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

FOURTH SECTION

DECISION

Application no. 10872/11
Danuta KOŁPACZEWSKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 6 December 2016 as a Committee composed of:
Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Marko Bošnjak, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*
Having regard to the above application lodged on 1 February 2011,
Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Danuta Kołpaczewska, is a Polish national who was born in 1947 and lives in Warsaw.
2. The Polish Government ("the Government") are represented by their Agent, Mrs J. Chrzanowska of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

1. Background of the case

4. The applicant and her husband (B.K.) divorced in 2003.
5. On 28 March 2006 the Warsaw District Court gave a decision in the proceedings concerning division of the marital property. The court granted

the applicant the right to the marital flat and ordered her to pay her ex-husband 42,500 Polish zlotys (PLN) (approximately 9,835 euros (EUR)), corresponding to half of the value of the flat. The court also held that the applicant's ex-husband had a right to social accommodation. At the same time it decided that B.K.'s obligation to leave the flat should be suspended until the municipality had provided him with social accommodation.

6. On 20 June 2006 the applicant asked the Warsaw Municipality to provide social accommodation to her ex-husband.

2. The applicant's attempts to receive compensation

7. On 16 May 2009 the applicant sent a letter to the Warsaw Municipality, asking for compensation for its failure to provide social accommodation to B.K.

8. On 20 July 2009 the Warsaw Ursynów Municipality stated that under section 18(5) of the Act of 21 June 2001 on the protection of the rights of tenants, housing resources of municipalities and on amendments to the civil code (*Ustawa o ochronie lokatorów, mieszkaniowym zasobie gminy i o zmianach kodesku cywilnego*) ("the 2001 Act"- see paragraph 16 below) if a municipality failed to provide social accommodation to someone entitled to it, the landlord had a right to claim compensation from the municipality. However, it informed the applicant that under the case-law of the Supreme Court and the Supreme Administrative Court she should have proceeded first against the person who had occupied her flat without legal title.

9. On 23 October 2009 the applicant lodged a claim for payment against B.K. with the Warsaw District Court. She asked for PLN 35,400 (approximately EUR 8,190), referring to the fact that B.K. had lived in the flat between 28 March 2006 and 23 October 2009. She further asked the court to order B.K. to pay monthly rent of PLN 850 (approximately EUR 195) and PLN 30 (approximately EUR 7) for electricity bills.

10. In reply to her statement of claim, B.K. submitted that he only occupied one room of 11 sq. m. and used the kitchen and bathroom. Moreover, he had also been paying half of the monthly charges.

11. On 11 March 2010 the Warsaw District Court dismissed the applicant's claim. The court held that the applicant had failed to prove that even if B.K. had moved out, she would have been able to rent the room to someone else and profit from that. In addition, the court noted that B.K. had been contributing to the upkeep of the apartment and paying half of the monthly service charges since 2003.

12. On 9 September 2010 the Warsaw Regional Court upheld the first-instance judgment. The court held that under section 18(1) and (3) of the 2001 Act (see paragraph 16 below) persons who had received eviction orders were required to pay compensation to their landlord until they had vacated the premises. It further stressed that B.K. had been paying half of

the monthly service charges since 2003, which had not been contested by the applicant. He could not therefore be expected to pay any additional compensation, in particular as he was the former co-owner of the apartment. Consequently, he could only be required to contribute to the monthly service charges, which he had been doing. Furthermore, the court stated that under section 18(5) of the 2001 Act the applicant was allowed to seek compensation directly from the municipality.

13. A cassation appeal was not available in the applicant's case.

14. On 13 June 2011 the Warsaw Ursynów Municipality informed the applicant that B.K. was forty-third out of 119 people waiting on the list for social accommodation in Ursynów.

15. On 25 February 2014 B.K. moved out of the applicant's flat.

B. Relevant domestic law and practice

1. Civil liability for failure to supply social housing

16. In so far as relevant, section 18 (5) of the 2001 Act, provides, as follows:

> "1.Persons occupying an apartment without a legal title must pay compensation every month until they vacate the apartment.
>
> 2. Subject to subsection 3, the compensation is to equal the amount of rent which the landlord might have obtained if the apartment had been rented out ....
>
> 3. Persons entitled to social housing, in cases where a court has decided to suspend their obligation to vacate an apartment until they have been offered social accommodation, shall pay compensation of the same amount as the rent or other fees for using the apartment which they would have to pay if the legal relationship still existed.
>
> ...
>
> 5. If the municipality has not provided social housing to a person who is entitled to it by virtue of a final judgment, the landlord shall have a claim for damages against the municipality on the basis of Article 417 of the Civil Code."

