



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF PABJAN v. POLAND

(Application no. 24706/05)

JUDGMENT

STRASBOURG

2 June 2009

FINAL

02/09/2009

This judgment may be subject to editorial revision.

In the case of Pabjan v. Poland,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*

Having deliberated in private on 12 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 24706/05) 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 a Polish national, Mr Józef Pabjan (“the applicant”), on 5 July 2005.

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

3. On 19 October 2007 the President of the Chamber 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 1928 and lives in Tarnów.

5. On 9 August 1968 the Hrubieszów District National Council took over the applicant’s farm, regarding it as abandoned property. On 16 January 1969 the Lublin Regional National Council upheld that decision.

6. On 12 December 1994 the applicant requested the Minister of Agriculture to declare the latter decision null and void.

7. On 29 August 1997 the Minister of Agriculture and Food Economics dismissed the applicant's request. The applicant appealed. On 9 January 1998 the Minister upheld his former decision.

8. On 8 September 1999 the Supreme Administrative Court quashed both decisions of the Minister of Agriculture and Food Economics and remitted the case for re-examination.

9. On 4 April 2000 the applicant lodged a complaint with the Supreme Administrative Court requesting that a fine be imposed on the Minister for failure to enforce the decision of the Supreme Administrative Court of 8 September 1999. He also complained about the overall length of the proceedings. On 9 May 2001 the Supreme Administrative Court discontinued these proceedings since the applicant had withdrawn his complaints as the Minister had in the meantime issued the decision in question (see paragraph 12 below).

10. The Minister began to examine the case in June 2000. On 16 June 2000 he stayed the proceedings until certain documents concerning ownership of the applicant's farm were submitted by the Lublin Governor's Office. The requested documents were submitted to the Minister on 23 November 2000.

11. On 14 March 2001 the applicant lodged another complaint with the Minister of Agriculture and Food Economics alleging inactivity on his part.

12. On 26 April 2001 the Minister again dismissed the applicant's request to declare the decision null and void. On 8 May 2001 the applicant appealed, requesting a re-examination of his case.

13. On 21 November 2001 the applicant again lodged a complaint with the Supreme Administrative Court alleging inactivity on the part of the Minister. The proceedings were discontinued on 14 March 2002 since the applicant had withdrawn his complaint as the Minister had issued the decision in question (see paragraph 14 below).

14. On 8 February 2002 the Minister of Agriculture and Food Economics upheld his decision of 2001.

15. On 21 January 2003 the Supreme Administrative Court quashed the Minister's decisions given in 2001 and 2002.

16. On 27 January 2004 the Minister dismissed the applicant's request of 1994 for the third time. On 9 February 2004 the applicant lodged an appeal against that decision.

17. The proceedings are currently pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law concerning the remedies for the inactivity of the administrative authorities at the material time is set out in the Court's judgment in the case of *Grabiński v. Poland*, no. 43702/02, §§ 60-65, 17 October 2006.

THE LAW

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

19. The applicant 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...”

20. The Government contested that argument.

21. The period to be taken into consideration began on 12 December 1994 and it has not yet ended. It thus has lasted over 14 years and 3 months at three instances.

A. Admissibility

22. The Government raised a preliminary objection that the applicant had not exhausted all domestic remedies available to him under Polish law, as required by Article 35 § 1 of the Convention.

23. Firstly, they submitted that the applicant only once had lodged a complaint about the inactivity of the administrative authorities under Article 17 of the Act on the Supreme Administrative Court (“1995 Act”), and subsequently, he had withdrawn his complaint after the delivery of the decision in question which resulted in the discontinuance of the proceedings.

24. Secondly, the Government admitted that the applicant had lodged the complaints twice; for the first time, when requesting that a fine be imposed on the Minister for his failure to execute the decision of the Supreme Administrative Court of 8 September 1999, and, for the second time, when complaining about the inactivity of the Minister of Agriculture. However, each time he had waived his complaints as decisions on the merits had been issued after his complaints had been submitted. Hence, the Supreme Administrative Court had never had the opportunity to examine the substance of the applicant’s complaint.

