



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

FOURTH SECTION

CASE OF DERDA v. POLAND

(Application no. 58154/08)

JUDGMENT

STRASBOURG

1 June 2010

FINAL

01/09/2010

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

In the case of Derda 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 11 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 58154/08) 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, Mr Leszek Derda (“the applicant”), on 13 November 2008.

2. The applicant was represented by Mr K. Nowacki, a lawyer practising in Bydgoszcz. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 25 May 2009 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).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in Bydgoszcz.

A. Prior to 1 May 1993

5. In 1948 the applicant's legal predecessor, his great-grandfather Mr Roman Pawłowski, lodged an application under Article 7 of the Decree of 26 October 1945 on real property in Warsaw for temporary ownership of a plot of land situated in Warsaw. This application remained unanswered.

6. In 1981 the Bydgoszcz District Court declared that the applicant had acquired 2/12 of his late great-grandfather's estate and had thereby become his legal successor.

7. On 20 December 1988 the applicant, together with his mother, Ms Z. Berent-Derda, another legal successor of Mr Pawłowski, reiterated the request submitted in 1948.

B. After 1 May 1993

8. In 1993 the Board of Association of Districts of Warsaw City (*Zarząd Związku Dzielnic-Gmin Warszawy*), by a decision of 17 June, declared that ownership of the property concerned had been acquired by the City of Warsaw Taxi Enterprise. The applicant and Ms Berent-Derda appealed, pointing out that the decision was unlawful because the request submitted in 1948 and reiterated in 1988 had already been pending before the authorities at that time.

9. On 23 February 1995 the Land Administration Division of the Warsaw Municipality found that it was not competent to examine the case. The case file was subsequently transmitted, on an unknown later date, to the Board of Warsaw City (*Zarząd Miasta st. Warszawy*).

10. On 12 June 2001 the Board of Warsaw City examined the request and dismissed it in its part concerning a surface area of 2,205 square metres. Apparently the plot had been divided, on an unspecified earlier date, into two parts, the other part covering 478 square metres, with the State Treasury listed as its owner in the local land register. The applicant appealed. On 21 September 2001 the Local Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) quashed the contested decision and remitted the case.

11. On 11 October 2001 the applicant and his mother complained to the Local Government Board of Appeal about the City Board's failure to issue a

decision regarding the plot of 478 square metres. On 18 February 2002 they submitted an identical complaint, concerning the area of 2,205 square metres. On 21 January 2002 the Local Government Board of Appeal, in reply to the complaint of 11 October 2001, fixed a time-limit for a decision on the merits to be given by the Warsaw Board within thirty days. On 3 March 2002 the applicant and his mother reiterated their complaint.

12. On 22 March 2002 the Local Government Board of Appeal quashed the decision of 17 June 1993 (see paragraph 8 above) by which the ownership of the plot had been given to the City of Warsaw Taxi Enterprise. On 10 April 2002 the Mayor requested the Board to reconsider the case.

13. By a decision dated 25 June 2002, the Local Government Board of Appeal found that the applicant's complaint of 18 February 2002 about the excessive length of the proceedings in the part concerning the establishing of ownership of the plot was unfounded as the first-instance authority was conducting investigatory proceedings.

On 25 June 2002 the Local Government Board of Appeal dismissed the applicant's complaint concerning the Warsaw's Board failure to issue a decision.

14. On 8 July 2002 Ms Z. Berent - Derda complained to the Supreme Administrative Court about the authorities' failure to give a decision on the merits of the case. On 13 August 2002 the Board fixed the time-limit for giving a decision on the merits of the case for 30 November 2002.

15. On 5 December 2002 the Supreme Administrative Court scheduled for 8 January 2003 a hearing to be held in the proceedings instituted by the complaint about the authorities' failure to give a decision on the merits.

16. On 7 January 2003 the Warsaw Municipal Office (*Urząd Miasta st. Warszawy*) stayed the proceedings, having regard to the fact that the proceedings to establish the owner of the property were pending. The applicant appealed.

