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

FOURTH SECTION

DECISION

Application no. 56311/08
Roman WILCZYŃSKI against Poland
and 3 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 3 June 2014 as a Committee composed of:

George Nicolaou, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above applications,

Having regard to the declaration submitted by the respondent Government on 6 April 2011, requesting the Court to strike the applications out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Roman Wilczyński, is a Polish national who was born in 1961 and lives in Warsaw.

A. The circumstances of the case

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

1. Expropriation proceedings – applications nos. 52577/09 and 2313/10

3. The applicant has the right of property (*prawo własności*) and perpetual use (*prawo użytkowania wieczystego*) of some land located in Gubin (plots nos. 392/3 (allotted from a plot no. 392/1) and 207/1

respectively). Plot no. 392/3 measures 0,2685 hectare and plot no. 207/1 measures 0,4691 hectare.

4. On 15 September 1998 the Zielona Góra Governor (*Wojewoda Zielonogórski*) instituted expropriation proceedings concerning both plots for the purpose of building a public road pursuant to the Law of 21 August 1997 on Land Administration (*Ustawa o gospodarce nieruchomościami*).

5. By a decision of 5 October 1998 the Zielona Góra Governor expropriated *ex officio* plots nos. 392/3 and 207/1. The decision on compensation was to be given within a month. The Governor in particular relied on the fact that prior negotiations concerning the transfer of rights to the land by way of a contract for sale had failed. The applicant appealed.

6. On 10 December 1998 the President of the Office for Housing and Town Development (*Prezes Urzędu Mieszkalnictwa i Rozwoju Miast*) upheld the decision of 5 October 1998. The applicant appealed.

7. On 16 December 1998 the Director of the General Directorate of Public Roads (*Dyrektor Generalnej Dyrekcji Dróg Publicznych*) ordered that the construction works be carried out. They effectively commenced on 8 January 1999.

8. On 29 September 1999 the Supreme Administrative Court quashed the decisions of 5 October and 10 December 1998. It found that the administrative proceedings preceding the issuance of the decisions were tainted with formal shortcomings.

9. On 24 March 2000 the applicant lodged a complaint about the inactivity on the part of Zielona Góra Governor. On 1 December 2000 his complaint was dismissed as ill-founded by the Supreme Administrative Court branch in Poznań (*ośrodek zamiejscowy w Poznaniu*).

10. On 27 March 2000 the Zielona Góra Governor following amendments in the relevant statute transferred the case to the Mayor of the Krosno District (*Starosta Powiatu Krośnieński*ego).

11. By a decision of 18 May 2000 the Mayor refused to expropriate the land in question. It was established that since the road had already been built the expropriation had become purposeless. The Director of the General Directorate of Public Roads appealed against the decision.

12. On 6 June 2000 the General Directorate filed a petition with the Zielona Góra Regional Court that the applicant be ordered to convey his rights over the land against payment for the benefit of the Directorate (*zobowiązanie do przeniesienia własności oraz użytkowania wieczystego*).

13. On 4 July 2000 the Lubuski Governor (*Wojewoda Lubuski*) decided to suspend the appeal proceedings until the final decision was given in the civil proceedings. The applicant appealed.

14. On 26 September 2000 the President of the Office for Housing and Town Development upheld the Governor's decision. The applicant appealed.

15. On 21 September 2001 the Supreme Administrative Court quashed the decisions of 26 September and 4 July 2000.

16. On 5 November 2001 the applicant filed a complaint about the inactivity on the part of the Lubuski Governor with the Supreme Administrative Court.

17. On 8 January 2002 the Lubuski Governor quashed the decision of 18 May 2000 and remitted the case for re-consideration. The applicant appealed to the Supreme Administrative Court in Poznań.

18. On 14 February 2002 the Supreme Administrative Court in Poznań decided to discontinue proceedings concerning the applicant's complaint about the inactivity of the Lubuski Governor as a decision had been issued on 8 January 2002.

19. On 6 February 2003 the Supreme Administrative Court in Poznań dismissed the applicant's appeal against the decision of 8 January 2002.

20. On 17 September 2003 the applicant was made an offer of purchase by the General Directorate.

21. On 14 October 2003 the Director of the General Directorate in Zielona Góra (*oddział w Zielonej Górze*) requested that proceedings be instituted under the Law of 10 April 2003 on special rules for preparing and implementing investments concerning national roads (*Ustawa z 10 kwietnia 2003 o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg krajowych*).

