



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

FOURTH SECTION

CASE OF WYSOCKA AND OTHERS v. POLAND

(Application no. 23668/03)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Wysocka and Others 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 Lawrence Early, *Section Registrar*

Having deliberated in private on 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 23668/03) against the Republic of Poland lodged with the Court on 8 July 2003 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the applicants, Ms Lucyna Wysocka, Mr Marian Wysocki, Mr Stanisław Wysocki, Ms Joanna Wadas and Ms Czesława Jasińska. They are Polish nationals who were born in 1958, 1955, 1952, 1949 and 1947, respectively. They live in Miastko.

2. The applicants were represented before the Court by Ms K. Gutowska, a lawyer practising in Słupsk. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołasiewicz of the Ministry of Foreign Affairs.

3. On 15 October 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. By way of an administrative decision of 5 April 1978 a property belonging to the applicants’ mother and father, situated in Miastko and listed in the land register under entry no. 5001 of a surface area of 1,372 square metres was expropriated.

5. On 19 January 1990 the applicants requested the Mayor of Miastko (*Burmistrz Miastka*) that the property be restored to them, arguing that the purpose for which it had been expropriated, namely the construction of a block of flats, had not been implemented. This request was reiterated on 9 March 1991. The applicants requested that the decision be declared null and void under Article 156 of the Code of Administrative Procedure.

6. On 27 May 1991 the District Office (*Urząd Rejonowy*) in Miastko refused the applicants' request. This decision was upheld by the Słupsk Governor (*Wojewoda słupski*) on 8 July 1991.

7. On 19 December 1991 the Supreme Administrative Court allowed the applicants' appeal and quashed the contested decision.

8. On 30 September 1992 the Słupsk Regional Office (*Urząd Wojewódzki*) refused to declare the expropriation decision null and void. The applicants appealed.

9. On 29 June 1996 the Minister of Construction and Land Planning quashed the decision and ordered that the case be re-examined.

10. On 12 January 1997 the Słupsk Regional Office dismissed the applicants' request. The applicants appealed, arguing that the decision was unlawful.

11. In March 1997 the applicants complained to the Ombudsman about the excessive length of the proceedings.

12. On 5 May 1997 the applicants complained to the Supreme Administrative Court about the failure of the administration to rule on their 1990 application. On an unspecified later date that court gave a decision by which it ordered the competent authorities to give a ruling on the merits of the case.

13. On 17 June 1999 the President of the National Office of Housing and Urban Planning (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*) upheld the decision of 12 January 1997. The applicants appealed.

14. By a judgment of the Supreme Administrative Court given on 11 October 2000 the decision of 12 January 1997 was quashed as not being in compliance with the applicable laws.

15. By a decision of 31 August 2001 the President of the National Office of Housing and Urban Planning declared the expropriation decision of 1978 partly null and void.

16. On 31 October 2001 the applicants requested the municipality to transfer the possession of the building to them.

17. On 5 November 2001 the municipality informed them that it had acquired ownership of the property by way of an administrative decision given in 1991. Under the 2001 decision only the transfer of ownership from the applicants' parents to the State Treasury had been declared null and void, but the transfer from the State to the municipality still remained valid. Hence, the municipality was not obliged to give the property back to the applicants.

18. On 12 December 2001 the Starosta Bytowski discontinued the proceedings, finding that they were devoid of purpose. He observed that in 1991 the ownership of the property had been transferred to the municipality. Hence, the decision of 1991 had to be quashed first in order for the decision of 31 August 2001 to become enforceable.

19. The applicants complained to the Ombudsman about the failure to carry out the 2001 decision and about the excessive length of the proceedings. Following the Ombudsman's intervention, in May 2002 the Słupsk Governor informed the applicants that the fact that in 1991 the ownership had been transferred to the municipality made it impossible for the State administration to hand the property over to the applicants.

20. In April 2002 the applicants were referred to the Ministry of Internal Affairs.

21. By a decision of 10 January 2003 the Ministry declared the 1991 decision by which the ownership of the property concerned had been transferred from the State to the municipality null and void.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Under domestic law inactivity on the part of administrative authorities is open to challenge.

23. Firstly, a party to administrative proceedings can make a complaint to a higher authority under Article 37 § 1 of the Code of Administrative Procedure in order to urge the relevant authority to issue a decision within the time-limits fixed in that Code.

24. If dissatisfied with the outcome of the proceedings initiated by a complaint under Article 37 of the Code of Administrative Procedure, up to 1 January 2004 a party could have lodged a complaint about inactivity on the part of the administrative authorities with the Supreme Administrative Court under Article 17 of the Act of 1995 on the Supreme Administrative Court. This provision was repealed with effect from 1 January 2004.

25. On 1 January 2004 the 1995 Act was replaced by the Act on Proceedings before Administrative Courts of 30 August 2002, which provides for similar remedies.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

26. On 17 October 2008 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicants' rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which they had been involved. In respect of non-pecuniary damage, the Government proposed to award the applicants jointly PLN 40,000. The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

27. The applicants did not agree with the Government's proposal and requested the Court to continue the examination of the cases. They maintained that the amount offered was too low.

28. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

29. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length of proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded where it has found a breach of the reasonable-time requirement including with respect to multiple applicants (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-...; *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004; *Arvanitaki-Roboti and Others v. Greece* [GC], no. 27278/03, §§ 27 - 32, ECHR 2008-...).

30. On the facts and for the reasons set out above, in particular the low amount of compensation proposed which is substantially less than the Court would award in a similar case involving five applicants, the Court finds that

the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

31. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicants 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..."

33. The Government contested that argument.

34. The administrative proceedings commenced on 19 January 1990. 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 10 January 2003. Therefore, the proceedings in question lasted thirteen years, of which nine years and eight months fall within the Court's jurisdiction *ratione temporis*.

A. Admissibility

35. 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

36. 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).

37. 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).

38. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicants claimed EUR 30,000 in respect of non-pecuniary damage.

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

42. The Court considers that the applicants must have sustained non-pecuniary damage on account of the protracted length of the proceedings. Ruling on an equitable basis, it awards each of the applicants EUR 3,600 under that head.

B. Costs and expenses

43. The applicants also claimed EUR 2,809 for the costs and expenses incurred before the Court.

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

45. 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 considers that the sum claimed should be awarded in full.

C. Default interest

46. 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. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay, 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, plus any tax that may be chargeable to the applicants:
 - (i) EUR 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage to be paid to each of the applicants;
 - (ii) EUR 2,809 (two thousand eight hundred and nine euros) in respect of costs and expenses, to be paid to the applicants jointly;
 - (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;
5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President