17. On 28 February 2003 the Supreme Administrative Court examined the applicant's mother's complaint about the authorities' failure to give a decision. It noted that as the proceedings had been stayed by a decision of 7 January 2003, it could not be said that the authorities had failed to act in the case. The proceedings instituted by the complaint were therefore discontinued.

18. Subsequently, the proceedings concerning the merits of the case were resumed on an unspecified date.

19. On 12 January, 17 February and 24 March 2003 the Local Government Board of Appeal requested the Mayor to show that he had standing to be a party to the proceedings, concerning the ownership of the plot by the Taxi Enterprise. There was no reply to these requests.

20. On 28 May 2003 the Mayor withdrew his request for the case to be reconsidered. Accordingly, on 11 July 2003 the Local Government Board of

Appeal discontinued the proceedings. The decision of 22 March 2002 (see paragraph 12 above) became final.

21. On 22 March 2003 the applicant's mother complained to the Local Government Board of Appeal about the first-instance authority's failure to issue a decision. She reiterated her complaint on 2 April and 25 May 2003.

22. On 26 April 2004 the Mayor of Warsaw again stayed the proceedings, having regard to the fact that in the absence of a valid land development plan for the city it was impossible to decide on the applicant's request.

23. The applicant appealed. By decisions of 18 and 25 May 2004 the Local Government Board of Appeal quashed the decision to stay the proceedings, holding that the lack of the local land development plan was not a valid reason for the proceedings to be stayed. The Mayor appealed. On 28 July 2005 the Regional Administrative Court rejected his appeal.

24. On 2 February 2006 the applicant and his mother submitted to the Regional Administrative Court their request for a decision ordering the first-instance authority to decide the case. On 8 March 2006 they requested that court to impose a fine on the Mayor for her failure to act diligently in the case.

25. On 24 March 2006 the Mayor dismissed the applicant's motion for the property to be restored to the applicant, his mother and other heirs of Mr Roman Pawłowski.

26. On 7 June 2006 the Warsaw Regional Administrative Court examined the complaints lodged with it on 8 March 2006 and refused to impose a fine on the Mayor, having observed that in the meantime the decision on the merits had been given on 24 March 2006 and that a fine should serve a disciplinary, not punitive, purpose.

27. The Mayor's decision on the merits of the case, given on 24 March 2006 (see paragraph 26 above) was quashed on 24 July 2006 by the Local Government Board of Appeal and the case remitted for reconsideration. The Board observed that the Mayor had obviously not shown any willingness to deal with the case in an appropriate manner and that the contested decision was in breach of Article 7 of the 1945 Decree (see paragraph 5 above). The applicant appealed, arguing that the second-instance authority should have decided on the merits of the case and that the proceedings had lasted an unreasonably long period of time.

28. On 1 August 2006 the applicant withdrew his complaint of 2 February 2006 (see paragraph 24 above) about the authorities' failure to decide the case, having regard to the fact that after the decision on the merits of his request, given on 24 March 2006, the complaint about the failure to act had become devoid of purpose.

29. On 4 December 2006 the Warsaw Regional Administrative Court dismissed the applicant's appeal against the decision of 24 July 2006 (see paragraph 27 above).

30. On 20 August 2007 the applicant again complained to the Local Government Board of Appeal about the Mayor's failure to issue a decision on the merits of his request. On 11 September 2007 the Board found that the complaint was well-founded and ordered the Mayor to give a decision within two months.

31. On 19 November 2007 the Mayor of Warsaw again refused to allow the applicant's request to be granted the right of perpetual use in respect of the property concerned. The applicant appealed. On 1 April 2008 the Local Government Board of Appeal quashed the contested decision, having noted again that it violated the substantive provisions of the 1945 Decree, and ordered that the merits of the case be re-examined.

