



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF RADOSZEWSKA-ZAKOŚCIELNA v. POLAND

(Application no. 858/08)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

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 Radoszewska-Zakościelna 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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 858/08) 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, Ms Anna Radoszewska-Zakościelna (“the applicant”), on 19 December 2007.

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

3. On 17 November 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant's family owned a plot of land with a surface area of 1,454 sq. m. situated in the centre of Warsaw. The applicant is a legal successor of A.M.R., her grandmother and one of the direct heirs of the former owners of that property, who had passed away. A.M.R. was a party to the proceedings referred to below from the very beginning. It transpires

from the case file that on 16 September 1999 the Warsaw District Court declared the applicant an heir of the deceased.

6. By virtue of the Decree of 26 October 1945 on the Ownership and Use of Land in Warsaw the ownership of all private land was transferred to the City of Warsaw.

7. On 30 September 1948 the applicant's family filed an application for the grant of the right of temporary ownership (*własność czasowa*) of the plot of land pursuant to section 7 of the 1945 Decree ("the 1948 application"). This application was refused in 1953 and 1954 respectively. In 1955 the State constructed the Metropol Hotel on part of the plot in question.

8. On an unspecified date the plot was divided into two separate parts. On 27 May 1990 the ownership of the first part of the original plot was transferred to the City of Warsaw by operation of law. It constituted a part of a larger plot (no. 39) with an overall surface area of 4,163 sq. m. The second part of the plot with a surface area of 636 sq. m. remained with the State.

9. On 29 June 1993 the Board of the Union of Warsaw Municipalities (*Zarząd Związku Dzielnic Gmin Warszawy*) issued a decision declaring that as of 5 December 1990 the "Syrena" Warsaw Tourist Company had the right of perpetual use of the plot of land no. 39. In addition, the ownership of the buildings attached to that plot, including the Metropol Hotel, was transferred to the "Syrena" company.

1. Proceedings concerning the grant of the right of perpetual use of land

10. On 1 October 1992 S.P., one of the heirs of the applicant's family and acting on their behalf, filed with the Minister of Planning and Construction (*Minister Gospodarki Przestrzennej i Budownictwa*) an application for annulment of the administrative decisions refusing to grant the right of temporary ownership. On 24 March 1993 the Minister quashed the 1953 and 1954 decisions. Consequently, the competent administrative authorities were required to rule on the 1948 application. The applicant (as from 16 September 1999) and other heirs of the previous owners were, as their legal successors, parties to the subsequent proceedings.

11. In 1995 the Minister of Planning and Construction instituted *ex officio* proceedings with a view to having his earlier decision of 24 March 1993 annulled. On 9 July 1996 the Minister declared the decision of 24 March 1993 null and void. Upon several appeals, on 11 December 1998 the Supreme Administrative Court quashed this decision. As a consequence of that judgment, the 1948 application filed by the applicant's family had yet to be examined.

12. Initially the applicant's grandmother and later the applicant herself were a party to two sets of proceedings concerning the right of perpetual use

of land, which were conducted separately before the Board of the City of Warsaw (subsequently the Mayor of Warsaw) and the Warsaw District Office. That situation stemmed from the fact that the plot of land formerly owned by the applicant's family had been divided into two separate parts which were respectively owned by the City of Warsaw and the State.

13. As from July 2002, following amendments to the relevant laws, the City of Warsaw became the sole owner of the entire plot of land in question and the relevant proceedings were conducted exclusively before the Mayor of Warsaw.

14. On 11 June 1996 the Board of the City of Warsaw (*Zarząd Miasta Stołecznego Warszawy*) decided *ex officio* to stay the proceedings until the termination of the proceedings instituted by the Minister of Planning and Construction in 1995 (see above). This decision was subsequently quashed by the Warsaw Local Government Board of Appeal.

15. On 12 November 1997 the Board of the City of Warsaw decided to discontinue the proceedings, finding that they had become devoid of purpose. On 24 March 1998 the Local Government Board of Appeal quashed the impugned decision and remitted the case for re-examination.

16. On 23 June 1998, the participants complained about the inactivity of the Mayor to the Local Government Board of Appeal.

17. On 17 July 1998, the Mayor of Warsaw decided to stay the proceedings until the termination of other related proceedings pending before the Supreme Administrative Court.

18. On 2 September 1998, the Mayor informed the Local Government Board of Appeal that the case could not be examined since the proceedings had been stayed.

