



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF PUCZYŃSKI v. POLAND

(Application no. 32622/03)

JUDGMENT

STRASBOURG

8 December 2009

FINAL

08/03/2010

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 Puczyński 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 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 32622/03) 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 a Polish national, Mr Antoni Puczyński (“the applicant”), on 12 September 2003.

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

3. On 16 January 2008 the President of the Fourth Section of the Court decided to communicate the complaint concerning the length of the administrative proceedings 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

4. The applicant, Mr Antoni Puczyński, is a Polish national who was born in 1940 and lives in Kraków.

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

6. On 15 October 2000 the applicant lodged with the Mayor of Kraków (*Urząd Miasta*) an application to transform his right of perpetual use (*prawo użytkowania wieczystego*) of a piece of real property into a right of

ownership. He relied on the provisions of the 4 September 1997 Law on Transforming Perpetual Use Vested in Individuals into Ownership (*ustawa o przekształceniu prawa użytkowania wieczystego przysługującego osobom fizycznym w prawo własności*) (“the 1997 Act”).

7. On 3 November 2000 the Mayor informed the applicant that, due to a judgment of the Constitutional Court (*Trybunał Konstytucyjny*) which found some provisions of the 1997 Act to be incompatible with the Constitution, he could not give a decision in the case within the statutory time-limit of one month, and set a new time-limit of 31 July 2001.

8. On 27 November 2001 the Mayor informed the applicant that, due to some changes to the 1997 Act, a valuation report concerning the property (*operat szacunkowy*) had to be drawn up and a new time-limit set, 31 March 2002.

9. On 6 August 2002 the applicant complained to the Kraków Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) about inactivity on the part of the administrative authority.

10. On 17 January 2003 the Kraków Self-Government Board of Appeal found the applicant's complaint well-founded and ordered the Mayor to give a decision on the merits within one month of the delivery of its decision.

11. The Mayor did not give the decision within the prescribed time-limit. Instead, on 6 March 2003, the Mayor issued a procedural decision (*postanowienie*) setting another time-limit, 31 December 2003, and informing the applicant that the decision could not be appealed against and that it could be challenged only when a decision on the merits had been given.

12. On 20 August 2004 the applicant again asked the Mayor to give a decision in his case.

13. On 7 September 2004 the Mayor informed the applicant that, due to further changes to the 1997 Act, by a decision of 5 August 2004 the proceedings for transforming his right had been discontinued and that proceedings for *ex lege* acquisition of the property in question had been instituted.

14. On 23 December 2004 the Mayor again informed the applicant that the matter could not be resolved within the statutory time-limit and set a new time-limit of 31 December 2005.

15. On 22 June 2005 the applicant again complained to the Kraków Self-Government Board of Appeal about the inactivity of the administrative authority.

16. On 5 August 2005 the Kraków Self-Government Board of Appeal found the complaint justified and ordered the Mayor to give a decision in that connection within one month of the delivery of its decision.

17. On 15 September 2005 the Mayor gave a decision on the merits and refused to acknowledge an *ex lege* acquisition of the property by the applicant.

18. On 27 September 2005 the applicant appealed.
19. On 30 December 2005 the Kraków Self-Government Board of Appeal quashed the challenged decision and remitted the case.
20. On 11 April 2006 the Mayor gave a further decision and again refused to acknowledge an *ex lege* acquisition of the property.
21. On an unspecified date the applicant appealed.
22. On 19 June 2006 the Kraków Self-Government Board of Appeal again quashed the challenged decision and remitted the case.
23. On 3 November 2006 the Mayor gave a decision, again a refusal.
24. The applicant did not appeal against that decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. 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

26. 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...”

27. The Government contested that argument. They first submitted that the applicant had been involved in two sets of administrative proceedings, the length of which should be assessed separately. The first set concerned the transformation of the applicant's right of perpetual use into ownership against payment and terminated with the decision of 5 August 2004 when the relevant proceedings were discontinued. The second set of proceedings concerned free of charge acquisition of the ownership of the property in question, and was instituted by the Mayor of Kraków on 28 April 2004. The two sets of proceedings were conducted on the basis of different requests and with different legal bases.

28. The Court accepts that formally the applicant was involved in two separate sets of administrative proceedings. However, it also notes that the applicant lodged his request for transfer of his right of perpetual use into ownership on 15 October 2000 and the relevant proceedings were discontinued on 5 August 2004, that is almost four years later

(see paragraph 13 above). The decision on discontinuance was given due to legislative changes for which the applicant cannot be held responsible. Had the decision sought by the applicant been given within the statutory time-limit, the applicant would not have to be involved in further administrative proceedings, referred to by the Government as “the second set of administrative proceedings”. The Court finds it immaterial that the proceedings before and after 5 August 2004 were conducted “on different legal bases”; they were both aimed at acquisition of the property in question by the applicant, and the change of legal basis was due exclusively to legislative changes. For those reasons the Court considers that the length of proceedings before and after 5 August 2004 should be assessed jointly.

