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

FOURTH SECTION

DECISION

Application no. 5745/09
Janusz WILCZYŃSKI against Poland
and 3 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 19 November 2013 as a Committee composed of:

Ledi Bianku, *President,*
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above applications,

Having regard to the declaration submitted by the respondent Government on 8 April 2011, requesting the Court to strike the applications out of the list of cases and the applicants' reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Janusz Wilczyński and Mr Roman Wilczyński, are brothers and Polish nationals, born in 1957 and 1961 respectively.

The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

On 5 April 1994 the Gorzowski Governor (*Wojewoda Gorzowski*) gave a decision (no. 2/94) on the location of a gas pipeline (*decyzja o ustaleniu lokalizacji inwestycji*). It was to be laid underground and partly crossed the applicants' land.

1. Application no 5745/09, lodged on 19 January 2009 by Janusz WILCZYŃSKI, born on 17 January 1957 and living in Warsaw.

On 16 February 1995 the company EuRoPol GAZ S.A. Warsaw filed a petition with the Międzyrzecze District Office (*Urząd Rejonowy*) to grant access to land for the purpose of constructing a gas pipeline. The request concerned *inter alia* plots nos. 434, 436/1, 5/2, 11 and 57/16 belonging to the applicants.

On 18 April 1995 the decision granting access was given by the Międzyrzecze District Office. The applicant appealed.

On 7 July 1995 the Gorzowski Governor quashed the decision and remitted the case for reconsideration.

On 22 September 1995 the Międzyrzecze District Office again granted access in respect of plots nos. 435, 436/1, 5/2, 11 and 57/16.

On 18 October 1995 the applicant requested to have the decision supplemented by *inter alia* making provisions for compensation.

On 9 November 1995 his request was dismissed by the head of the Międzyrzecze District Office.

On 8 December 1995 the Regional Office in Gorzów Wielkopolski - Directorate for Land Management (*Urząd Wojewódzki*) upheld the decision of 22 September 1995. The applicant appealed. On 23 May 1996 the Supreme Administrative Court in Poznań (*ośrodek zamiejscowy w Poznaniu)* dismissed his appeal.

On 17 May 1996 the applicant instituted administrative proceedings for the grant of compensation (in respect of plot no. 57/16).

On 22 July 1996 the applicant filed a complaint of inactivity on the part of the Międzyrzecze District Office. It was dismissed as ill-founded on 21 August 1996 by the Regional Office in Gorzów Wielkopolski.

On 21 November 1996 the Supreme Administrative Court in Poznań dismissed another complaint of inactivity on the part of the Międzyrzecze District Office filed by the applicant.

On 28 February 1997 the Międzyrzecze District Office decided that the applicant's request for compensation should be examined by 20 March 1997 at the latest.

On 10 March 1997 the Międzyrzecze District Office decided to grant Roman Wilczyński 8,364 Polish zlotys (PLN) in compensation for plots nos. 5/2, 435 and 436/1 and Janusz Wilczyński 2,757 Polish zlotys (PLN) in compensation for plot no. 57/16. As to the remaining plots no compensation was granted. The applicant appealed.

On 21 April 1997 the Regional Office in Gorzów Wielkopolski quashed the decision and remitted the case for reconsideration.

On 12 June 1997 the applicant filed another complaint of inactivity on the part of the Międzyrzecze District Office.

On 9 July 1997 the Międzyrzecze District Office refused to grant compensation in respect of plots nos. 11 and 57/16. The applicant appealed.

On 20 August 1997 the Regional Office in Gorzów Wielkopolski upheld the decision. The applicant appealed.

On 17 February 1998 the Supreme Administrative Court in Poznań quashed the proceedings concerning the alleged inactivity of the Międzyrzecze District Office since they had become groundless. It found that since the office had given decisions (in respect of all plots) in July 1997 it could not have been inactive.

On 2 March 1998 the Supreme Administrative Court in Poznań quashed the decisions of 9 July and 20 August 1997 and remitted the case for reconsideration.

On 26 August 1998 the Regional Office in Gorzów Wielkopolski decided to grant Janusz Wilczyński 3,848 Polish zlotys (PLN) in compensation for plot no. 57/16 and refused to grant compensation in respect of plot no. 11. The applicant appealed.

On 1 December 1998 the Supreme Administrative Court dismissed the applicant's further complaint of inactivity on the part of the Gorzowski Governor.

On 4 March 1999 the President of the Office for Housing and Urban Development (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*) suspended the proceedings for compensation. On 15 March 1999 the applicant requested that the decision be quashed.

On 6 May and 8 December 1999 and 23 January 2002 the Supreme Administrative Court dismissed the applicant's complaints of the inactivity of the President of the Office for Housing and Urban Development in examining his appeal against the decision of 26 August 1998.

On 13 May 1999 the President of the Office for Housing and Urban Development upheld its decision of 4 March 1999.