25 Finally, the Government submitted that the applicant could have lodged another complaint about inactivity with the administrative court.

26. The Court reiterates that, whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it normally requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate

domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in the domestic law (see, among other authorities, *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34). However, non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the complaint (see, among other authorities, *Skalka v. Poland* (dec.), no. 43425/98, 3 October 2002; and *Uhl v. Germany* (dec.), no. 64387/01, 6 May 2004).

27. The Court also 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).

28. The Court notes that the applicant withdrew his complaint of 21 November 2001 before it was examined by the Supreme Administrative Court since the Minister had, following his complaint, issued the decision in question. The applicant also requested that a fine be imposed on the Minister for failure to execute the decision of the Supreme Administrative Court of 8 September 1999. That complaint was also withdrawn by the applicant before it was examined by the Supreme Administrative Court since the Minister had issued the decision on the merits.

29. The remedy the applicant used was therefore adequate and sufficient to afford him redress in respect of the alleged breach. It also resulted in the acceleration of the proceedings. In consequence, the Court does not consider that the applicant should have lodged a further complaint about inactivity with the Supreme Administrative Court in order to fulfil his obligation under Article 35 § 1.

30. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

31. 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

1. The parties' submissions

32. The Government refrained from expressing their opinion on the merits of the applicant's case. At the same time, they pleaded the particular complexity of the case which had involved complicated legal and factual

issues. They maintained that the authorities had shown due diligence in the proceedings but many factors had contributed to the length of the proceedings.

33. The applicant submitted that the “reasonable time” requirement laid down in Article 6 § 1 had not been complied with, referring to the long periods of unexplained inactivity on the part of the administrative authorities.

2. *The Court’s assessment*

34. 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).

35. 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.

36. 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.

37. As regards the conduct of the relevant authorities, the Court notes that there were frequent periods of inactivity. By way of example, the Court observes that there was a period of almost two years and nine months of inactivity between 12 December 1994 when the applicant lodged his request and 29 August 1997, when the Minister issued his decision. Subsequently, there was a period of one year and six months of inactivity between 24 February 1998 when the applicant appealed against the decision of the Minister and 8 September 1999, when the Supreme Administrative Court quashed the challenged decision and remitted the case. The Court observes that there were other unexplained periods of inactivity in the subsequent proceedings, such as a period of almost twelve months between 21 January 2003 when the Supreme Administrative Court quashed the decision of the Minister and 27 January 2004, when the Minister dismissed the applicant’s request for the third time. Finally, the Court observes that there was a period of five years of inactivity which had started on 9 February 2004.

38. The Court observes that the delays in the proceedings were caused mainly by the successive remittals. Given that a remittal of a case for re-examination is usually ordered as a result of errors committed by lower instances, the Court considers that the repetition of such orders within one set of proceedings discloses a deficiency in the procedural system as applied in the present case (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

39. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed EUR 20,000 in respect of non-pecuniary damage.

42. The Government submitted that the claim was exorbitant.

43. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 9,600 under that head.

B. Costs and expenses

44. The applicant also claimed EUR 84.10 for the costs and expenses incurred before the domestic administrative authorities and courts and before the Court.

45. The Government contested the claims. They submitted that only the costs actually had incurred before the Court should have been taken into consideration. They pointed out that the applicant had confirmed his expenses in that regard in the amount of PLN 27.70.

46. 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 it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 32 under this head.

C. Default interest

47. 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 application admissible;
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 9,600 (nine thousand six hundred euros) in respect of non-pecuniary damage and EUR 32 (thirty two euros) in respect of costs and expenses, plus any tax that may be chargeable to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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* unanimously the remainder of the applicant's claims for just satisfaction and for the costs and expenses.

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

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President