19. On 16 January 1999 following the Supreme Administrative Court's judgment of 11 December 1998 (see above), the participants requested the Mayor of Warsaw to grant them the right of perpetual use.

20. In January 1999 the Mayor of Warsaw began negotiations with the parties with a view to renouncing their claims to the plot of land at issue in exchange for an alternative plot. On 23 March 1999 the parties accepted the Mayor's proposal. However, on 29 April 1999 the Deputy Mayor informed them that he had to withdraw from the negotiations as there were grounds on which the 1948 application could be dismissed.

21. On 1 June 1999 the Board of the City of Warsaw refused the application. Subsequently, S.P. lodged an appeal against this decision. On 1 June 2000 the Warsaw Local Government Board of Appeal upheld the Board's decision of 1 June 1999. Upon a further appeal, on 27 February 2002 the Supreme Administrative Court quashed the Board of Appeal's decision. The Supreme Administrative Court instructed the administrative authorities to examine the heirs' intentions as to the use of the land at issue. It further emphasised that if the intended use was compatible with the local

development plan, the administrative authorities were under an obligation to grant the application.

22. As of July 2002 the proceedings concerning the grant of the right of perpetual use in respect of the entire property of the applicant's family were conducted before the Mayor of Warsaw.

23. On 25 April 2003 A.G., acting on behalf of the other parties, lodged with the Warsaw Local Government Board of Appeal a complaint about the inactivity of the Board of the City of Warsaw.

24. On 9 December 2003 the Mayor of Warsaw, who in the meantime had assumed the competences of the Board of the City of Warsaw, issued his decision in the case. He refused the application, considering that the use of the plot by the heirs of the former owners would not be compatible with the local development plan adopted. The parties appealed.

25. On 24 February 2004 the parties complained to the Administrative Supreme Court about the inactivity of the Local Government board of Appeal.

26. On 12 May 2004 the Local Government Board of Appeal quashed the Mayor's decision of 9 December 2003 and remitted the case.

27. On 28 February 2008, the parties complained about the inactivity of the Mayor to the Local Government Board of Appeal.

28. On 25 April 2008 the Mayor of Warsaw stayed the proceedings pending the conclusion of the administrative proceedings concerning the grant of the right of perpetual use of land for the benefit of the "Syrena" company (see below).

29. On 30 June 2008 the Warsaw Local Government Board of Appeal quashed its decision of 25 April 2008 and discontinued the proceedings concerning the stay of the main proceedings. On an unspecified date, the Mayor of Warsaw appealed to the Regional Administrative Court.

30. It would appear that the proceedings are still pending.

2. Proceedings conducted before the Warsaw District Office up to July 2002

31. On 5 February 1999 one of the heirs requested the Warsaw District Office to grant the right of perpetual use of the plot of land owned by the State Treasury.

32. Upon two complaints about inactivity, on 30 August 1999 the Warsaw Governor ordered the Warsaw District Office to issue a decision within one month.

33. On 4 January 2000 the Warsaw District Office refused to grant the right of perpetual use in respect of the plot owned by the State Treasury, considering that that plot had been designated in the local development plan for public use.

34. On 7 September 2000 the Warsaw Governor upheld the decision of the Warsaw District Office. S.P. lodged an appeal against the decision of the Governor with the Supreme Administrative Court.

35. On 12 March 2002 the Supreme Administrative Court quashed the Warsaw Governor's decision of 7 September 2000 and the earlier decision of the Warsaw District Office.

36. On 7 June 2002 the Warsaw District Office informed the applicant that it would not be possible to conclude the proceedings within the time-limit specified in Article 35 of the Code of Administrative Procedure due to the need to undertake further examination of the application.

37. It appears that in July 2002 the ownership of the plot held by the State was transferred to the City of Warsaw by operation of law. Consequently, the proceedings concerning the grant of the right of perpetual use of land in respect of the entire property of the applicant's family were conducted before the Mayor of Warsaw (see above).

3. Proceedings concerning the grant of the right of perpetual use of land for the benefit of the "Syrena" company

38. On 10 May 1996 the heirs filed with the Board of the City of Warsaw an objection against the auction for the sale of shares in the "Syrena" company.

39. On 14 September 1996 A. G, one of the heirs, made an application to the Warsaw Local Government Board of Appeal for annulment of the decision of the Board of the Union of Warsaw Municipalities of 29 June 1993 (see above). On 17 September 1998 the Board of Appeal quashed its earlier decision and refused to institute proceedings for the annulment.