On 21 September 2004 the Minister for Infrastructure (*Minister Infrastruktury*) refused to reinstitute the proceedings suspended by the decision of 4 March 1999. The applicant appealed. On 14 December 2004 the minister upheld his decision.

On 9 June 2005 the Minister for Infrastructure refused to declare the decisions of 22 September and 8 December 1995 null and void.

On 29 December 2005 the Regional Administrative Court in Warsaw dismissed the applicant's appeal against the decision of 14 December 2004.

On 20 June 2007 the Supreme Administrative Court dismissed the applicant's cassation appeal against the judgment of 29 December 2005.

On 10 June 2008 the applicant filed a complaint with the Regional Administrative Court in Warsaw alleging inactivity on the part of the Minister for Infrastructure. He alleged that the latter had failed to examine his appeal lodged on 7 September 1998 against the Gorzowski Governor's decision of 26 August 1998. It was dismissed on 23 October 2008.

On 22 February 2010 the applicant filed a complaint with the Regional Administrative Court in Warsaw alleging inactivity on the part of the Minster of Infrastructure. As previously, he alleged that the latter had failed to examine his appeal lodged on 7 September 1998 against the Gorzowski Governor's decision of 26 August 1998. The applicant's complaint was dismissed on 19 August 2010. On 9 November 2011 the Supreme Administrative Court upheld the judgment of 19 August 2010.

2. Application no 7470/09, lodged on 9 January 2009 by Roman WILCZYŃSKI, born on 5 December 1961 and living in Warsaw.

On 20 May 1996 the applicant filed a petition for damages for using his land with the Międzyrzecze District Office.

On 8 July 1997 the Międzyrzecze District Office refused to grant compensation in respect of plots nos. 5/2, 435 and 436/1. The applicant appealed. On 20 August 1997 the Regional Office in Gorzów Wielkopolski upheld the contested decision.

On 2 March 1998 the Supreme Administrative Court quashed the decisions of 8 July and 20 August 1998 as having been issued *contra legem* and remitted the case for reconsideration.

On 26 August 1998 the Regional Office in Gorzów Wielkopolski decided to grant Roman Wilczyński 7,779 Polish zlotys (PLN) in compensation for plots nos. 435 and 436/1 and 3,065 Polish zlotys (PLN) for plot no. 5/2.

On 3 December 1998 the Supreme Administrative Court in Poznań dismissed the applicant's complaint of the inactivity of the Gorzowski Governor.

On 4 March 1999 the President of the Office for Housing and Urban Development suspended the proceedings for compensation. On 15 March 1999 the applicant requested that the decision be quashed. On 13 May 1999 the president upheld the decision.

On 23 January 2002 the Supreme Administrative Court dismissed the applicant's complaint of the inactivity of the Gorzowski Governor in examining the appeal against the decision of 26 August 1998.

On 10 December 2004 the Minister for Infrastructure refused to reinstitute the proceedings suspended by the decision of 4 March 1999. The applicant appealed. On 16 March 2005 the minister upheld the decision.

On 12 June 2006 the Regional Administrative Court in Warsaw quashed the decisions of 4 March 1999 and 10 December 2004. On 1 February 2008 the Supreme Administrative Court dismissed the cassation appeal lodged by the Minister for Infrastructure.

On 19 August 2008 the applicant was informed by the Minister for Infrastructure that the factual evidence in his case had been collected.

On 21 February 2010 the applicant lodged a complaint with the Regional Administrative Court in Warsaw alleging inactivity on the part of the Minister for Infrastructure.

On 11 March 2010 the Minster of Infrastructure refused to reinstitute the proceedings suspended by the decision of 4 March 1999. The applicant appealed. On 17 September 2010 the Minister of Infrastructure upheld the decision of 11 March 2010.

On 9 July 2010 the Regional Administrative Court discontinued proceedings regarding inactivity on the part of the Minister of Infrastructure. The applicant lodged a cassation appeal. On 12 October 2010 the Supreme Administrative Court upheld the first instance decision of 9 July 2010.

3. Application no 7472/09, lodged on 15 January 2009 by Roman WILCZYŃSKI, born on 5 December 1961 and living in Warsaw.

On 18 November 1997 the applicant filed a petition to have decision no. 2/94 of 5 April 1994 declared null and void.

On 4 March 1998 the Office for Housing and Urban Development informed the applicant that the relevant proceedings had been instituted.

On 12 November 1998 the President of the Office for Housing and Urban Development declared the decision of 5 April 1994 to be null and void.

On 21 April 1999 the President of the Office for Housing and Urban Development upheld the decision of 12 November 1998. The applicant appealed.

On 26 October 1999 the Supreme Administrative Court quashed the proceedings concerning the alleged inactivity of the president. It found that since on 21 April 1999 a decision as to the merits had been given, the president could not have been inactive.

On 28 November 2000 the Supreme Administrative Court imposed a pecuniary penalty (*grzywna*) of 1,000 Polish zlotys (PLN) on the President of the Office for Housing and Urban Development for his alleged inactivity in examining the applicant's appeal against the decision of 5 April 1994.

