30 May 1996 the applicant asked the Minister of Agriculture and Food Economy for the immediate enforcement of the judgment of 19 October 1992.

13. As the Minister had failed to give any decision, on 19 July 1996 the applicant lodged an inactivity complaint with the Supreme Administrative Court. She also requested that a fine be imposed on the Minister of Agriculture and Food Economy and a declaration be granted that the 1955 Ordinance was null and void.

14. On 12 May 1998 the Supreme Administrative Court discontinued the proceedings in respect of the inactivity complaint. It relied on the fact that on 22 April 1998 the Minister of Agriculture and Food Economy had given a decision on the merits, whereby the applicant's restitution motion had been dismissed.

15. On 7 May 1998 the applicant made an application to the Minister of Agriculture and Food Economy for reconsideration (*wniosek o ponowne rozpatrzenie sprawy*) of the decision of 22 April 1998.

16. On 28 July 2000 the applicant filed another inactivity complaint with the Minister of Agriculture and Food Economy.

17. As no decision had been given, on 20 October 2000 she lodged with the Supreme Administrative Court a complaint about the inactivity of the Minister of Agriculture and Food Economy.

18. On 21 December 2000 the Minister of Agriculture and Country Development (*Minister Rolnictwa i Rozwoju Wsi*), who had assumed the competencies of the Minister of Agriculture and Food Economy, upheld the decision of 22 April 1998.

19. On 19 January 2001 the applicant appealed against that decision to the Supreme Administrative Court.

20. On 6 March 2001 the Supreme Administrative Court discontinued the proceedings concerning her inactivity complaint, since, on 21 December 2000, the Minister of Agriculture and Country Development had taken the decision in question.

21. On 21 November 2002 the Supreme Administrative Court gave judgment and quashed both decisions given by the Minister of Agriculture and Country Development.

22. As no decision had been given for months, on 9 April 2003 the applicant lodged with the Minister of Agriculture and Country Development an inactivity complaint and, on 13 May 2003, another inactivity complaint with the Supreme Administrative Court.

23. On 22 March 2004 the Minister of Agriculture and Country Development stayed the proceedings. The applicant's appeal in that respect was dismissed by the same authority on 10 May 2004. The applicant appealed to the Warszawa Regional Administrative Court (*Wojewódzki Sąd Administracyjny*).

24. On 20 May 2004 the Warszawa Regional Administrative Court discontinued the proceedings concerning the applicant's inactivity complaint.

25. On 30 November 2004 the Warszawa Regional Administrative Court quashed both decisions by virtue of which the administrative proceedings had been stayed.

26. On 8 November 2007 the Minister of Agriculture and Country Development gave a decision declaring that the Ordinance no. 425 of 6 December 1955 had been issued in flagrant breach of the law. This decision became final.

C. Proceedings before the Warszawa Regional Administrative Court

27. On 13 June 2005 the applicant lodged a complaint with the Warszawa Regional Administrative Court, alleging inactivity on the part of the Minister of Agriculture and Country Development. In her complaint, she alleged that, despite the judgment of the Warszawa Regional Administrative Court of 30 November 2004, the Minister had failed to give a decision on the merits. The applicant maintained that the Regional Administrative Court has not so far examined her complaint.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. Article 35 of the Code of Administrative Procedure (*Kodeks postępowania administracyjnego*) lays down time-limits ranging from 1 month to 2 months for dealing with a case pending before an administrative authority. If those time-limits have not been complied with, the authority must, under Article 36 of the Code, inform the parties of that fact, explain the reasons for the delay and fix a new time-limit.

29. Pursuant to Article 37 § 1, if the case has not been dealt with within the time-limits referred to in Articles 35 and 36, a party to administrative proceedings may lodge a complaint with the higher authority, alleging inactivity. In cases where the allegations of inactivity are well-founded, the higher authority fixes a new term for examining the case and orders an inquiry in order to determine the reasons for the inactivity and to identify the persons responsible for the delay. If need be, the authority may order that measures be applied to prevent such delays in the future.

30. A more detailed rendition of relevant domestic law and practice relating to remedies for the excessive length of administrative proceedings before 1 January 2004 are stated in the Court's decision given in the case of *Bukowski v. Poland*, no. 38665/97 (dec.), 11 June 2002.

31. On 1 January 2004 the Law of 30 August 2002 on proceedings before administrative courts (*Prawo o postępowaniu przed sądami administracyjnymi*) ("the 2002 Act") entered into force.