32. By a subsequent decision of 21 July 2008 the Mayor granted the applicant and his mother a right to perpetual use in respect of the part of the plot concerning a surface area of 2,205 square metres. The City of Warsaw Taxi Enterprise appealed.

33. On 23 October 2008 the Local Government Board of Appeal found that the Enterprise had no standing in the proceedings. It held that therefore the decision of 21 July 2008 was the final decision in the proceedings.

34. On 5 December 2008 the Enterprise appealed against this decision to the Regional Administrative Court.

35. On 16 September 2009 the Warsaw Regional Administrative Court dismissed its appeal.

C. Relevant domestic law

36. The relevant domestic law is summarised in detail in the judgment *Berent-Derda v. Poland*, no. 23484/02, §§ 27-35, 1 July 2008.

THE LAW

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

37. 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...”

38. The Court notes that the proceedings commenced, at the latest, on 20 December 1988, when the applicant and his mother reiterated their legal predecessor's request submitted in 1948. 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.

39. The Court further notes that the proceedings ended on 16 September 2009. The period under consideration lasted therefore sixteen years and over four months.

A. Admissibility

40. The Government submitted that the applicant had not attempted to pursue all effective domestic remedies with respect to his complaint about the length of the proceedings. He had the following remedies at his disposal: a complaint to the higher authority under Article 37 § 1 of the Code of Administrative Procedure; a complaint to the Supreme Administrative Court under Article 17 of the Law of 11 May 1995 on the Supreme Administrative Court (“the 1995 Act”) and a complaint provided for by Article 3 of the 2002 Act on the Proceedings before Administrative Courts.

41. The Government further argued that in the present case the complaint under Article 17 of the 1995 Act had been signed only by Ms Z. B.-D. and that the complaint lodged under Article 3 of the 2002 Act had been submitted but subsequently withdrawn by the applicant.

42. The applicant submitted that his mother represented him throughout the proceedings and that the remedies which she had pursued regarding the excessive length of the proceedings had also been brought on his behalf. He further referred to a judgment given by the Court in her case (*Berent-Derda v. Poland*, no. 23484/02, 1 July 2008) where it found that she had complied with the requirement set by Article 35 of the Convention. He further submitted that he had withdrawn the complaint of 2 February 2006 (see paragraph 24 above) because it had been successful in that a decision on the merits of the case had been given after his lodging of that complaint.

43. The Court reiterates that the obligation to exhaust domestic remedies requires only that an applicant make normal use of effective and sufficient remedies that are capable of remedying the situation at issue and affording redress for the breaches alleged (see, among other authorities, *Selmouni v. France* [GC], §§ 74-76, ECHR 1999-VII).

44. The Court has held in a number of cases against Poland that in order to comply with the requirement of exhaustion of domestic remedies in the context of lengthy administrative proceedings it was necessary to have recourse first to a hierarchical complaint about inactivity of an administrative authority and if this proved unsuccessful, to a subsequent complaint to the Supreme Administrative Court (see, e.g., *Zynger* (dec.), no. 66096/01, 7 May 2002; *Futro v. Poland* (dec.), no. 51832/99, 3 June 2003; *Marcinkowscy v. Poland* (dec.), no. 39262/98, 13 November 2003; *Mazurek v. Poland* (dec.), no. 57464/00, 7 September 2004; *Koss*

v. Poland, no. 52495/99, 28 March 2006; *Beller v. Poland*, no. 51837/99, 1 February 2005; *Karasińska v. Poland*, no. 13771/02, 6 October 2009; *Puchalska v. Poland*, no. 10392/04, 6 October 2009).

45. Examining the instant case, the Court first observes that the applicant several times lodged hierarchical complaints alleging inactivity on the part of the administrative authorities with the respective higher authority. His complaints were twice found to be well-founded and time-limits were fixed for dealing with the case (see paragraphs 11 and 30 above). The applicant's mother also filed complaints with the administrative courts about the authorities' failure to give a decision on the merits of the case (see paragraphs 14 and 24 above). Such a complaint was also lodged by the applicant himself (see paragraphs 24 above).

