



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF TARNOWSKI v. POLAND (no. 1)

(Application no. 33915/03)

JUDGMENT

STRASBOURG

29 September 2009

FINAL

29/12/2009

This judgment may be subject to editorial revision.

In the case of Tarnowski v. Poland (no. 1),

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*,
Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 33915/03) 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 three Polish nationals, Mr Juliusz Tarnowski, Mr Marek Tarnowski and Mr Aleksander Tarnowski (“the applicants”), on 15 October 2003.

2. The applicants were represented by Mr P. Boroń, a lawyer practising in Cracow. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 6 December 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) and that the case be examined simultaneously together with the case no. 43934/07 (Rule 42 § 2 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants, Mr Juliusz Tarnowski, Mr Marek Tarnowski and Mr Aleksander Tarnowski are brothers. They are Polish nationals who were born in 1929, 1932 and 1934 respectively and live in Kraków and Sopot.

5. The applicants are heirs of the owner of 27 plots of land and buildings, which constituted a property called “*Końskie-Kolonie*”

Fabryczne”. The property was *de facto* expropriated by the State by virtue of the 1944 Decree on Agrarian Reform in January 1945.

6. However, in this particular case the relevant authorities failed to issue an appropriate administrative decision, declaring that the property had been subject to expropriation within the framework of the agrarian reform.

7. In 1965 the State Treasury’s ownership title was entered in the land and mortgage register.

8. In respect of plot no. 6271, the right of perpetual use of that plot was granted by the State Treasury to the “*Zakłady Energetyczne Okręgu Radomsko-Kieleckiego SA*” and that company was designated as the present occupier. On 12 July 1992 the State-owned enterprise was transformed into an independent public company, the “*Zakłady Energetyczne Okręgu Radomsko-Kieleckiego SA*”, the structure and functioning of which were governed by the provisions of the Commercial Code and other relevant Acts. The State however retained a 100 % shareholding in the company.

1. Administrative proceedings concerning the applicants’ right to the property

9. On 23 July 1996 the applicants requested the Kielce Governor to issue a decision stating that the property “*Końskie - Kolonie Fabryczne*” should not have been subject to expropriation under section 2 § 1 (e) of the 1944 Decree on Agrarian Reform.

10. On 30 June 1997 the Kielce Governor partly dismissed the applicants’ request, finding that a part of the property had met the criteria for expropriation set out in the 1944 Decree. However, the Governor declared that several plots of land with an overall area of 12.03 hectares should not have been subject to expropriation. This decision concerned, among others, plot no. 6271.

11. The applicants and the present occupier of one of the plots appealed. On 14 January 1998 the applicants’ opponent withdrew its appeal. On 19 November 1997 the Minister of Agriculture discontinued the appellate proceedings in respect of the part of the decision given in the applicants’ favour and dismissed the applicants’ appeal against the remainder of the decision.

12. On 8 June 2001 the Supreme Administrative Court dismissed the applicants’ further appeal, finding that the contested administrative decisions of the Kielce Governor and the Minister of Agriculture had been lawful.

2. Civil proceedings for rectification of an entry in the land and mortgage register

13. On 25 July 1996 the applicants instituted civil proceedings for rectification of an entry in the land and mortgage register. They requested the court to enter their title to plot no. 6271 in the land and mortgage register. Hearings were held on 8 January and 9 April 1997.

14. On 16 April 1997 the Kielce Regional Court gave a decision, securing the applicants' claims by entering a caveat in the land and mortgage register. Subsequently, the court stayed the proceedings pending the outcome of the above administrative proceedings.

15. On 7 December 1998, following the delivery of the Kielce Governor's decision of 30 June 1997 (see paragraph 10 above), the applicants requested that the proceedings be resumed in the part concerning the following plots: 1) nos. 1299/2, 1303, 1306/3 and 1307/7; 2) nos. 1310 and 1314/1; 3) no. 6271.

16. On 23 June 1999 the Kielce Regional Court delivered a partial judgment in respect of the plots listed under 1) nos. 1299/2, 1303, 1306/3 and 1307/7 and 2) nos. 1310 and 1314/1. The judgment in this part became final. The proceedings in respect of plot no. 6271 continued.

17. On 9 November 2000 the Kielce Regional Court stayed the proceedings in respect of plot no. 6271 as it had decided, following the request of another party, to re-open the proceedings in respect of plots nos. 1310 and 1314/1. The proceedings were resumed on an unknown date.

