



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

FOURTH SECTION

CASE OF PALIGA AND ADAMKOWICZ v. POLAND

(Application no. 23856/05)

JUDGMENT

STRASBOURG

14 April 2009

FINAL

14/07/2009

This judgment may be subject to editorial revision.

In the case of Paliga and Adamkowicz 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 24 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 23856/05) 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 Elżbieta Paliga and Ms Alicja Adamkowicz (“the applicants”), on 20 June 2005.

2. Ms Elżbieta Paliga was represented by Mr G. Długi, a lawyer practising in Katowice. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 30 August 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 applicants were born in 1937 and 1934 respectively and live in Katowice.

A. Background of the case

5. The applicants' father owned a plot of land with a surface area of 1,035 square metres, situated in Warsaw, in Grabowa Street.

6. By virtue of the Decree of 26 October 1945 on the Ownership and Use of Land in Warsaw (*Dekret o własności i użytkowaniu gruntów na obszarze miasta stołecznego Warszawy*) ("the 1945 Decree"), the ownership of all private land was transferred to the City of Warsaw.

7. On 14 February 1949 the applicants' father filed an application for the grant of the right of temporary ownership (*własność czasowa*) of the plot of land, pursuant to section 7 of the 1945 Decree ("the 1949 application").

8. On 28 July 1983 the Head of the Warszawa-Wola District Office (*Naczelnik Dzielnicy Warszawa-Wola*) refused his application ("the 1983 decision").

9. In the meantime, the Law of 20 March 1950 on the Local State Administration entered into force on 13 April 1950, according to which the ownership of all property previously held by the local government was transferred to the State. By virtue of certain decisions of 12 January 1976 and 11 June 1982, the property in question had been designated for construction of an underground.

10. By a decision of 25 January 1984, given on behalf of the Mayor of Warsaw (*Prezydent Warszawy*), the applicants' father was granted compensation for the property and subsequently it was paid to him.

11. On the applicants' father's death, the applicants' status as heirs was confirmed by the Katowice District Court (*Sąd Rejonowy*) on 24 November 1989.

12. Following the re-establishment of the local government in Poland in the 1990s, the ownership of the plot was transferred to the City of Warsaw. The above was confirmed by decisions of the Warsaw Governor (*Wojewoda Warszawski*) given on 2 February 1992 and 31 May 2000.

B. Proceedings for the annulment of the 1983 decision

13. On 23 March 1998 the applicants instituted administrative proceedings before the Warsaw Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) and applied for the annulment of the 1983 decision.

14. On 9 October 2000 the applicants filed complaints, alleging inactivity on the part of the first-instance authority.

15. In the meantime, the case file circulated among the Warsaw Government Board of Appeal, the President of the Office for Housing and Town Development (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*) and the Mazowiecki Governor's Office (*Mazowiecki Urząd Wojewódzki*). However, no decision was taken in the applicants' case.

16. On 20 July 2001 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) dismissed their complaint of 9 October 2000 about the inactivity of the Warsaw Self-Government Board of Appeal.

17. On 22 May 2002 the Warsaw Self-Government Board of Appeal gave a decision declaring the 1983 decision null and void.

18. On an unspecified date an appeal against the decision of 22 May 2002 was lodged by the Board of the City of Warsaw (*Zarząd Miasta Warszawy*).

19. On 3 December 2002 the applicants lodged a complaint with the Supreme Administrative Court, complaining of the inactivity of the Warsaw Self-Government Board of Appeal.

20. On 18 March 2003 the Warsaw Self-Government Board of Appeal gave a decision and discontinued the appellate proceedings. It was found out that the City of Warsaw was not a party to the proceedings. As a consequence of that decision, the 1949 application had still to be examined.

21. By a letter of 26 May 2003 the applicants withdrew their complaint about the inactivity of the Warsaw Self-Government Board of Appeal, which had been lodged on 3 December 2002.

C. Proceedings concerning the grant of the right of perpetual use of the plot owned by the City of Warsaw

22. On 8 December 2003 the Mayor of Warsaw, after examination of the 1949 application, decided to discontinue the proceedings. He considered that they had become devoid of purpose. He observed that by virtue of another decision given on 25 January 1984 on behalf of the Mayor of Warsaw, the applicants' father had been granted and paid compensation for the property. He underlined that the 1945 Decree had provided either for the grant of the right of perpetual use (which replaced the former temporary ownership), or for the payment of compensation. As such had been paid to the applicants' father, their claims in this respect had already been satisfied.

23. The applicants contested that decision on 23 December 2003. They alleged, in particular, that the amount of the compensation paid in the 1980s had been disproportionately low in comparison with the market value of the property.

24. On 13 February 2004 the Warsaw Self-Government Board of Appeal quashed the first-instance decision and remitted the case.

25. On 12 November 2004 and 25 April 2005, the applicants' lawyer wrote a letter to the Office of the City of Warsaw (*Urząd Miasta Stołecznego Warszawy*), inquiring about the progress in the proceedings following the decision of the Warsaw Self-Government Board of Appeal. He underlined that since the remittal of the case no action had been taken by the first-instance authority.

26. On 19 October 2004 the applicants' lawyer lodged with the Office of the City of Warsaw a complaint about the inactivity of the first-instance authority, to no avail.

27. Further complaints in this respect were lodged with the Board of the City of Warsaw (*Rada Miasta Stołecznego Warszawy*) on 7 July and the Mazowiecki Governor on 4 November 2005.

