



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF PUCHALSKA v. POLAND

(Application no. 10392/04)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

01/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision

In the case of Puchalska v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 10392/04) 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, Mrs Barbara Puchalska (“the applicant”), on 12 March 2004.

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

3. The applicant alleged that the length of the proceedings in her case exceeded a “reasonable time”.

4. On 16 January 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Sandomierz.

A. Facts prior to 1 May 1993

6. In 1974 the applicant's parents agreed to the expropriation of their property in Sandomierz for the purpose of building a pedestrian access and a driveway to a clinic.

7. On 21 September 1990 the applicant and her parents lodged an application for restitution of the expropriated land with the Sandomierz Municipality (*Urząd Miejski*) under section 69 of the Law of 29 April 1985 on Land Administration and Expropriation (*Ustawa o gospodarce gruntami i wywłaszczaniu nieruchomości*). This section stipulated that the former owner of the expropriated property (or his legal successor) could lodge an application for restitution provided that the property no longer served the purpose specified in the expropriation decision. According to the applicant, their application was left unanswered.

8. Subsequently, the applicant's parents transferred their claim to the property to the applicant.

9. On 17 November 1992 the applicant and her parents made another application for restitution of the property.

10. On 15 March 1993 the head of the Sandomierz District Office (*Kierownik Urzędu Rejonowego*) refused the application.

11. The applicant appealed.

B. Facts after 1 May 1993

12. On 7 June 1993 the Tarnobrzeg Governor (*Wojewoda*) upheld the first-instance decision.

13. The applicant appealed to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

14. On 14 June 1994 the Supreme Administrative Court quashed both decisions.

15. On 14 March 1995 the applicant complained of inactivity on the part of the administrative authorities.

16. On 21 April 1995 the Tarnobrzeg Governor explained that the case was particularly complex and acknowledged that the proceedings had indeed been lengthy. He also ordered the head of the Sandomierz District Office to give a decision by 20 May 1995.

17. On 18 May 1995 the head of the Sandomierz District Office gave a decision and ordered the restitution of the property. He also ordered the applicant to pay the Sandomierz Municipality the indexed sum of 81,931 Polish zlotys (PLN) in return for the compensation awarded to her parents in 1974.

18. The applicant appealed, arguing that the indexed sum had been wrongly calculated and did not reflect the real value of the property.

19. On 20 September 1995 the applicant complained to the Supreme Administrative Court about the inactivity of the administrative authority.

20. On 30 November 1995 the Tarnobrzeg Governor quashed the challenged decision and ordered that the property be returned to the applicant for a payment of PLN 49,338.

21. The applicant and the Sandomierz Municipality lodged appeals with the Supreme Administrative Court.

22. On 27 June 1996 the Supreme Administrative Court declared the challenged decision null and void.

23. On 14 July 1996 the Supreme Administrative Court examined the applicant's complaint of 20 September 1995 about the inactivity of the administrative authorities and discontinued the proceedings, finding that a decision had already been given by the relevant authority.

24. On 12 February 1997 the Tarnobrzeg Governor quashed the decision of the head of the Sandomierz District Office of 18 May 1995.

25. On 30 June 1997 the head of the Sandomierz District Office gave a decision and ordered that part of the property, which had not been developed, be returned to the applicant.

26. Both parties lodged appeals: the applicant on 18 July 1997 and the Sandomierz Municipality on 15 July 1997.

27. On 9 August 1997 the Tarnobrzeg Governor upheld the challenged decision.

28. On 30 August 1997 the applicant again appealed to the Supreme Administrative Court.

29. On 7 May 1998 the Supreme Administrative Court quashed the first-and second-instance decisions.

30. On 31 May 2000 the Mayor of the Sandomierz District (*Starosta Powiatu*) gave a decision and ordered the restitution of the property.

31. On 30 June 2000 the applicant lodged an appeal, contending that the Mayor's decision had been based on an incorrect measuring of the buildings constructed on the property in question.

32. On 27 June 2000 the Sandomierz Municipality (*Zarząd Gminy*) also appealed against that decision, maintaining that the restitution of the property together with the buildings on it was impossible. It requested that the decision be quashed.

33. On 28 September 2000 the Świętokrzyski Governor, who took over the competences of the Tarnobrzeg Governor, amended the first-instance decision in the part which concerned the indexed sum to be paid by the applicant.

34. On 27 October 2000 the Sandomierz Municipality lodged a complaint with the Supreme Administrative Court.

35. Subsequently, owing to the reform of the administrative courts which took effect on 1 January 2003, the case was transmitted to the Kraków Regional Administrative Court (*Wojewódzki Sąd Administracyjny*).

36. On 30 April 2004 the applicant's father died.
37. On 8 October 2004 the Sandomierz Municipality applied to the Regional Administrative Court for the proceedings to be stayed.
38. On 20 October 2004 the proceedings were stayed.
39. On 30 May 2005 the Regional Administrative Court resumed the proceedings.
40. On 28 September 2005 the Kraków Regional Administrative Court gave judgment and dismissed the appeal.
41. On 30 January 2006 the Sandomierz Municipality lodged a cassation appeal with the Supreme Administrative Court.
42. On 13 March 2007 the Supreme Administrative Court dismissed the cassation appeal.