17. Article 417 of the Civil Code reads in so far as relevant:

> "The State Treasury, municipality or another legal person wielding public power by virtue of the law shall be liable for damage caused by an unlawful act or omission in the exercise of that power."

2. Supreme Court's case-law

18. The Supreme Court, in a ruling of 25 June 2008 (no. CZP 46/2008) concerning a claim for damages under section 18(5) of the 2001 Act read in conjunction with Article 417 of the Civil Code, confirmed that a landlord was entitled to full compensation for any damage sustained on account of a municipality's failure to provide social housing to a tenant.

COMPLAINTS

19. The applicant complained under Article 1 of Protocol No. 1 to the Convention of a violation of her right to the peaceful enjoyment of her possessions.

THE LAW

20. The applicant complained that she had been unable to use her flat for a long time owing to the authorities' failure to enforce an eviction order against her former husband. She invoked Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

21. The Government submitted that the applicant had failed to exhaust the domestic remedies available to her. They stressed that it was open to her to lodge a civil claim for damages against the municipality under section 18(5) of the 2001 Act taken together with Article 417 of the Civil Code. The Government referred to the Supreme Court's jurisprudence which had confirmed a landlord's right to full compensation for any damage sustained as a result of a municipality's failure to provide social housing to a tenant (see paragraph 18 above). They also provided examples of domestic court judgments in which the courts had awarded compensation to landlords from municipalities. Lastly, they stated that the claim under section 18(3) of the 2001 Act which the applicant had lodged against B.K. would have been effective only if B.K. had not participated in the upkeep of the apartment.

22. The applicant contested those submissions. She maintained that she had exhausted all effective remedies. On 16 May 2009 she had sent a letter to the municipality asking for compensation. However, she had been informed in reply that she should have first lodged a claim against B.K. (see paragraphs 7 and 8 above) As she was not a lawyer, she had acted in accordance with that information and had lodged a claim against B.K. With reference to the examples of domestic court case-law produced by the Government, she maintained that they were irrelevant in the circumstances of her case as they had all been given after the judicial proceedings in her case had ended.

23. The Court reiterates that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. Recourse should therefore be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. As a consequence, complaints intended to be made before the Court should have first been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law, and any procedural means that might prevent a breach of the Convention should have been used (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV, and *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

24. Turning to the circumstances of the present case, the Court notes that the applicant's former husband was ordered to vacate the applicant's flat on 28 March 2006. However, the eviction could only be carried out when he had been allocated social housing by the municipality (see paragraph 5 above).

25. As indicated by the Government (see paragraph 21 above) it was possible for the applicant to bring a claim for damages against the municipality under section 18(5) of the 2001 Act read in conjunction with Article 417 of the Civil Code, alleging that the respondent had failed to provide social housing to B.K.

26. The Court has already examined this remedy in the context of general measures introduced at the domestic level covering persons affected by the systemic problem identified in the *Hutten-Czapska* pilot judgment (see *Hutten-Czapska v. Poland* (friendly settlement) [GC], no. 35014/97, § 41, 28 April 2008, and *Association of Real Property Owners in Łódź and Others v. Poland* (dec.), no. 3485/02, §§ 70 and 72, ECHR 2011 (extracts)) and recently in two other cases against Poland (see *Wasiewska v. Poland* (dec.), no. 9873/11, § 31, 2 December 2014, and *Strzelecka v. Poland* (dec.), no. 14217/10, § 44, 2 December 2014). In those cases the Court found the remedy effective in that it had enabled landlords to get compensation for losses incurred due to the municipal authorities' failure to provide social housing to tenants. In addition, in view of the domestic case-law advanced by the Government (see paragraphs 18 and 21 above), the Court sees no reason to doubt the effectiveness of this remedy.

27. In the present case the applicant alleged that as she was not a lawyer herself she had merely acted upon the advice received from the municipality (see paragraph 22 above). The Court considers that even if the applicant initially received inaccurate information from the municipality, the Regional Court in its judgment of 9 September 2010 subsequently pointed out to her that she was entitled to seek compensation under section 18(5) of the 2001

Act directly from the municipality (see paragraph 12 above). However, the applicant did not use that remedy and instead lodged an application directly with the Court.

28. In the light of the foregoing, the Court concludes that in accordance with the principle of subsidiarity the applicant should have brought an action against the municipality under section 18(5) of the 2001 Act before lodging her application with the Court.

29. It follows that the application is inadmissible for failure to exhaust domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 January 2017.

Andrea Tamietti	Nona Tsotsoria
Deputy Registrar	President