18. On 1 March 2007 the Kielce Regional Court gave judgment in the case. In respect of the disputed plot no. 6271 the court partly allowed the applicants' claim and decided on rectification of an entry in the land and mortgage register in respect of plot no. 6271/3. The court dismissed the remainder of the claim (plots nos. 6271/1 and 6271/2), finding that that part of plot no. 6271 had been sold by the applicants' predecessor in title in 1939. It had been in the possession of certain individuals until the 1960s when it had been re-sold to the State Treasury with a view to realising certain development plans. The judgment became final as no parties lodged an appeal.

19. On 12 July 2007 the applicants were entered in the land and mortgage register as the owners of plot no. 6271/3.

20. On 19 November 2007 the applicants sold the above-mentioned plot to the present occupier (see paragraph 32 below).

3. Civil proceedings for recovery of possession

21. On 15 April 1999 the applicants lodged an action for recovery of plot no. 6271.

22. On 23 November 1999 the Kielce Regional Court stayed the proceedings pending the outcome of the proceedings for rectification of an entry in the land and mortgage register (see paragraphs 13-20 above).

23. On 20 January 2003 the applicants requested the court to resume the proceedings. The applicants submitted that the proceedings regarding the rectification of the entry in the land and mortgage register had been pending before the Kielce Regional Court. However, they wished to have the proceedings resumed as the Kielce Governor's decision of 30 June 1997 had become final in respect of plot no. 6271 and their title to this plot had not been disputed.

24. On 21 March 2005 the Kielce Regional Court dismissed the applicants' request.

25. On 1 June 2007 the applicants requested the court to resume the proceedings as the proceedings regarding the rectification of the entry in the land and mortgage register had ended on 1 March 2007 (see paragraph 18 above). On 28 June 2007 the court resumed the proceedings.

26. On 27 December 2007 the proceedings were discontinued, since the applicants had withdrawn their action.

4. Civil proceedings for compensation

27. On 1 March 1999 the applicants instituted civil proceedings for compensation for the use of their property by the State Treasury without valid legal title. They claimed compensation for the period from 29 September 1990.

28. The right of perpetual use of plot no. 6271 was granted by the State Treasury to the "Zakłady Energetyczne Okręgu Radomsko-Kieleckiego SA" and that company was designated as the present occupier (see paragraph 8 above).

29. On 6 December 2001 the Kielce Regional Court gave judgment in the case. On 12 July 2001 the Cracow Court of Appeal upheld the first-instance judgment. On 11 February 2004 the Supreme Court quashed the second-instance judgment and remitted the case.

30. On 17 December 2004 the Court of Appeal held a hearing in the case. At the hearing the applicants partly withdrew their claim in respect of plots nos. 1310 and 1314/1.

31. On 29 December 2004 the Cracow Court of Appeal gave judgment partly in the applicants' favour awarding them the amount of PLN 894,648 for the period from 1 January 1997 to 20 October 2000. In respect of plot no. 6271 the court awarded the amount of PLN 433,906 and dismissed the defendant's claim that part of that plot had been sold by the applicants' predecessor in 1939 as it had failed to substantiate them.

32. On 19 November 2007 the applicants sold plot no. 6271/3 to the present occupier of the property - the "Zakłady Energetyczne Okręgu

Radomsko-Kieleckiego SA". On the basis of that agreement the applicants were awarded compensation for the use of the plot without title for the period from 20 April 2007 to 19 November 2007. In respect of the period from 1 November 2000 to 20 April 2007 the parties decided that it would be subject to another agreement to be concluded in the future or civil proceedings.

5. *Proceedings under the 2004 Act*

33. On 1 March 2005 the applicants lodged a complaint with the Cracow Court of Appeal under the Act of 17 June 2004 on complaints about a breach of the right to trial within a reasonable time ("the 2004 Act"). The applicants claimed just satisfaction in the amount of PLN 1. They also requested the court to take action to expedite and resume the proceedings for recovery of the property (see paragraphs 21-26 above).

34. On 29 April 2005 the Cracow Court of Appeal rejected the complaints of Mr M. Tarnowski and Mr A. Tarnowski as all three applicants had paid only PLN 100 by way of Court fees. It held that this had been contrary to section 17 § 2 of the 2004 Act, which provided that each applicant was obliged to pay the amount of PLN 100 in respect of their complaints.

