



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF TARNOWSKI v. POLAND (no. 2)

(Application no. 43934/07)

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. 2),

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 8 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 43934/07) 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 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. 33915/03 (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 title to the property was entered in the land and mortgage register.

8. In respect of plots nos. 1310 and 1314/1, the right of perpetual use of these plots was granted by the State Treasury to the Końskie Municipality. The plots were leased to certain individuals.

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, plots nos. 1310 and 1314/1.

11. On 19 November 1997 the Minister of Agriculture dismissed the applicants’ appeal in respect of 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 ownership title to plots nos. 1310 and 1314/1 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. On 22 February 2000, after the judgment in this part became final, the Końskie District Court entered the applicants' ownership title in the relevant land register.

17. On 8 February one of the parties to the proceedings applied for the proceedings in respect of plots nos. 1310 and 1314/1 to be re-opened, arguing that new facts had arisen which showed that the applicants' father had not owned the plots in question.

18. On 9 November 2000 the Kielce Regional Court re-opened the proceedings in respect of plots nos. 1310 and 1314/1.

19. On 21 November 2000 the court stayed the re-opening proceedings pending the outcome of civil proceedings concerning the ownership title to these plots before the Końskie District Court, and subsequently, before the Kielce Regional Court. On 29 December 2005 the Kielce Regional Court, following an appeal by the applicants, dismissed the State's Treasury claim and discontinued the proceedings.

20. On 21 February 2007 the Kielce Regional Court resumed the proceedings for re-opening the proceedings terminated by the judgment of 23 June 1999 (see paragraph 16 above).

21. On 1 March 2007 the Kielce Regional Court gave judgment in the case. It dismissed the motion for re-opening the proceedings.

3. Civil proceedings for recovery of possession

22. On 15 April 1999 the applicants lodged an action for recovery of plots nos. 1310 and 1314/1.

23. At the first hearing, on 6 July 1999, the Końskie District Court stayed the proceedings pending the outcome of the proceedings for rectification of an entry in the land and mortgage register (see paragraphs 13-21 above).

24. On 14 July 1999 the applicants appealed against that decision. On 20 October 1999 the Kielce Regional Court dismissed the applicants' interlocutory appeal.

25. On 25 November 1999 the applicants requested that the proceedings be resumed.

26. On 14 January 2000 the Końskie District Court resumed the proceedings.

27. On 27 January 2000 a third party asked the court to allow her to participate in the proceedings as intervenor. She alleged that the applicants'

father had not been the owner of the plots in question since she and her husband had been in possession of the disputed plots since 1948.

28. On 16 May 2000 the Końskie District Court stayed the proceedings, indicating that the proceedings for rectification of an entry in the land register had been re-opened in their part concerning the applicants' claim. On 1 December 2000 the Kielce Regional Court dismissed the applicants' interlocutory appeal, finding that the lower court's decision was correct.

29. On 26 January 2006 the applicants requested the court to resume the proceedings. On 5 October 2007 the Court resumed the proceedings and discontinued them since the applicants had withdrawn their action.

4. Civil proceedings for compensation

30. 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 to November 2000.

31. On 6 December 2001 the Kielce Regional Court gave judgment in the case. On 12 July 2002 the Cracow Court of Appeal upheld the first-instance judgment. Following a cassation appeal lodged by the State Treasury, on 11 February 2004 the Supreme Court quashed the second-instance judgment and remitted the case.

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

33. On 29 December 2004 the Cracow Court of Appeal discontinued the proceedings in respect of the abovementioned plots since the applicants had withdrawn their claims.

34. On 5 May 2006 the applicants sold plots nos. 1310 and 1314/1 to a third party.

5. Proceedings under the 2004 Act

35. On 7 February 2005 the applicants lodged a complaint with the Kielce Regional Court 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 10,000 (approx. EUR 2,700). They also requested the court to take action to resume and expedite the proceedings for recovery of the property (see paragraphs 22-29 above).

36. On 4 May 2005 the Kielce Regional Court dismissed the applicants' complaint. The court referred to the fact that there had been no undue delay in the proceedings on and after the date of entry into force of the Act on 17 September 2004. The court pointed out that the proceedings had been stayed pending the outcome of other proceedings (see paragraphs 19 and

13-21 above) in which the ownership of the property was in issue. Therefore, there had been no delays in dealing with the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are 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.

38. 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

39. 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..."

40. The Government contested that argument.

A. Admissibility

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

42. The Government acknowledged that the applicants had used the available remedy in respect of the proceedings for recovery of possession by submitting a complaint under the 2004 Act with the Kielce Regional Court on 7 February 2005.

43. The Government further maintained, however, 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.

44. 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.

45. The applicants disagreed. However, they did not comment on the Government's submissions concerning the proceedings for rectification of an entry in the land and mortgage register, the proceedings for compensation or the administrative proceedings.

46. 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.

47. 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.

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

49. The Court further notes that the remainder of the application concerning the proceedings for recovery of possession 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 period to be taken into consideration

50. The civil proceedings for recovery of possession started on 15 April 1999 and ended on 5 October 2007 by a decision of the Kielce Regional Court (see paragraph 29 above). Thus, the period to be taken into consideration lasted 8 years, 5 months and 23 days.

2. *The parties' submissions*

51. 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.

