



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

FOURTH SECTION

CASE OF SOBIECCY v. POLAND

(Application no. 32594/03)

JUDGMENT

STRASBOURG

19 January 2010

FINAL

19/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sobieccy v. Poland,

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 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 32594/03) 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 two Polish nationals, Mrs Anna Sobiecka and Mr Ignacy Sobiecki (“the applicants”), on 30 September 2003.

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

3. The applicants alleged, in particular, that the length of administrative proceedings was in breach of the “reasonable time” requirement.

4. On 14 January 2008 the President of the Fourth Section of the Court 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).

5. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, Mrs Anna Sobiecka and Mr Ignacy Sobiecki, were born in 1957 and 1959 respectively and live in Chalin.

A. The circumstances of the case

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

8. The applicants are farmers and they own a property in Borowo, Poland.

9. On 19 October 1998 the Włocławek Regional Governor (*Wojewoda*¹) gave a decision limiting the applicants' right to use their property because of a building permit granted to Europol Gaz S.A. ("the investor") for the construction of an underground gas pipeline which would pass through the applicants' property. The decision in question also obliged the applicants to make the property accessible to the investor in order that he could maintain the gas pipeline. It also imposed an obligation on the investor to restore the property to its previous condition and to pay the applicants compensation once the construction works were completed.

10. On 1 December 1999 the investor informed the Lipno District Mayor (*Starostwo Powiatowe*) that the construction works on the gas pipeline had been completed.

11. On 21 February 2000 the applicants requested the Lipno District Mayor to calculate the compensation due.

12. On 28 March 2001 the Mayor gave a decision determining the amount of compensation due at 24,510 Polish zlotys (PLN).

13. On unspecified dates the applicants and the investor lodged appeals.

14. On 7 June 2001 the Kujawsko-Pomorski Regional Governor quashed the decision and remitted the case to the Lipno District Mayor.

15. On 1 October 2002 the applicants lodged a complaint with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) that the administration had taken no action.

16. On 6 March 2003 the Supreme Administrative Court upheld the complaint and ordered the Mayor to give a decision and determine the amount of compensation within two months.

17. That time-limit expired and no decision was given. However, the Mayor gave several procedural decisions (on 27 February, 30 April, 30 July and 29 October 2004, 31 January, 25 March, 31 May, 18 July, 13 September, 28 October and 30 November 2005, and 29 March and 31 May 2006), each time setting a new time-limit for the case to be decided (*postanowienie o wyznaczeniu nowego terminu załatwienia sprawy*). The Mayor relied on similar reasons for each postponement, which in his view were beyond his control, namely that there had been difficulties in finding a person who could draft an expert report on the value of the property

¹ Under the pre-1999 administrative structure of the State, Włocławek was a separate region. Since 1999 it has been part of Kujawsko-Pomorskie

(*operat szacunkowy*), a document which was indispensable in determining the amount of compensation.

18. On unspecified dates the applicants and the investor again lodged complaints that the administration had taken no action, arguing that the Mayor had done nothing except set new time-limits for issuing the decision in question.

19. On 28 January 2004 the Bydgoszcz Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) gave judgment and dismissed the applicants' complaint. The parties did not produce a copy of the reasoning in this judgment.

20. On 24 August 2005 the Bydgoszcz Regional Administrative Court likewise dismissed the investor's complaint. It held that the delay in issuing the decision requested was not attributable to the Mayor, who had experienced objective difficulty in finding an expert to draw up a report on the value of the property.

21. On 21 February 2007 the Lipno District Mayor gave a decision determining the amount of compensation at PLN 12,226, and imposed an obligation on the investor to pay the compensation within fourteen days of the date on which the decision became final.

22. The applicants and the investor appealed against that decision on 10 March 2007 and 13 March 2007 respectively.

23. On 22 May 2007 the Kujawsko-Pomorski Regional Governor upheld the first-instance decision.

24. On 16 July 2007 the applicants appealed to the Bydgoszcz Regional Administrative Court.

25. On 31 July 2007 the Kujawsko-Pomorski Regional Governor suspended the enforcement of his own decision of 22 May 2007 pending the resolution of the case by the Regional Administrative Court.

26. On 18 December 2007 the Bydgoszcz Regional Administrative Court quashed the challenged decision and the preceding decision of 21 February 2007. The proceedings are now pending before the Supreme Administrative Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. The relevant domestic law on remedies for inaction on the part of the 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

28. The present case was communicated under Article 6 § 1 of the Convention on account of the excessive length of the administrative proceedings and on account of the alleged limitation on the applicants' access to a court resulting from the non-enforcement of the final judgment given by the Supreme Administrative Court on 6 March 2003. However, the Court considers that the whole application should be examined from the standpoint of the length of the proceedings alone.

29. The relevant part of Article 6 § 1 of the Convention reads:

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

30. The Court observes that the proceedings in question began on 21 February 2000 and are still pending. Thus, they have so far lasted over nine years and eight months.

A. Admissibility

31. 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

32. The Government agreed that the proceedings in the present case were in breach of the “reasonable time” requirement. They relied on the particular complexity of the case and on the difficulties which the domestic administrative authorities had faced in finding an expert to assess the amount of compensation due to the applicants. According to the Government, the Lipno District Mayor sent almost seventy requests to various experts asking them for an assessment.

33. The Government further submitted that the present case did not concern employment or pension issues and that what was at stake for the applicants was of a purely pecuniary nature. Therefore “special diligence” in the case was not required from the domestic authorities.

34. The Government concluded that the national authorities had regularly informed the applicants of the progress of the proceedings and that they had generally shown due diligence in the handling of their case.

35. Lastly, the Government admitted that the applicants had not significantly contributed to the length of the proceedings.

36. The applicants maintained that the proceedings had been unreasonably long. They claimed that the domestic authorities had been neglecting their constitutional obligation to determine and pay compensation for the seized property for ten years.

37. 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], 30979/96, § 43, ECHR 2000-VII, and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

38. In the present case the Government firstly relied on the complexity of the case and, in particular, the difficulty in finding experts to assess the amount of compensation due to the applicants. 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.

39. The Court recognises that the case was of a certain complexity and that the domestic authorities had to go to some trouble to find an expert to calculate the amount of compensation. However, the Court considers that the complexity of the case and the fact that it did not concern a specific issue in which special diligence is required cannot justify the length of proceedings which have already lasted almost ten years. Even taking into account certain objective obstacles cited by the Government, such a period of time must still be considered excessive.

40. Having examined all the material submitted to it and taking into account all the arguments put forward by the Government, the Court considers that in the instant case the length of the proceedings failed to meet the “reasonable time” requirement.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicants claimed 14,200 euros (EUR) in respect of pecuniary damage and EUR 3,000 in respect of non-pecuniary damage.

43. The Government contested these claims.

44. 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 EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicants, who were represented by a lawyer, also claimed EUR 1,450 in respect of the costs of legal representation before the Court. They produced a copy of the contract with their lawyer for legal representation before the Court at a cost of 4,100 Polish zlotys (PLN).

46. The Government requested that the Court take into consideration that the costs awarded should be reasonable as to quantum.

47. According to the Court’s case-law, an applicant is entitled to reimbursement of his 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 considers it reasonable to award the full amount claimed.

C. Default interest

48. 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 applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Polish zlotys at the rate applicable on the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,450 (one thousand four hundred and fifty euros) plus any tax that may be chargeable to the applicants, 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President