32. Under section 3 § 2 of the 2002 Act a party to administrative proceedings can lodge a complaint about inactivity on the part of an authority obliged to issue an administrative decision with an administrative court. Under section 149, if a complaint is well-founded, an administrative court shall oblige the authority concerned to issue a decision, or to perform a specific act, or to confirm, declare, or recognise a right or obligation provided for by law.

33. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings ("the 2004 Act") which, in the present case, apply in so far as administrative courts are concerned, 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.

THE LAW

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

34. The applicant complained that the length of the proceedings for restitution 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...”

35. The Government contested that argument.

36. The Court notes that the proceedings commenced on 7 June 1990 when the applicant’s mother filed a request for restitution. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question ended on 8 November 2007. It thus lasted 14 years, 6 months and 11 days for two levels of jurisdiction.

A. Admissibility

37. 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

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 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).

39. 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).

40. 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 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS BEFORE THE WARSZAWA REGIONAL COURT

41. The applicant complained that the length of the proceedings before the Warszawa Regional Court had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention.

42. However, in the light of the material submitted by the applicant, it seems that she did not make use of remedies provided for by the 2004 Act.

43. It follows that the complaint under Article 6 § 1 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

44. The applicant also alleged a breach of Article 13 of the Convention in that she had no effective domestic remedy in respect of the protracted length of proceedings in her case. Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

45. The applicant argued that on several occasions she made use of the various remedies available to her within the administrative procedure system but they had proved ineffective. She further claimed that despite the judgment of the Supreme Administrative Court of 19 October 1992 obliging the Minister to issue a decision within 30 days the proceedings were still pending before the Minister until 22 April 1998. She stressed that the proceedings had been pending for over 18 years; therefore, she contended that there had been a violation of Article 13.

46. The Government maintained that the applicant had at her disposal various remedies in respect of the excessive length of the administrative proceedings. It had been open to her to have recourse to the remedy provided for by Article 37 § 1 of the Code of Administrative Procedure. In addition, under Article 17 of the Law of 11 May 1995 on the Supreme Administrative Court (“the 1995 Act”) a party to administrative proceedings may, at any time, lodge with the Supreme Administrative Court a complaint about inactivity on the part of an authority obliged to issue an administrative decision. Following the entry into force of the 2002 Act the applicant could lodge a complaint about inactivity on the part of the administrative authority with the competent Regional Administrative Court.

47. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. However, the “effectiveness” of a “remedy” within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, §§ 154 et seq., ECHR 2000-XI, §§ 156-157).

48. It further reiterates that the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, e.g., *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

49. The Court has held on several occasions that the combination of the remedies as advanced by the Government (see paragraph 46 above), enabled applicants to put the issue of the length of the proceedings in question before the national authorities and to seek a decision terminating those proceedings “within a reasonable time” (see, *Bukowski v. Poland* and *Futro v. Poland* cited above, *Grabinski v. Poland* (dec.) no. 43702/02, 18 October 2005).

50. Turning to the facts of the present case the Court observes that the applicant did not contest the availability of the remedy relied on by the Government. She stated, on the other hand, that in her case this remedy had proved ineffective (see paragraph 45 above).

51. In the light thereof, the Court finds that the fact that the Supreme Administrative Court discontinued the proceedings in respect of the inactivity complaint since the relevant administrative authority had meanwhile given a decision on the merits (see paragraphs 14 and 20 above) does not render this remedy, in the circumstances of the present case, incompatible with the requirements of Article 13 of the Convention (see also *Solárová and Others v. Slovakia*, no. 77690/01, § 56, 5 December 2006, with further reference).

52. In the light of the foregoing, the Court considers that it cannot be said that the applicant's right to an effective remedy under Article 13 of the Convention has not been respected.

53. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 213,986 Polish zlotys (PLN) in respect of pecuniary damage and 10,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government contested these claims.

57. 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 8,400 in respect of non-pecuniary damage.

B. Costs and expenses

58. The applicant also claimed PLN 8,140 for the costs and expenses incurred before the domestic courts and in the proceedings before the Court.

59. The Government contested the claim.

60. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 160 for the proceedings before the Court.

C. Default interest

61. 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 restitution admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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 8,400 (eight thousand four hundred euros) in respect of non-pecuniary damage and EUR 160 (one hundred and sixty euros) for costs and expenses, to be converted into Polish zlotys 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 amounts 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 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President