35. Having examined the complaint lodged by Mr J. Tarnowski, on 29 April 2005 the Cracow Court of Appeal found that the proceedings had been handled properly. The court concluded that the fact that the proceedings had been suspended from November 1999 had not amounted to "unreasonable delay" as defined by the 2004 Act. It found that a delay had occurred only between the date when the applicants submitted their request for the proceedings to be resumed to the Kielce Regional Court on 20 January 2003 and the date of the decision on this matter on 21 March 2005. The court granted Mr J. Tarnowski just satisfaction in the amount of PLN 1 as he had requested. The court dismissed the request for the proceedings to be expedited.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, is set out 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 relevant domestic law and practice concerning Article 1 of Protocol No. 1 is set out in the Court's judgments in the cases of *Zwierzynski v. Poland*, no. 34049/96, § 63-74, ECHR 2001-VI, and *Bennich-Zalewski v. Poland*, no. 59857/00, judgment of 22 April 2008.

THE LAW

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

37. 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...”

38. The Government contested that argument.

A. Admissibility

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

40. As regards the proceedings for recovery of possession the Government submitted that only Mr J. Tarnowski had lodged his complaint in accordance with the formal requirements set out in the 2004 Act.

41. The complaints of Mr M. Tarnowski and Mr A. Tarnowski had been rejected as they had failed to pay the court fee of PLN 100. Therefore, these applicants had failed to exhaust the remedies provided for by domestic law. The Government maintained that they could have lodged a new complaint concerning the length of the proceedings at any time after the court had rejected their requests.

42. The Government further maintained that all the applicants had failed to exhaust the remedies provided for by domestic law in respect of the proceedings for rectification of an entry in the land and mortgage register and the proceedings for compensation.

43. The Government also submitted that they had not made use of any remedies available under administrative law in order to complain about the allegedly protracted length of the administrative proceedings concerning the applicants' title to the property.

44. The applicants disagreed with the Government. They submitted that, in separate proceedings under the 2004 Act (the proceedings concerning plots nos. 1310 and 1314/1 – see application no. 43934/07 pending before the Court), the Kielce Regional Court had examined their complaint under the 2004 Act on the merits in similar circumstances. They did not comment on the Government's submissions concerning the other proceedings.

45. The Court reiterates that under Article 35 § 1 of the Convention, the Court may only deal with complaints after all domestic remedies have been exhausted.

46. The Court considers that the applicants were required by Article 35 § 1 of the Convention to lodge a complaint of a breach of the right to trial within a reasonable time with the domestic court under the 2004 Act in respect of the proceedings for rectification of an entry in the land and mortgage register and the proceedings for compensation. They were also required by Article 35 § 1 of the Convention to use remedies available under administrative law in order to complain about the length of the administrative proceedings. However, they did not avail themselves of these remedies.

47. It follows that this part of the applicants' application in respect of the above-mentioned proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

48. As regards the proceedings for recovery of possession, the Court notes that only one of the applicants paid the court fee for the length complaint.

The Court notes that at that time the applicants were represented by a lawyer and the domestic court was not obliged to advise them on how to lodge or remedy formal deficiencies of their complaints (compare and contrast *Wende and Kukówka v. Poland*, no. 56026/00, § 54, 10 May 2007)

49. It follows that this part of the application in respect of the above-mentioned applicants, Mr M. Tarnowski and Mr A. Tarnowski, must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

50. The Court further notes that, in view of the judgment of the Cracow Court of Appeal of 29 April 2005, a question arises as to whether the applicant, Mr J. Tarnowski, can still claim to be a "victim", within the meaning of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time in respect of the proceedings for recovery of the property. It notes, in this connection, that in its judgment of 29 April 2005 the Cracow Court of Appeal found the delay in the proceedings unjustified (see paragraph 35 above) and granted him just satisfaction in the amount of PLN 1 which was the full amount he had claimed in respect of delays which had occurred in the proceedings. Moreover, the proceedings in question quickly came to a final resolution (in less than 10 months) after the delivery of the final judgment in the proceedings for rectification of an entry

in the land and mortgage register (see paragraphs 25-26 above). However, the Court considers that this issue is closely linked to the substance of the applicant's complaint and its examination should therefore be joined to the merits of the case. As the complaint is not inadmissible on any other grounds, it must therefore be declared admissible.

B. Merits

1. The period to be taken into consideration

51. The civil proceedings for recovery of possession started on 15 April 1999 and ended on 27 December 2007 by a decision of the Kielce Regional Court (see paragraph 26 above). Thus, the period to be taken into consideration lasted 8 years, 6 months and 14 days.