40. Upon a further appeal, on 19 November 1998 the Supreme Administrative Court stayed the proceedings pending the termination of the proceedings concerning the application for annulment of the Minister of Planning and Construction's decision of 24 March 1993. The proceedings were resumed on 27 September 2002. On 11 December 2002 the Supreme Administrative Court quashed the decision of the Board of Appeal of 17 September 1998 on procedural grounds. Consequently, the Board of Appeal had to examine the applicant's application for annulment again.

41. On 20 June and 20 December 2003 the applicant requested the Board of Appeal to expedite the proceedings.

42. On 10 December 2003 the Board of Appeal quashed its earlier decision of 26 November 1997 and declared null and void the decision of the Board of the Union of Warsaw Municipalities of 29 June 1993.

43. On 5 July 2004 the Local Government Board of Appeal reopened the proceedings at the request of the "Syrena" company. On 9 December 2004 it refused the "Syrena" company's request to quash its decision of 10 December 2003. That decision was upheld on appeal on 18 April 2005.

44. On 20 May 2005 the “Syrena” company appealed to the Regional Administrative Court in Warsaw.

45. On 13 April 2006 the Regional Court quashed the decision of the Local Government Board of Appeal of 9 December 2004.

46. On 11 July 2007 the Supreme Administrative Court dismissed a further cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

47. The legal provisions applicable at the material time and questions of practice are set out in paragraphs 60-65 of the judgment delivered by the Court on 17 October 2006 in the case of *Grabiński v. Poland* (application no. 43702/02).

THE LAW

I. THE GOVERNMENT'S REQUEST THAT THE COURT STRIKE OUT PART OF THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

48. On 2 February 2009 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were prepared to accept that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the administrative proceedings. In respect of non-pecuniary damage, the Government proposed to award the applicant EUR 3,600. The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

49. The applicant did not agree with the Government's proposal and requested the Court to examine the case.

50. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application or part thereof under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75, and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

51. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-...; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004; and *Arvanitaki-Roboti and Others v. Greece* [GC], no. 27278/03, §§ 27-32, ECHR 2008-...).

52. On the facts and for the reasons set out above, in particular the low amount of compensation proposed which is substantially less than the Court would award in a similar case, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the length of proceedings complaint (see, *a contrario*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

53. This being so, the Court rejects the Government's request that it strike part of the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case as a whole.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

54. 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...”

55. The Government contested that argument.

56. The Court notes that the proceedings commenced on 1 October 1992, when S.P., acting on behalf of the applicant's family, filed an application for annulment of the administrative decisions refusing the grant of temporary ownership. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

57. The period in question has not yet ended. It has thus lasted 16 years and over 3 months.

A. Admissibility

58. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

59. None of the parties commented on the merits of the case.

2. *The Court's assessment*

60. 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).

61. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Grabinski* §, cited above).

62. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

64. The applicant complained that he did not have at his disposal the effective remedy against the decisions of administrative authorities.

65. The Court has already dealt with this issue in previous cases. In particular it has held that the expression “effective remedy” used in Article 13 cannot be interpreted as a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see *Figiel v. Poland* (no. 2), no. 38206/05, § 33, 16 September 2008).

66. The fact that in the present case the applicant's claim for the grant of perpetual use of land is still pending does not in itself render the

combination of remedies available in administrative proceedings incompatible with Article 13 (see, *Grabinski v. Poland* (dec.) no. 43702/02, 18 October 2005).

67. In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant's right to an effective remedy under Article 13 of the Convention has not been respected.

68. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

69. The applicant also complained under Article 1 of Protocol No. 1 to the Convention that his family had been deprived of the property owned by them and that the application for the grant of the right of perpetual use has not been finally determined.

70. The Court observes that the domestic proceedings to determine the applicant's claim are currently pending before the Mayor of Warsaw. Therefore, in so far as the applicant relies on Article 1 of Protocol No. 1 to the Convention, the Court considers that it would be premature to take a position on the substance of this complaint. It follows that the complaint must be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. In her application submitted to the Court the applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

73. The Government did not express any comment on this issue.

74. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 10,000 under that head.

B. Costs and expenses

75. The applicant did not make any claim under this head.

C. Default interest

76. 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. *Dismisses* the Government's request to strike the length of proceedings complaint out of the list;
2. *Declares* the complaint under Article 6 § 1 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President