II. RELEVANT DOMESTIC LAW

43. The relevant domestic law concerning inactivity on the part of administrative authorities 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 EXCESSIVE LENGTH OF THE PROCEEDINGS

44. The applicant complained that the length of proceedings in her case exceeded a “reasonable time”. She alleged a violation of Article 6 § 1 of the Convention which, in its relevant part, reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

45. The Government contested that argument.

46. The Court observes that the proceedings in question began on 21 September 1990 and terminated on 13 March 2007 when the Supreme Administrative Court dismissed the cassation appeal. However, since the Court's jurisdiction *ratione temporis* in respect of Poland covers only the facts and decisions subsequent to 1 May 1993, the Court may take into consideration only the period of 13 years, 10 months and 15 days following that date. It may, however, have regard to the stage reached in the proceedings on that date (see, for instance, *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 59).

A. Admissibility

47. The Government submitted that the applicant had not exhausted domestic remedies since she had not availed herself of the complaint provided for by 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”).

48. The Court notes that the 2004 Act provides for a complaint about the unreasonable length of judicial proceedings and that proceedings before administrative authorities are not covered by its provisions. It further observes that the proceedings complained of lasted 16 years, 5 months and 25 days, out of which 13 years, 10 months and 15 days fall within the Court's competence *ratione temporis*. The proceedings before the administrative authorities lasted from 1 May 1993 until 27 October 2000, that is 7 years, 5 months and 27 days. Before the courts the proceedings lasted from 27 October 2000 until 13 March 2007, that is 6 years, 4 months and 16 days. Thus the length of proceedings before the courts constituted almost half of the entire period. The Court admits that the time the proceedings lasted before the courts was considerable and that it cannot be excluded that the applicant, if she had lodged a complaint under the 2004 Act, would have been granted just satisfaction. At the same time, however, the Court notes that the domestic courts would not have been able to examine the long period of almost 7.5 years when the proceedings were pending before the administrative authorities. Thus, in any event, the overall period of the domestic proceedings would not have been taken into account. It follows that in the particular circumstances of the present case a complaint under the 2004 Act cannot be regarded as an effective remedy with a sufficient degree of certainty.

49. The Government further submitted that the applicant had a possibility, under Article 417 of the Civil Code, of lodging a claim with the Polish civil courts for compensation for damage caused by the excessive length of the administrative proceedings.

50. The Court first notes that it has already examined whether after 18 December 2001 a compensation claim in tort as provided for by Polish civil law was an effective remedy in respect of complaints about the length of proceedings. It held that no persuasive arguments had been adduced to show that Article 417 of the Civil Code could at that time be relied on for the purpose of seeking compensation for excessive length of proceedings or that such action offered reasonable prospects of success (see, *Małasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003, and for administrative proceedings, *Boszek v. Poland*, no. 4054/03, § 35, 5 December 2006). The Court sees no grounds on which to depart from these findings in the present case.

51. Secondly, the Court notes that the applicant lodged a complaint about the inactivity of the administrative authorities in accordance with the domestic law (see paragraph 15 above). The complaint was allowed by the Tarnobrzeg Governor on 14 March 1995, but proved ineffective because the Sandomierz District Office failed to give the relevant decision within the set time-limit. Subsequently, the applicant made use of the direct complaint to the Supreme Administrative Court concerning inactivity on the part of the administrative authorities (see paragraph 19 above). The Court considers that the combination of these remedies was designed to accelerate the process of obtaining an administrative decision enabling the applicant to put the issue of the length of the proceedings before the national authorities and to seek a decision terminating those proceedings “within a reasonable time” (see *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002; *Mazurek v. Poland* (dec), no. 57464/00, 7 September 2004; and *Kołodziej v. Poland* (dec), no 47995/99, 18 October 2005).

52. The Court concludes that, having exhausted the available remedies provided by domestic law, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation. Accordingly, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies.

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

54. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

55. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Humen v. Poland*, cited above, § 60).

56. In the present case the Government first relied on the complexity of the case and, especially, the need to establish the factual circumstances dating back to 1974. The Government further submitted that, since the present case did not concern issues of employment or pensions, “special diligence” was not required in its examination. They also pointed to the fact that the national authorities had taken all necessary steps to clarify the circumstances of the case and that the applicant herself could be held partly responsible for the delay in the proceedings because she had lodged

“countless motions, requests and complaints about different aspects of the proceedings”.

57. The Court accepts that the present case was of a certain complexity. It also accepts that the applicant indeed lodged numerous appeals. However, appeals were also lodged by the administrative authorities and the decisions given in the present case were quashed by the Supreme Administrative Courts on three occasions (see paragraphs 14, 22 and 29 above), which means that the administrative court found the appeals well-founded. The applicant does not seem to have abused her procedural rights by lodging manifestly ill-founded or completely irrelevant complaints or requests (see, by contrast, the case of *Malicka-Wąsowska v. Poland*, 41413/98 (dec.)). The fact that the proceedings were not the type that required “special diligence” on the part of domestic authorities does not mean that they were allowed to be unreasonably lengthy.

58. The Court considers that those factors cannot justify the significant total length of the proceedings. On the basis of the material before it, the Court finds no convincing justification for such a delay.

59. In view of the foregoing, the Court concludes that the relevant authorities have failed to respect the applicant's right to a hearing within a “reasonable time”.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 349,253.73 euros (EUR) in respect of pecuniary and EUR 30,000 in respect of non-pecuniary damage.

62. The Government submitted that the applicant's claims should be rejected as exorbitant, unfounded and irrelevant.

63. 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 the applicant EUR 11,000 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant made no claim for costs and expenses.

C. Default interest

65. 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 11,000 (eleven thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys 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 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President