22. On 24 March 2004 the Lubuski Governor instituted expropriation proceedings concerning plots nos. 207/1 and 392/3.

23. On 16 June 2004 the applicant filed a complaint about the inactivity on the part of the Lubuski Governor with the Minister of Infrastructure (*Minister Infrastruktury*). His complaint was dismissed as ill-founded on 31 August 2004.

(a) Subsequent proceedings concerning plot no. 392/3

24. On 27 January 2005 the Lubuski Governor decided to expropriate plot no. 392/3 and granted the applicant 36,100 Polish zlotys (PLN) (the equivalent of approximately 9,025 euros (EUR)) in compensation. The applicant appealed.

25. On 15 June 2005 the Minister for Infrastructure quashed the decision of 27 January 2005 and remitted the case for re-examination. The applicant appealed.

26. On 1 March 2006 the Regional Administrative Court in Warsaw dismissed the applicant's appeal against the decision of 15 June 2005.

27. On 11 April 2006 the Regional Administrative Court in Gorzów Wielkopolski (*Wojewódzki Sąd Administracyjny*) dismissed the applicant's complaint about the inactivity on the part of the Lubuski Governor in respect of proceedings concerning the expropriation of plots nos. 207/1

and 392/3, filed on 17 June 2004. The court found the applicant's complaint ill-founded.

28. On 12 July 2007 the Supreme Administrative Court dismissed the applicant's cassation appeal against the judgment of 1 March 2006. It followed that the Minister's decision of 15 June 2005 quashing the decision on expropriation was the only legally binding decision (*pozostała w obrocie prawnym*).

29. On 8 October 2008 the applicant filed a complaint about the inactivity on the part of the Lubuski Governor.

30. On 11 March 2009 the Regional Administrative Court in Gorzów Wielkopolski found the applicant's complaint well-founded and fixed a time-limit for the examination of the General Directorate's request of 14 October 2003.

31. On 9 September 2009 the Lubuski Governor gave a decision discontinuing the proceedings in the case. It found that the road had been built and therefore the expropriation proceedings had become purposeless.

32. This decision became final on 29 September 2009 as the applicant failed to appeal against it.

(b) Subsequent proceedings concerning plot no. 207/1

33. On 27 January 2005 the Lubuski Governor decided to expropriate plot no. 207/1 and granted the applicant PLN 59,200 (the equivalent of approximately EUR 14,800) in compensation. The applicant appealed.

34. On 15 June 2005 the Minister of Infrastructure quashed the decision of 27 January 2005 and remitted the case for re-examination. The applicant appealed.

35. On 19 September 2005 the Regional Administrative Court in Warsaw (*Wojewódzki Sąd Administracyjny w Warszawie*) dismissed his appeal.

36. On 10 March 2008 the Supreme Administrative Court dismissed the applicant's cassation appeal. It followed that the Minister's decision of 15 June 2005 quashing the decision on expropriation was the only legally binding decision (*pozostała w obrocie prawnym*).

37. On 1 September 2008 the applicant lodged a complaint about the inactivity on the part of the Lubuski Governor with the Minister of Infrastructure. The latter transferred the case to the Minister of the Interior and Administration (*Minister Spraw Wewnętrznych i Administracji*). The authorities became involved in a dispute on which one of them should examine the applicant's complaint.

38. On 3 March 2009 the Prime Minister (*Prezes Rady Ministrów*) found the Minister of Infrastructure to be competent to examine the complaint.

39. By a judgment of 11 March 2009 the Regional Administrative Court in Gorzów Wielkopolski found the applicant's complaint of 9 October 2008 about the inactivity of the Lubuski Governor well-founded and ordered the

Governor to give a decision on expropriation within a three months' time-limit.

40. On 7 July 2009 the Minister of Infrastructure decided to extend the time-limit for a further two months.

41. On 9 September 2009 the Lubuski Governor decided to discontinue the proceedings for expropriation of plot no. 207/1 instituted on 14 October 2003 by the Director of the General Directorate in Zielona Góra.

42. The applicant failed to appeal against this decision and it became final on 29 September 2009.

2. Civil proceedings before the Zielona Góra Regional Court for release of plot no. 207/1 – application no. 57029/09

(a) Civil proceedings for release of plot no. 207/1

43. On an unspecified date in June 2000 the applicant instituted proceedings against the General Directorate for release of plot no. 207/1 (*powództwo o wydanie nieruchomości*) before the Zielona Góra Regional Court (*Sąd Okręgowy*).