On 6 September 2001 the Supreme Administrative Court quashed the decisions of 12 November 1998 and 21 April 1999.

On 22 October 2001 the applicant filed a complaint of inactivity on the part of the President of the Office for Housing and Urban Development with the Supreme Administrative Court. On 18 June 2002 the court requested the president to give a decision as to the merits within a time-limit of one month.

On 26 February 2002 the President of the Office for Housing and Urban Development decided to suspend the proceedings to declare decision no. 2/94 of 5 April 1994 null and void. The applicant appealed. On 16 May 2002 the president upheld the contested decision.

On 4 July 2002 the Supreme Administrative Court decided to quash the proceedings concerning the alleged inactivity of the president. It found that since on 16 May 2002 a decision as to the merits had been given, the president could not have been inactive.

On 29 October 2002 the Supreme Administrative Court dismissed the applicant's petition to have a pecuniary penalty imposed on the president for his alleged inactivity.

On 13 August and 12 November 2002, 21 March and 7 October 2003 the Supreme Administrative Court dismissed the applicant's complaints of the president's inactivity.

On 28 April 2004 the applicant requested the Minister for Infrastructure to reopen the suspended proceedings.

On several later dates the applicant filed numerous petitions to have a pecuniary penalty imposed on the Minister for Infrastructure for his alleged inactivity. They were all dismissed as ill-founded by the Regional Administrative Court in Warsaw, *inter alia* on 25 February and 1 July 2005, and 11 May and 31 August 2006.

On 31 October 2005 the Minister for Infrastructure changed his name to the Minister for Transport and Construction (*Minister Transportu i Budownictwa*).

On 9 November 2005 the Regional Administrative Court in Warsaw obliged the minister to examine the applicant's motion of 28 April 2004 within the time-limit of fourteen days.

On 22 March 2006 the Minister for Transport and Construction decided not to reopen the suspended proceedings. The applicant appealed. On 29 May 2006 the Minister for Construction (*Minister Budownictwa*) upheld the decision.

4. Application no 9688/09, lodged on 13 February 2009 by Janusz WILCZYŃSKI, born on 17 January 1957 and living in Warsaw.

The facts are identical to these presented in application no. 7472/09 (see above).

B. Relevant domestic law and practice

1. Inactivity of administrative authorities

For a presentation of the relevant domestic law see the cases of *Kaniewski v. Poland*, no. 38049/02, 8 February 2006; and *Koss v. Poland*, no. 52495/99, 28 March 2006.

2. Length of proceedings

The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland,* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland,* no. 11215/02 (dec.), ECHR 2005-VIII; and

the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

COMPLAINT

The applicants complained under Article 6 § 1 of the Convention about the unreasonable length of all sets of administrative proceedings in which they have been involved.

THE LAW

A. Length of proceedings

The applicants complained about the length of the proceedings and that they had no effective remedy at their disposal. They relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

Article 6 § 1

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

By letter dated 8 April 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

The declaration provided as follows:

"...The Government hereby wish to express, by way of the unilateral declaration, their acknowledgement of the infringement of the applicants' right guaranteed by Article 6 § 1 of the Convention due to excessive length of the proceedings.

In these circumstances, and having regard to the particular facts of the case, the Government are prepared to pay to the applicants the sum of PLN 8,000 which they consider to be reasonable in the light of the Court's case-law. The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it , from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus the three percentage points.

The Government would suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention. ..."

In the letters of 11 and 13 June 2011 the applicants expressed the view that the sum mentioned in the Government's declaration was unacceptably disproportionate to the damage caused by the excessively long proceedings. The applicants requested for the examination of the case to be continued.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the case to be continued.

To this end, the Court will examine the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03).

The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-....; *Majewski v. Poland*, no. 52690/99, 11 October 2005; and *Wende and Kukówka v. Poland*, no. 56026/00, 10 May 2007).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed the Court considers that it is no longer justified to continue the examination of the applications (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the applications (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

Since it appears that the proceedings concerned are still pending before the domestic courts, the Court's strike-out decision is without prejudice to use by the applicants of other remedies to obtain redress for any delay in the proceedings which may occur after the date of this decision.

For these reasons, the Court unanimously

Decides to join the applications;

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Fatoş Aracı	Ledi Bianku
Deputy Registrar	President

APPENDIX

No.	Application number	Application name	Date of introduction	Name and surname of Applicant
1.	5745/09	WILCZYŃSKI v. Poland	19/01/2009	Janusz Wilczyński
2.	7470/09	WILCZYŃSKI v. Poland	09/01/2009	Roman Wilczyński
3.	7472/09	WILCZYŃSKI v. Poland	15/01/2009	Roman Wilczyński
4.	9688/09	WILCZYŃSKI v. Poland	13/02/2009	Janusz Wilczyński