29. Accordingly, the period to be taken into consideration began on 15 October 2000 and ended on 3 November 2006. It thus lasted six years and twenty days.

A. Admissibility

30. The Government submitted that the applicant had failed to exhaust domestic remedies as required under Article 35 § 1 of the Convention.

31. This Article, in its relevant part, provides:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...”

32. In this respect, the Government underlined that the applicant did not attempt to pursue all effective domestic remedies with respect to his complaint about the length of the proceedings. The Government acknowledged that the applicant had on two occasions lodged appeals with the higher authority under Article 37 § 1 of the Code of Administrative Procedure. However, under Article 17 of the Law of 11 May 1995 on the Supreme Administrative Court (“The 1995 Act”) he could have further lodged a complaint with the Supreme Administrative Court, since, by complaining first to the higher administrative authority, he had fulfilled a requirement under section 34 of the 1995 Act.

33. The Government further submitted that after 1 January 2004, that is after the date of the entry into force of the Law of 30 August 2002 on Proceedings before Administrative Courts (“The 2002 Act”), which replaced the 1995 Act, the applicant could have made use of Section 3 § 2 of the 2002 Act which contains provisions analogous to Section 17 of the 1995 Act.

34. The applicant claimed that he had made two complaints to the Self-Government Board of Appeal. He acknowledged that, due to his poor financial situation, he had not made a complaint about the inactivity of administration to the Supreme or Regional Administrative Court.

35. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

36. The Court notes that the applicant on two occasions lodged complaints about inactivity on the part of the administrative authorities responsible for giving a decision (see paragraphs 9 and 15 above). The competent supervision bodies found the complaints well-founded and ordered the proceedings to be accelerated (see paragraphs 10 and 16 above). The Court further notes that the relevant administrative authorities, having exceeded the statutory time-limits for giving a decision, informed the applicant of the delay and set new dates (see paragraphs 11 and 14 above). It is further to be noted that the excessive length of the proceedings in this particular case was not entirely due to inactivity on the part of the administrative authorities but was to a great extent caused by legislative changes (see paragraphs 8 and 13 above) and the Constitutional Court's judgment which had found the respective provisions to be incompatible with the Constitution (see paragraph 7 above). In these circumstances the Court does not consider that the applicant should have lodged a further complaint with the Supreme Administrative Court in order to fulfil his obligation under Article 35 § 1. The remedies the applicant used were therefore adequate and sufficient to afford him redress in respect of the alleged breach (see also, *mutatis mutandis*, *Kaniewski v. Poland*, no. 38049/02, §§ 32–39, 8 November 2005).

37. Secondly, the Government argued that the applicant had failed to lodge a compensation claim with a civil court in order to seek redress for the alleged damage which had resulted from the inactivity of the administrative authorities. They relied on Article 417¹ § 3 of the Civil Code as amended by the Law of 17 June 2004 on Amendments to the Civil Code and Some Other Laws.

38. The applicant did not comment on that matter.

39. However, the Court notes that the provision relied on by the Government entered into force on 1 September 2004. It also observes that prior to that date the applicant resorted to remedies designed to accelerate the process of obtaining an administrative decision, namely an appeal under Article 37 of the Code of Administrative Procedure.

40. The Court further observes that according to Article 417¹ § 3 of the Civil Code no claim for damages resulting from unreasonable length of administrative proceedings may arise unless it has been formally determined that there had been an unlawful failure to issue an administrative decision within the relevant time-limits. The Court notes that the Government provided some judgments of the domestic courts indicating that a claim for compensation based on Article 417¹ § 3 of the Civil Code could, in some circumstances, be an effective remedy. However, the material relied on by the Government cannot be regarded as presenting a consolidated and well-established judicial practice (see also *Grabiński v. Poland*, cited above). It follows that this part of the Government's objection must be rejected.

41. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies.

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

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

B. Merits

43. 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).

44. 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 *Frydlender*, cited above).

45. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 30,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

48. The Government did not express an opinion on the matter.

49. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,600 under that head.

B. Costs and expenses

50. The applicant claimed PLN 7,681.90 for costs and expenses incurred before the domestic authorities and PLN 1,700 in the proceedings before the Court. However he did not present any documents to support his claim.

51. The Government did not express an opinion on the matter.

52. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 400 for the proceedings before the Court.

C. Default interest

53. 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, to be converted into the Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (ii) EUR 400 (four hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President