CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FOURTH SECTION

## DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 41187/02
by Leokadia SZWAGRUN-BAURYCZA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 18 October 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Registrar,*

Having regard to the above application lodged on 5 November 2002,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

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

The applicant, Mrs Leokadia Szwagrun-Baurycza, is a Polish national, who was born in 1929 and lives in Wrocław. The respondent Government are represented by their Agent, Mr Jakub Wołąsiewicz of the Ministry of Foreign Affairs.

## A. The circumstances of the case

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

On 3 November 1975 the applicant's parents requested the court to declare that they had acquired by prescription ownership of a plot of land which had been in their possession for more than 15 years. It appears that they were summoned by the court to identify the successors of the original owners and to indicate their addresses. Participation of these persons in the proceedings was necessary to preclude them from invoking their rights after the matter was decided upon.

As the applicant's parents failed to establish the addresses of all persons potentially concerned, the proceedings were stayed on 31 July 1976. The number of persons who could potentially be affected by the outcome of the proceeding amounted at the time to thirty-eight, some of them residing abroad.

On unspecified dates in 1977 the applicant's parents died and the applicant and her sister inherited their estate.

Between 1975 and 1990, some of the original owners of the property or their successors died and the number of persons potentially affected by the outcome of these proceedings (as further successors of the original owners) increased.

On 15 October 1990 the applicant, being unable to identify all successors of the original owners or to indicate their addresses, requested the Ostrów Wielkopolski District Court to publish a press notice summoning persons potentially interested in the outcome of the case and to resume the proceedings.

On 17 September 1993 the court decided to appoint a court officer *(curator absentis)* to represent persons potentially affected by the proceedings but whose addresses were unknown. The court also ordered the publication of a press notice to summon other persons potentially concerned.

Nevertheless, at the hearing of 29 April 1994, the court found that some of the other persons already involved in the proceedings had died and again instructed the applicant to indicate the addresses of their successors. The applicant failed to do so and, by decision of 13 January 1997, the court refused to resume the proceedings.

On 22 February 1999 the applicant again requested the court to resume the proceedings on the merits. Apparently, at this stage, 53 persons were already potentially interested in the outcome of the proceedings.

On 25 March 1999 the Ostrów District Court refused to resume the proceedings in view of the applicant's failure to submit the addresses of all persons potentially affected. The court also decided to discontinue the

proceedings, finding that more than three years had elapsed since the date of the last procedural step in the case.

On 2 April 1999 the applicant appealed against this decision and on 27 October 1999 the Kalisz Regional Court partly allowed her appeal. In particular, the court found that there were no grounds to discontinue the proceedings as some procedural steps had been taken within the preceding three years even though technically the proceedings were stayed. Nevertheless, the court decided that the proceedings should remain stayed in view of the applicant's failure to comply with the court order.

On 3 March 1999 the Ostrów District Court again summoned the applicant to indicate the current address of one of the potential litigants and the legal successors of another.

It appears that the applicant did not file with the court the addresses requested and, on 2 February 2000, the trial court rendered a decision to discontinue the proceedings. The applicant appealed. On an unspecified date her appeal was allowed.

On 18 January 2002 the applicant was again summoned to submit names and addresses of potential litigants, including one allegedly living in Ukraine, on pain of a stay of the proceedings. On 19 February 2002 the court stayed the proceedings, having regard to the applicant's failure to indicate legal successors of five litigants and to give the current addresses of a further seven litigants.

On 21 February 2005 the court discontinued the proceedings, having regard to the fact that the applicant had failed to request, within three years, that the stayed proceedings be resumed.

The applicant appealed and objected to the obligation to identify and find the legal successors of former owners and to indicate their addresses. She submitted that the case should have been terminated long ago, if the institutions of *curator absenti* and the press notice had been properly used by the court. She requested that the court again publish a relevant press notice.

On 31 May 2005 the court summoned her to pay PLN 160 as a court fee for the appeal, to identify legal successors of another six parties who had died and to submit 50 copies of her appeal. The applicant refused to pay the fee, arguing that she had paid this amount several times, but that this had not led to any progress as to the merits of the case. She also refused to identify legal successors or addresses of sixteen persons referred to in the decision of 21 February and the summons of 31 May 2005 and reiterated that she had already repeatedly informed the court that she was unable to do so.

On 15 June 2005 the court refused to entertain her appeal on the ground that she had refused to pay the court fee and refused to submit 50 copies of the appeal.

The applicant appealed against this decision, submitting that in the absence of addresses of all potential litigants the requirement to submit 50 copies of her appeal was unreasonable because in any event these copies could not be served on them.

On 28 July 2005 the court summoned her to rectify her appeal by paying PLN 160, by submitting 26 copies of the appeal, by indicating legal successors of six late litigants and by giving the addresses of two further litigants.

The applicant refused to do so. She submitted again that a decision on the merits could have been given in her case, had the court made proper use of the *curator absentis* and the publication of a press notice, provided for in Article 609 of the Code of Civil Procedure.

On 12 August 2005 the court rejected her appeal against the decision of 15 June 2005, having regard to her failure to comply with the summons of 28 July 2005.

The applicant appealed against this decision, submitting again that she was unable to identify the addresses and names of the persons concerned.

The proceedings are pending.

## B. Relevant domestic law and practice

Under Polish law, a request to declare that property was acquired by prescription is examined in so-called non-litigious procedure. However, the claimant is obliged to identify persons who are potentially affected by these proceedings, notably the original owners or their successors. Should these persons express their interest in the proceedings, they may be granted the status of a "party".