44. On 17 August 2000 the Zielona Góra Regional Court suspended the proceedings in the case. It was decided to await the final decision in the administrative proceedings for expropriation. The applicant appealed. On 21 November 2000 the Poznań Court of Appeal (*Sąd Apelacyjny*) upheld the decision.

45. On two occasions in 2001 and 2002 the applicant unsuccessfully applied for the proceedings to be resumed.

46. On 17 September 2004 the Zielona Góra Regional Court decided to resume the proceedings in the case.

47. On 28 February 2005 the Regional Court again suspended the proceedings to await the final decision in the administrative proceedings for expropriation.

48. On 14 January 2010 the applicant informed the Regional Court that the expropriation proceedings had been finally discontinued.

49. On 10 March 2010 the Zielona Góra Regional Court resumed the proceedings in the applicant's case. The court scheduled a hearing for 15 April 2010, which was adjourned upon the applicant's request.

50. On 2 June 2010 the Regional Court gave judgment and dismissed the applicant's claim. It found that, although the applicant indeed had the right of perpetual use of the plot in issue, in the circumstances of the case his claim for release of the plot amounted to abuse of his right (*nadużycie prawa*) and was contrary to the principles of social co-existence *(zasady współżycia społecznego*).

The Regional Court established that, when purchasing the land in 1994, the applicant had been aware of the existing plans of construction of a public road on it. He had never used the land himself, he also had not

constructed any buildings on it. Nevertheless, he had refused several offers of purchase of the land made by the Zielonogórski Governor and by the General Directorate.

The court pointed out that the construction of the public road had been carried out in the period from 8 January 1999 until May 1999 when the expropriation decision of 5 October 1998 was still legally binding. In the court's view, it had been mostly due to the applicant's conduct that both the expropriation proceedings and the attempts of authorities at contractual purchase of the land had failed.

It further emphasised that allowing the applicant's claim could result in him blocking the public road situated on his land. It considered that it was necessary in the public interest that the road on the applicant's land remained accessible, as it led to the border crossing in Gubinek.

51. On 2 December 2010 the Poznań Court of Appeal dismissed the applicant's appeal against the first-instance judgment. It agreed with the first instance court's findings of facts and law. It stressed that the applicant had never used the plot of land in question and that his action was only aimed at gaining profits from the public road which had been constructed on his property by the State Treasury.

52. On 13 October 2011 the Supreme Court refused to entertain the applicant's cassation appeal.

(b) Relevant proceedings under the 2004 Act

53. The applicant lodged four complaints under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act").

54. On three occasions he sought a ruling that the length of the proceedings in his case had been excessive, alleging inactivity on the part of the Zielona Góra Regional Court. He further requested that the proceedings be resumed and compensation in the amount of PLN 10,000 be awarded. Those complaints were dismissed as ill-founded on 21 June 2005, 30 April 2008 and 3 June 2009 by the Poznań Court of Appeal. The court found that the length of the proceedings had been mainly caused by their suspension.

55. On 29 September 2010 the applicant lodged another complaint alleging inactivity on the part of the Zielona Góra Regional Court. He requested that his appeal against the first-instance judgment be immediately served on the Poznań Court of Appeal and that compensation in the amount of PLN 20,000 be awarded.

56. On 19 October 2010 the Poznań Court of Appeal dismissed this complaint as well. The court found that the trial court acted in due time and

diligent manner after the applicant had informed the trial court about the termination of the expropriation proceedings.

3. Civil proceedings before the Zielona Góra District Court for payment for use of the plot no. 392/3– application no. 56311/08

57. On an unspecified date the applicant instituted proceedings for payment against the State Treasury as represented by the General Directorate of Public Roads and Motorways *(Generalna Dyrekcja Dróg Publicznych i Autostrad)*. He claimed PLN 33,294 in compensation for using the plot no. 392/3 without a legal basis in the period from 1 January until 31 January 2000.

58. On 8 May 2007 the Zielona Góra District Court (*Sąd Rejonowy*) dismissed the plea.

The District Court noted that the construction works on the said plot had been carried out in accordance with the law and the relevant expropriation decision of 5 October 1998. It further established that, after the construction works had been carried out by the authority, the expropriation decision had been quashed by the Supreme Administrative Court. Thus, at the relevant time, the applicant had been the owner of the plot occupied by the State Treasury. The District Court further noted that the expropriation proceedings were still pending.