2. The parties' submissions

52. The Government submitted that the case had been very complex as the domestic authorities had had to clarify the legal and factual circumstances of events which had occurred in the past dating back to the Second World War. Numerous documents had had to be obtained and examined.

53. The Government acknowledged that the applicants had not contributed to the length of the proceedings.

54. The Government maintained that the proceedings for recovery of possession, which had been instituted on 15 April 1999, had had to be stayed pending the outcome of the proceedings for rectification of an entry in the land and mortgage register. The latter proceedings had been, in turn, adjourned pending the outcome of the administrative proceedings. In the Government's opinion the proceedings in question had in fact lasted from 15 April 1999 to 23 November 1999, when the Kielce Regional Court stayed the proceedings pending the outcome of the proceedings for rectification of an entry in the land and mortgage register and from 28 June 2007 when the court resumed the proceedings to 27 December 2007, when it discontinued the proceedings. Therefore, the length of the proceedings amounted only to twelve months. The Government further claimed that the periods during which the proceedings had been stayed should be deducted from the overall period.

55. The applicants disagreed with the Government. They submitted that after the decisions of 30 June 1997 by the Kielce Governor, and subsequently, that of 19 November 1998 by the Minister of Agriculture, the State Treasury should have returned the property in question without delay. Finally, they submitted that the case had been examined with delays and

they had had to wait almost ten years before their title to the property was entered in the land and mortgage register by the judgment given by the Kielce Regional Court on 1 March 2007.

3. *The Court's assessment*

56. 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).

57. The Court observes that the case involved a certain degree of complexity. The Court can accept that some delays in the proceedings before the Kielce Regional Court could be explained by the fact that at the material time the court had to stay the proceedings until delivery of a judgment in separate proceedings. However, it considers that this in itself cannot justify the overall length of the proceedings.

58. 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.

59. As regards the conduct of the relevant authorities, the Court observes that the proceedings, instituted on 15 April 1999, remained dormant from 23 November 1999 to 27 June 2007 since they were stayed pending the outcome of separate proceedings.

60. The Court does not share the Government's view that the whole period during which the proceedings were stayed should be deducted from the overall length of the proceedings. The Court further observes that some delays occurred between the date when the applicants submitted their request for the proceedings to be resumed to the Kielce Regional Court on 20 January 2003 and the date of the decision on this matter on 21 March 2005 (see paragraphs 23-24 above).

61. The Court notes that the applicant, Mr J. Tarnowski, availed himself of the procedure provided for by domestic law to resume the proceedings in question as well as the procedure provided for by the 2004 Act to expedite the proceedings.

62. The Court observes that these efforts were unsuccessful, and the proceedings for recovery of possession have remained stayed, essentially, as a consequence of civil claims to the property having been raised in the context of separate proceedings (see paragraphs 17-18 above).

63. However, the Court is of the view that the State cannot be held responsible for the remaining period when the proceedings were stayed pending the outcome of the proceedings for rectification of an entry in the land and mortgage register. It was open to the applicant to lodge a complaint

under the 2004 Act in the latter proceedings with a view to speeding them up since they were decisive for his rights, but he failed to do so (see paragraphs 13-20 above).

64. Having regard to all the circumstances of the case, the Court considers that there has been no violation of Article 6 § 1 of the Convention.

65. Lastly, the Court recalls that it has joined to the merits of the case the question whether the applicant, Mr J. Tarnowski, can still claim to be a victim of a breach of the Convention (see paragraph 50 above). However, having regard to its conclusion on the Article 6 issue, the Court finds that it is not necessary to determine the issue of the applicant's victim status.

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

66. The applicants complained that the domestic courts had failed to take appropriate and speedy action to restore possession of their property to them. They relied on Article 1 of Protocol No. 1 to the Convention, which reads:

“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.”

A. Admissibility

67. The Government raised a preliminary objection that the applicants could not claim to be victims of a breach of the Convention since they had already obtained just satisfaction within the domestic system. They had obtained full redress for any delay in having possession of the property restored to them by the present occupier.

68. Under the agreement which they had concluded with the company concerned, they had sold the property in question to it and had obtained compensation for the use of their property without title. Additionally, compensation under the same title but for another period of time was awarded to the applicants by the Cracow Court of Appeal.

69. The applicants disagreed with the Government.

70. The Court considers that the Government's objection is closely linked to the substance of the applicants' complaint under Article 1 of Protocol No. 1 to the Convention. Its examination should therefore be

joined to the merits of the case. As the complaint is not inadmissible on any other grounds, it must therefore be declared admissible.