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

53. The Government submitted that the applicants had instituted the administrative proceedings concerning their title to the property and the proceedings for rectification of an entry in the land and mortgage register almost on the same date. In consequence, the latter proceedings had to be stayed pending the outcome of the former.

54. The Government maintained that the proceedings for repossession, 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.

55. The applicants disagreed. They submitted that they had asked for the proceedings for recovery of possession to be speeded up because other sets of proceedings pending at the same time, in particular the proceedings for rectification of an entry in the land and mortgage register, could not be terminated by a decision on the merits because of additional claims submitted by the State Treasury and the Końskie Municipality. Finally, they submitted that the case had been examined with delays and they had had to wait almost ten years before they regained possession of the land.

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 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).

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 Końskie District 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.

58. As regards the conduct of the applicants, the Court, having regard to the available evidence, does not find it established that the applicants substantially contributed to the delays in the proceedings.

59. As regards the conduct of the relevant authorities, the Court observes that the proceedings for repossession, instituted on 15 April 1999, remained

dormant from 6 July 1999 to 27 January 2000 and from 16 May 2000 to 5 October 2007 since they were stayed pending the outcome of separate proceedings.

60. The Court notes that the applicants availed themselves 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. 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 17-19 above).

61. 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 Końskie District Court on 26 January 2006 and the date of the decision on this matter on 5 October 2007. However, that period has to be assessed in the light of the fact that the applicants had sold plots nos. 1310 and 1314/1 on 5 May 2006 (see paragraph 34 above). Therefore, the delay which was essential to the applicants' rights amounted only to three months.

62. Lastly, 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 applicants to lodge a complaint under the 2004 Act in the latter proceedings with a view to speeding them up since they were decisive for their rights, but they failed to do so (see paragraphs 13-21 above).

63. 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.

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

64. 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

65. 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.

66. The Government further maintained that the applicants had sold plots nos. 1310 and 1314/1 on 5 May 2006. On 1 March 1999 the applicants had instituted civil proceedings for compensation for the use of their property without valid legal title. However, on 17 December 2004 they had withdrawn their claims in respect of the plots in question.

67. The applicants disagreed.

68. 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 complaint. As the complaint is not inadmissible on any other grounds, it must therefore be declared admissible.

B. Merits

1. The parties’ submissions

69. 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 23 November 1999 the Kielce Regional Court had given partial judgment concerning plots nos. 1310 and 1314/1. Despite the fact that one of the defendants had lodged a motion for re-opening the proceedings and the courts had instituted further proceedings aimed at verifying the legal status of the disputed plots, the applicants had eventually sold the plots on 5 May 2006.

70. The Government further maintained that on 1 March 1999 the applicants had instituted civil proceedings for compensation for the use of their property without valid legal title. However, on 17 December 2004 they had withdrawn their claims in respect of plots nos. 1310 and 1314/1. In consequence, on 29 December 2004 the Cracow Court of Appeal had discontinued the proceedings in respect of these plots.

71. The Government were of the opinion that the applicants had therefore obtained full redress for any delays in having possession of the property restored to them. Hence, there had been no interference with their peaceful enjoyment of possessions for which the Government could have been held responsible.

72. The applicants disagreed. They submitted that the domestic authorities had interfered with their right to the peaceful enjoyment of their possession and that they had sold their plots below their real market value. Therefore, they had not been compensated in full.

2. The Court's assessment

73. 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.”

74. 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.

75. 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 decision of the Kielce Governor given on 30 June 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 13-34 above).

76. The Court notes that the Kielce Governor declared that plots nos. 1310 and 1314/1 should not have been subject to expropriation (see paragraph 10 above). Under the provisions of Polish law such a decision gives rise, on the part of former owners or their legal successors, to a right to have the property restored to them, or, failing that, to compensation. Hence, the decision to set aside the final expropriation decision had consequences for the applicants which should be regarded as conferring on them 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).

77. 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).

78. 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).

79. 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 (see paragraph 10 above).

80. The Court notes that the property in question, plots nos. 1310 and 1314/1, 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 *Zwierzynski v. Poland*, cited above, § 67, ECHR 2001-VI). It was held by the individuals who leased the property from the Końskie Municipality (see paragraph 8 above).

81. 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).

82. 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 discontinued those proceedings since the applicants had withdrawn their claims in respect of the plots in question (see paragraph 33 above). Hence, it was open to the applicants to seek just satisfaction before the domestic courts but they waived their claims voluntarily.

83. The Court further notes that the applicants successfully instituted proceedings to have their title to plots nos. 1310 and 1314/1 entered in the land and mortgage register (see paragraphs 16 and 21 above).

84. Furthermore, the applicants also successfully instituted proceedings to have possession of their property returned to them. On 5 May 2006 they sold their plots to the present occupier on the basis of a civil law contract (see paragraph 34 above).

85. Hence, the 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). They successfully availed themselves of the possibilities created for them and had their rights vindicated.

86. 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 victim status (see paragraph 68 above).

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

87. Lastly, the applicants complained that the 2004 Act had not provided an effective remedy against excessive length of 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.”

88. 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).

89. 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. *Declares* the complaint concerning the excessive length of the proceedings for recovery of possession admissible;
2. *Joins* 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;
3. *Declares* the remainder of the application inadmissible;
4. *Holds* that there has been no violation of Article 6 § 1 of the Convention;
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