28. On 18 November 2005 the Mazowiecki Governor transferred the applicants' complaint of 4 November to the Warsaw Self-Government Board of Appeal. On the same date he instructed the Board of the City of Warsaw to examine the applicants' inactivity complaint of 7 July.

29. On 30 November 2005 the Warsaw Self-Government Board of Appeal instructed the Mayor of Warsaw to give explanations for his excessive delay in delivery of the first-instance decision. As no answer was given, on 30 January 2006 the Warsaw Self-Government Board of Appeal renewed its request.

30. On 13 February 2006 the Warsaw Self-Government Board of Appeal ordered the Mayor of Warsaw to examine the applicants' case by no later than 30 June 2006. At the same time it confirmed that the Mayor of Warsaw had breached the provisions of the Code of Administrative Procedure laying down time-limits for dealing with a case. It also reprimanded him for the failure to notify the applicants about the delay in the proceedings and the extension of the statutory time-limit for dealing with their case.

31. As no decision was given, on 21 July 2006 the applicants' lawyer filed with the Warszawa Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) a complaint about the inactivity of the Mayor of Warsaw. Subsequently he asked the Mayor of Warsaw to institute disciplinary proceedings against those responsible for the delay in examination of the applicants' case.

32. On 9 August 2006 the Mayor of Warsaw issued his decision in the case. He refused the application, observing that the property in question constituted part of a bigger plot of 11,434 square meters. He found that the plot in question had been designated partly for local housing and service facilities. He stated that on part of the property underground facilities had already been developed. Lastly, the Mayor considered that it was not feasible to detach from the existing larger plot the part which had been owned by the applicants' father.

33. On 24 August 2006, the applicants' lawyer appealed against the decision of the Mayor of Warsaw to the Warsaw Self-Government Board of Appeal.

34. On 1 February 2007 the Warszawa Regional Administrative Court discontinued the proceedings in respect of the inactivity complaint lodged on 21 July 2006. It doing so, it relied on the fact that on 9 August 2006 the Mayor of Warsaw had given the decision as to the merits. A cassation appeal against that decision was lodged on 28 March 2007.

35. On 21 May 2007 the Supreme Administrative Court dismissed the applicants' cassation appeal.

36. The proceedings in the applicants' case are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. The relevant domestic law concerning inactivity on the part of administrative authorities is stated in the Court's judgments in cases *Kaniewski v. Poland*, no. 38049/02, 8 February 2006, and *Koss v. Poland*, no. 52495/99, 28 March 2006.

38. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("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 THE ANNULMENT OF THE 1983 DECISION

39. The applicants complained that the length of the proceedings for the annulment of the decision refusing the grant of the so-called temporary ownership had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention.

40. However, pursuant to Article 35 § 1 of the Convention:

"1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken..."

41. The Court notes that the final decision in this respect was given by the Warsaw Self-Government Board of Appeal on 18 March 2003, thus

more than six months before the date on which this complaint was submitted to the Court.

It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS CONCERNING THE GRANT OF THE RIGHT OF PERPETUAL USE

42. The applicants complained that the length of the proceedings, which concerned the grant of the right of perpetual use, 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...”

43. The Government contested that argument.

44. The period to be taken into consideration began on 8 December 2003 and has not yet ended. It has thus lasted 5 years and 3 months for two levels of jurisdiction.

A. Admissibility

45. 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. They relied on Article 417¹ § 3 of the Civil Code. In addition, they maintained that the applicants could have filed an action for damages under Article 417 of the Civil Code.

46. The Government further argued that from 21 July 2006, the date of lodging a complaint about the inactivity of the Mayor of Warsaw with the Regional Administrative Court, the applicants had a possibility of filing a complaint under the 2004 Act.

47. The applicants contested the Government’s submissions.

48. With regard to the Government’s submissions that the applicants failed to institute proceedings for damages under Article 417¹ § 3 or Article 417 of the Civil Code, the Court reiterates that although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that, in cases where the national law provides for several parallel remedies in various branches of law, the person concerned, after an attempt

to obtain redress through one such remedy, must necessarily try all other means (see, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001; *Cichla v. Poland*, no. 18036/03, §23-26, 10 October 2006).

49. The Court considers therefore that, having exhausted the available remedies provided by the Polish Code of Administrative Procedure of 1960 (see paragraphs 26-30 above), the applicants were not required to embark on another attempt to obtain redress by bringing an additional civil action for compensation.

50. 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 reiterates that 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 a complaint lodged with the Supreme Administrative Court about the inactivity of the administrative authorities (see paragraphs 26-31 above). Moreover, the Court observes that the proceedings complained of lasted over five years. After the entry into force of the 2004 Act the proceedings were conducted by the Regional Administrative Court and the Supreme Administrative Court in a period which did not exceed eleven months (see paragraphs 31 and 34-35 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 for the purposes of the alleged 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.

51. 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

52. 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).

53. 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).

54. 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 concerning the grant of the right of perpetual use was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

55. The applicants submitted that because of the inactivity of the first-instance authority and its failure to issue an administrative decision within the statutory time-limit, they could not use domestic remedies and lodge an appeal against such a decision. They relied in substance on Article 13 of the Convention.

56. The Court reiterates that, according to its settled case-law, there exist in the Polish legal system remedies for the excessive length of administrative proceedings (see, *mutatis mutandis*, *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002).

57. 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

58. 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

59. The applicants claimed 5,000,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 1,000,000 in respect of non-pecuniary damage.

60. The Government contested these claims.

61. 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 to each applicant EUR 2,400 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

63. 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 the right of perpetual use 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 each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage, 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 amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President