B. Merits

1. The parties' submissions

71. The Government submitted that the applicants could not claim to be victims of a breach of the Convention since they had already obtained satisfaction within the domestic system. On 1 March 2007 the applicants had been entered as owners in the land and mortgage register. On 19 November 2007 they had sold plot no. 6271/03 to the present occupier and on the basis of the same agreement they had been compensated for the use of their property without title. Additionally, compensation under the same title but for another period of time had been awarded by the judgment of the Cracow Court of Appeal given on 29 December 2004.

72. The Government were of the opinion that the applicants had obtained full redress for any delays in securing possession of the property restored to them. Therefore, there had been no interference with their peaceful enjoyment of possessions for which the Government could have been held responsible. Although the applicants' property had remained for a time in the possession of the public company, their rights had been safeguarded by the civil law and they had already obtained redress at the domestic level.

73. The applicants disagreed with the Government. They submitted that plots nos. 6271/1 and 6271/2 had not been returned to them despite the fact that they had a legitimate expectation of being declared the owners of that part of the former plot no. 6271. They maintained that they had not been awarded any compensation for the period from 10 October 1994, the date of the ratification by Poland of Protocol No.1 to the Convention, to 31 December 1996.

2. The Court's assessment

74. The Court first reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described thus (in *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37; see also, 31524/96, § 51, ECHR 2000-VI):

“The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... The three rules are not, however, ‘distinct’ in the sense of being unconnected. The second and third

rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.”

75. The Court points out that the concept of “possessions” in Article 1 of Protocol No. 1 has an autonomous meaning (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I). Consequently, the issue that needs to be examined first is whether the circumstances of the case, considered as a whole, conferred on the applicant a substantive interest protected by Article 1 of Protocol No. 1.

76. In this connection, the Court notes that the applicants’ complaint is focused on the inability to enjoy what they perceive as their rights protected by Article 1 of Protocol No. 1. This inability has resulted from the fact that after the decisions of the Kielce Governor given on 30 June 1997 and the Minister of Agriculture given on 19 November 1997 by which their ownership was recognised, they had to take further proceedings in order to be able to effectively enjoy their rights originating in these decisions (see paragraphs 13-32 above).

77. The Court notes that the Kielce Governor declared that plot no. 6271 should not have been subject to expropriation (see paragraph 10 above). Under the provisions of Polish law such a decision should be regarded as conferring on the applicants a proprietary interest falling within the ambit of possessions within the meaning of Article 1 of Protocol No. 1 to the Convention (see *Bennich-Zalewski v. Poland*, no. 59857/00, judgment of 22 April 2008, § 90).

78. The Court reiterates that by virtue of Article 1 of the Convention, each Contracting Party must “secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention”. The obligation to secure the effective exercise of the rights defined in that instrument may result in positive obligations for the State (see, among other authorities, *X and Y v. the Netherlands*, 26 March 1985, Series A no. 91, p. 11, §§ 22-23). In such circumstances, the State cannot simply remain passive and “there is ... no room to distinguish between acts and omissions” (see, *mutatis mutandis*, *Airey v. Ireland*, 9 October 1979, Series A no. 32, p. 14, § 25).

79. As regards the right guaranteed by Article 1 of Protocol No. 1, such positive obligations may entail certain measures necessary to protect the right to property (see, among other authorities and *mutatis mutandis*, *López Ostra v. Spain*, 9 December 1994, Series A no. 303-C, p. 55, § 55), even in cases involving litigation between private individuals or companies (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 83, ECHR 2007-..., *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, ECHR 2002-VII, and *Bennich-Zalewski v. Poland*, cited above, § 92).

80. The Court observes that the applicants’ complaint does not relate to a simple failure on the part of the State to conduct enforcement proceedings

in respect of a final judicial decision given against it in the applicant's favour (in respect of which obligation, see *Prodan v. Moldova*, no. 49806/99, ECHR 2004-III (extracts), and *Lupacescu and Others v. Moldova*, nos. 3417/02, 5994/02, 28365/02, 5742/03, 8693/03, 31976/03, 13681/03, and 32759/03, 21 March 2006). Rather, their complaint is that it was left to them to take such measures as would have made it possible for them to fully enjoy the economic advantages arising out of their rights originating in the decision of the Kielce Governor in June 1997.