The Court notes that his complaint had a positive effect on the conduct of the proceedings in that decisions on the merits were given after he had lodged such complaint (see paragraph 25 above).

The Court notes the Government's argument that the applicant had subsequently withdrawn this complaint. However, the Court also notes that the applicant's complaint was successful in that it resulted in the proceedings being expedited. The Court accepts the applicant's argument that in such circumstances it served no practical purpose to maintain his complaint before the administrative court. The remedies which the applicant used were therefore adequate and sufficient to afford him redress in respect of the alleged breach (see, *Rygalski v. Poland*, no. 11101/04, 22 January 2008; *Lorenc v. Poland*, no. 28604/03, 15 September 2009).

46. 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.

47. The Court observes that according to Article 417¹ § 3 of the Civil Code no claim for damages resulting from the unreasonable length of administrative proceedings may arise unless it has been formally determined that there was an unlawful failure to issue an administrative decision within the relevant time-limits. The Court also notes that the domestic case-law relied on by the Government does not constitute evidence of a sufficiently established judicial practice to show that a claim for compensation based on Article 417¹ § 3 of the Civil Code was an effective remedy, and they have thus failed to substantiate their contention (see *Boszek v. Poland*, no. 4054/03, § 35, 5 December 2006; *Grabiński v. Poland*, no. 43702/02, § 74, 17 October 2006; *Puczyński v. Poland*, no. 32622/03, § 40, 8 December 2009).

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

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

49. 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

50. The Government stated that they would refrain from making any submissions as to the merits of the case.

51. The applicant submitted that the proceedings had lasted an unreasonably long time and that the Mayor had no intention of dealing with his case speedily. On two occasions decisions on the merits of the case were given which had subsequently been found by the appellate authorities to breach the applicable provisions of the substantive law. The later decision had been formulated, almost word by word, in the terms identical with that which had already been found by the appellate authority to have violated the provisions of the 1945 Decree. Moreover, the slowness of the first-instance authority and its unwillingness to deal with the case properly, both in terms of speed and substantive lawfulness, had repeatedly been stressed by the appellate authority.

52. 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).

53. 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).

54. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

56. The applicant complained that the domestic remedies in respect of the protracted length of the administrative proceedings had been ineffective in his case. He invoked Article 13 of the Convention, which reads:

“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.”

57. The applicant and the Government concurred that the applicant had at his disposal various remedies in respect of the excessive length of the administrative proceedings.

58. The Court reiterates that it has already repeatedly found that the administrative law remedies available under Polish law were effective in cases in which an applicant complains of excessive length of administrative proceedings (see, *Zynger v. Poland* (dec.), no. 66096/01, 7 May 2002, and *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002). It further reiterates that the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, e.g., *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006). In the light thereof, the Court finds that the fact that not all the remedies to which the applicant had recourse during the proceedings were successful, does not render them, in the circumstances of the present case, incompatible with Article 13 of the Convention (see also *Solárová and Others v. Slovakia*, no. 77690/01, § 56, 5 December 2006, with further reference).

59. 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.

III. 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 30,000 euros (EUR) in respect of non-pecuniary damage. He further claimed 643,125 euros (EUR) in compensation for pecuniary damage resulting from the breach of his right to the peaceful enjoyment of his property.

62. The Government contested these claims.

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 13,200 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant also claimed EUR 1,460 for the costs and expenses incurred before the domestic courts and before the Court.

65. The Government contested the claim.

66. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession, to the documents submitted by the applicant and the above criteria, the Court considers, taking account in particular of the length and complexity of the proceedings that the sum claimed should be awarded in full.

C. Default interest

67. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the respondent State is to pay the applicant, 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:
 - (a) EUR 13,200 (thirteen thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) EUR 1,460 (one thousand four hundred and sixty 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 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 1 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President