As regards the claim, the court considered that the applicant would be adequately compensated in the expropriation proceedings. It further noted that the applicant's plot was occupied by a public road. The State Treasury could not therefore be considered as disposing of independent possession (*posiadanie samoistne*) of the plot of land. The court concluded that the relevant provisions of domestic law concerning payment for use of property did not apply in the circumstances of the applicant's case.

59. The applicant lodged an appeal against the first-instance judgment.

60. On 10 January 2008 the Zielona Góra Regional Court dismissed his appeal. The Regional Court agreed with the first instance court's findings of facts and law. It considered that, even assuming that the relevant provisions of civil law were applicable in the circumstances of the case, the applicant's claim would nevertheless have to be dismissed as contrary to the principles of social co-existence and constituting abuse of his right. The court emphasised that the applicant had never used his land, which he had purchased in 1994. It was due to his own actions that the expropriation proceedings had not been terminated. The court also noted that the State Treasury had consistently made attempts at settling the applicant's case.

The Regional Court lastly considered that the passage of time and the resulting increase in land prices would be reflected in the amount of compensation due in the expropriation proceedings.

B. Relevant domestic law and practice

1. Inactivity of administrative authorities

61. 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

62. 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.

COMPLAINTS

63. The applicant complained under Article 6 § 1 of the Convention about the excessive length of the proceedings in which he had been involved in.

64. He further alleged in applications nos. 56311/08 and 57029/09 that his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention had been breached as he had not received any compensation.

THE LAW

A. Length of proceedings

65. The applicant complained about the length of the proceedings. He relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

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

66. By letter dated 6 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 application. They further requested the Court to strike out the application 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 applicant's rights 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 applicant 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 three percentage points. (...)"

67. In a letter of 14 June 2011 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low. Moreover, he stressed that in his applications to the Court he had also alleged a violation of Article 1 of Protocol No. 1 to the Convention. The applicant requested for the examination of the case to be continued.

68. 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".

69. 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 applicant wishes the examination of the case to be continued.

70. To this end, the Court examined carefully 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).

71. 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).

72. 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 this part of the application (Article 37 § 1(c)).

73. 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 this part of the application (Article 37 § 1 in fine).

74. Accordingly, it should be struck out of the list.

B. Complaint under Article 1 of Protocol No. 1

75. The applicant further complained under Article 1 of Protocol No. 1 to the Convention that as a result of the impugned measures his property had been taken from him without payment of compensation.

76. The applicant referred in this complaint only to the outcome of the two sets of civil proceedings he had instituted (see paragraph 64 above). He argued that the dismissal of his claims by the domestic courts resulted in denial of compensation for the plots of land. However, the Court observes that, contrary to the applicant's opinion, neither of those proceedings could have resulted in awarding him compensation for the expropriated land (see paragraphs 50 - 51, 58 and 60 above). Accordingly, the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

77. It should be further noted that the amounts of compensation due for both plots of land were to be determined in the expropriation proceedings concerning these plots. In the course of the expropriation proceedings the applicant was actually granted compensation on 27 January 2005 by the Lubuski Governor (see paragraphs 24 and 33 above). However, the decisions expropriating both plots of land and fixing the amounts of compensation were subsequently quashed by the Minister of Infrastructure (see paragraphs 25 and 34 above). Following the re-examination of the cases, on 9 September 2009 the Lubuski Governor discontinued the expropriation proceedings as regards both plots of land (see paragraphs 31 and 41 above). The Court thus considers that the decisions discontinuing the expropriation proceedings effectively deprived the applicant of a possibility to obtain compensation for the plots of land taken from him in these proceedings. Nevertheless, the applicant failed to appeal against the first-instance decisions and they became final (see paragraphs 32 and 42 above).

Therefore, even if the applicant could be understood as complaining about the outcome of the expropriation proceedings, the complaint should be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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 so far as they relate to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the applications inadmissible.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President

APPENDIX

No.	Application number	Application name	Date of introduction	Name and surname of Applicant
1.	56311/08	WILCZYŃSKI v. Poland	07/11/2008	Roman Wilczyński
2.	52577/09	WILCZYŃSKI v. Poland	28/09/2009	Roman Wilczyński
3.	57029/09	WILCZYŃSKI v. Poland	26/10/2009	Roman Wilczyński
4.	2313/10	WILCZYŃSKI v. Poland	01/12/2009	Roman Wilczyński