81. The Court notes that the property in question, a plot of land, was not held by any public authority either when the decision of the Kielce Governor was given in June 1997, or at any later time (contrast *Zwierzyński v. Poland*, cited above, § 67, ECHR 2001-VI). It was held by the “*Zakłady Energetyczne Okręgu Radomsko-Kieleckiego SA*”, a public company. Even if the State retained 100 % of the shares in the company, it nevertheless enjoyed complete operational and financial autonomy and was governed by the provisions of the Commercial Code and other relevant Acts (see paragraph 8 above).

82. The Court observes that the status of the company has a bearing on the nature of the State's obligations under Article 1 of Protocol No. 1. In particular, having regard to the institutional and operational independence of the present occupier of the property from the State, the latter must be taken to be absolved from responsibility under the Convention for that company's acts and omissions. For the Court, the State's obligation in the circumstances of this case is confined to ensuring effective enforcement of the decision annulling the expropriation, by having in place a legal framework making it possible for the applicants to recover possession of their property and to settle claims arising between them and the private-law entity which was in possession of the property at the time of the impugned decision (see, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, cited above, § 96).

83. The Court notes that under domestic law it was open to the applicants to have recourse to various types of proceedings in order to have the 1997 decision implemented in practice and, in particular, to have their claims and counterclaims determined by the courts. The applicants had recourse to them, firstly by instituting civil proceedings against the State Treasury in which they sought damages from it for the use of the property after 29 September 1990, the date on which the Constitutional Court had ruled on a legal question concerning interpretation of section 2 § 1 (e) of the Decree on Agrarian Reform. The Court of Appeal ruled partly in their favour and awarded just satisfaction to them (see paragraph 31 above). It was open to the applicants to appeal against that judgment or to institute civil proceedings with a view to obtaining compensation for a further period, but they failed to do so.

84. The Court further notes that the applicants successfully instituted proceedings to have their title to plot no. 6271/3 entered in the land and mortgage register. It was open to the applicants to appeal against the judgment of the Regional Court in respect of plots nos. 6271/1 and 6271/2, but they failed to do so (see paragraph 18 above).

85. Furthermore, the applicants also successfully instituted proceedings to have possession of their property returned to them. They sold their property to the present occupier and were awarded compensation for the use of the plot for the period from 20 April 2007 to 19 November 2007. In respect of the period from 1 November 2000 to 20 April 2007, which had not been covered by the ruling of the Court of Appeal, the parties decided that it would be subject to another agreement or civil proceedings. Therefore, it was open to the applicants to conclude a new agreement in respect of the later period or to put the matter before the civil courts, but they failed to do so (see paragraph 31 above).

86. Hence, domestic law provided an effective framework of a judicial character by which the applicants could seek to have the economic value of their rights arising out of the Kielce Governor's decision of 30 June 1997 recognised in practice (see paragraph 10 above).

87. Having regard to the circumstances of the case seen as a whole, the Court is of the view that the State has not failed to comply with its obligation to secure to the applicants the effective enjoyment of their rights guaranteed by Article 1 of Protocol No. 1 to the Convention. On that account, the Court finds that it is unnecessary to rule on the Government's preliminary objection relating to lack of victim status (see paragraphs 67 – 68 above).

Therefore, there has been no violation of Article 1 of Protocol No. 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. Lastly, the applicants complained that the 2004 Act had not provided an effective remedy against the excessive length of the proceedings. They relied on Article 13 of the Convention which provides as follows:

“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.”

89. The Court notes that two of the applicants, Mr M. Tarnowski and Mr A. Tarnowski, failed to avail themselves of the remedy provided for by the 2004 Act (see paragraphs 40-51 above). It also notes that only Mr J. Tarnowski availed himself of that remedy in respect of the proceedings for recovery of possession.

90. 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. The Court has already found that the remedy under the 2004 Act is effective in respect of a length of proceedings complaint (see, *Figiel v. Poland (no. 1)*, no. 38190/05, 17 July 2008).

91. 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.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* the question of Mr J. Tarnowski's victim status to the merits of his complaint under Article 6 of the Convention concerning the excessive length of the proceedings for recovery of possession and declares this applicant's complaint admissible;
2. *Joins* to the merits the Government's preliminary objection concerning the applicants' lack of victim status to the merits of their complaint under Article 1 of Protocol No. 1 to the Convention and declares this complaint admissible;
3. *Declares* the remainder of the application inadmissible;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention and that it is not necessary to determine, in consequence, the issue of Mr J. Tarnowski's victim status;
5. *Holds* that there has been no violation of Article 1 of Protocol No. 1 of the Convention;
6. *Holds* that it is not necessary to decide on the Government's above-mentioned preliminary objection.

Done in English, and notified in writing on 29 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President