If a claimant is objectively unable to identify persons who could be potentially affected by the outcome of the proceedings, the court orders the publication of a press notice, summoning such persons to join the case. If the identity of persons is known but their current addresses cannot be established, the court shall appoint a court officer *(curator absentis)* to represent such persons.

Art. 510 of the Code of Civil Procedure (Chapter on: *Non-litigious proceedings, general provisions*) provides as follows:

> § 1. Any person, whose rights and obligations are affected by the outcome of the proceedings, is an interested person; he or she may participate in the proceedings at any stage. If the person decides to participate, he or she becomes a party to the proceedings. An appeal is available against a refusal to be admitted as a party to the proceedings.
>
> § 2. If it turns out that a person concerned is not a party to the proceedings, the court will summon him or her to participate in them. Following the summons, a person becomes a party to the proceedings. If a need arises to appoint a court officer *(curator*

*absentis)* to represent a party whose address is unknown, such appointment is made *ex officio*.

Article 524 § 2 of the Code of Civil Procedure (Non-litigious proceedings, general provisions) provides as follows:

> An interested person who has not participated in the proceedings terminated by a final decision on the merits, may request that these proceedings be reopened. Provisions on the reopening on the grounds of being deprived of the possibility to act shall apply.

Art. 609 § 2 of the Code of Civil Procedure (Acquiring property by prescription) provides as follows:

> If a person who files a motion (for a declaration that property has been acquired by prescription) fails to indicate other interested persons, the decision (on the merits) may only be rendered after such persons are summoned by a press notice. A press notice may be published also in other circumstances when the court finds it necessary.

## COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention that the refusals to resume the proceedings on the ground that she failed to indicate the addresses of all interested persons amounts to a denial of an effective access to court. She submits that imposing on her an obligation to establish the addresses of 58 potential litigants, some of them residing abroad, is an unreasonable burden

She also complains about the excessive length of the proceedings.

## THE LAW

1. The applicant complains under Article 6 § 1 of the Convention about the excessive length of judicial proceedings.

The Government consider that the complaint is manifestly ill-founded.

Pursuant to Article 35 § 1 of the Convention:

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

The Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic court.

It further observes that, pursuant to Article 18 of the 2004 Act, it was open to persons such – as the applicant in the present case – whose case was pending before the Court to lodge, within six months from 17 September 2004, a complaint about the unreasonable length of the proceedings with the

relevant domestic court, provided that their application to the Court had been lodged in the course of the impugned proceedings and that it had not yet been declared admissible.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for violation that has already occurred (see *Michalak v. Poland* (dec.), no. 24549/03, §§ 37-43).

However, the applicant, despite having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under the 2004 Act, has chosen not to avail herself of this remedy.

The applicant stated explicitly that she had no wish to lodge a complaint about a breach of the right to a trial within a reasonable time under the provisions of that Act.

It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicant complained under Article 6 § 1 of the Convention that the refusals to resume the proceedings on the ground that she had failed to indicate the identity and addresses of all persons potentially affected by the outcome of the case amounts to a denial of an effective access to court.

The Government submit that under the Convention the right to a court enshrined in Article 6 is not an absolute one. It may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of this right is impaired.

They further submit that in proceedings in which a claim for acquisitive prescription is made the claimant is obliged to identify persons who are potentially affected by the outcome of such proceedings. If the claimant is objectively unable to identify such persons, the court is empowered to order the publication of a press notice by which such persons are informed of the proceedings and summoned to join them. In the present case such an order was made by the Ostrów Wielkopolski District court on 17 September 1993 under Article 609 § 2 of the Code of Civil Procedure. Further, if the identity of such persons is known, but their addresses cannot be established, the court is empowered to appoint a *curator absentis* to represent them before the court. This obligation has been discharged by the order of the same court given on 17 September 1993.

The Government conclude that the obligation to identify the addresses of the successors of the estate concerned did not deprive the applicant of effective access to a court, because the establishing of the addresses of the

potential parties to the proceedings was the only way to enable the court to give a decision on the merits of the applicant's claim.

The applicant submits that imposing on her an obligation to establish the addresses of at least 58 potential litigants, some of them residing abroad, is an unreasonable burden. She also submits that after almost thirty years of proceedings no decision on the merits has been given in the case and that the proceedings have been discontinued because of her failure to indicate the current addresses of all interested persons.

The applicant refers to the Government's submissions on the appointment of the *curator absenti* and the publication of a press notice. She stresses that the court took these measures in 1993, after the proceedings had been pending for eighteen years. She further submits that the Government have failed to explain why after these orders had been given the court again repeatedly summoned her to provide the court with the addresses of all interested persons, which resulted in a failure to make any progress in the case. This, in the applicant's argument, made these measures meaningless and they did not bring about any progress in the case.

The applicant argues that in cases such as hers, in which a claim for acquisitive prescription is made, it is a normal feature that the passage of time - which in any event is an essential legal prerequisite for any reasonable prospects of success for such a claim - makes it relatively more difficult to establish identities and addresses of all persons potentially interested in the outcome of the case. The possibility to make orders provided for in Articles 510 and 609 § 2 of the Code of Civil Procedure serve the purpose of remedying such difficulties. In the applicant's case they were resorted to unreasonably late, in 1993. Importantly, also after the orders of 17 September 1993 had been given, the court did not make proper use of them.

The applicant concludes that she was denied the right of effective access to a court as no decision on the merits of her claim has been given due to unreasonable and unnecessary obligations imposed on her during the proceedings.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

*Declares* admissible, without prejudging the merits, the applicant's complaint concerning lack of access to a court;

*Decides* to discontinue the application of Article 29 § 3 of the Convention and to join the question of the exhaustion of domestic remedies in respect of the complaint about lack of access to a court to the merits of the case;

*Declares* the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President