CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33017/03
by Maria WÓJCICKA-SURÓWKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 13 December 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 29 September 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Maria Wójcicka-Surówka, is a Polish national who was born in 1936 and lives in Kraków. He is represented before the Court by Mr Z. Cichoń, a lawyer practising in Kraków.

A. The circumstances of the case

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

On 10 June 1997 the Kraków City Office issued a construction permit to the applicant's neighbour. The applicant appealed, submitting that according to the construction project the proposed building encroached on her land.

On 28 July 1997 the Governor of the Town of Kraków upheld the decision. The applicant appealed.

On 28 April 1998 the Supreme Administrative Court quashed the decision as it found the boundaries of the land to be in dispute and indicated the necessity of conducting land demarcation before issuing a construction permit.

On 5 March 1998 the applicant informed the Kraków Regional Office that in spite of the Supreme Administrative Court judgment the construction works were being conducted on the disputed land.

On 27 May 1998 the applicant lodged an interlocutory appeal with the Kraków Regional Office challenging the fact that no steps had been taken by the authorities to stop the construction works.

On 30 July 1998 the Kraków Regional Office informed the applicant that it was not competent to undertake any steps in order to stop the construction works and indicated the Kraków City Office as the competent body.

On 8 September 1998 the applicant lodged a request with the Kraków City Office to obtain the suspension of the construction works until the demarcation proceedings were complete.

On 4 October 2002 the applicant lodged a complaint with the Supreme Administrative Court about the inactivity of the administrative authorities.

On 2 June 2004 the Regional Administrative Court (which took over the competence of the Supreme Administrative Court) rejected the complaint as it found that the applicant had not exhausted relevant remedies before lodging a complaint.

On 14 September 2004 the applicant appealed. The proceedings are still pending.

On 23 March 2005 the applicant lodged a complaint with the Supreme Administrative Court challenging the length of the proceedings commenced by the complaint of 4 October 2002.

On 6 April 2005 the Supreme Administrative Court dismissed the complaint stating that the length of proceedings was a consequence of the court's caseload for which the state could not be found responsible. It stated that:

> "...the order of examination of cases is established according to the day when the file is lodged with the court. It is the number of cases lodged with the court which is the reason for which one has to wait for the first hearing. (...). Bearing the above in mind, the Supreme Administrative Court decided that in the circumstances it could not be deemed that any excessive length of the proceedings could be attributed to the State."

B. Relevant domestic law

Under domestic law the inactivity of authorities (length of administrative proceedings) may be challenged by two avenues.

Firstly, a party to administrative proceedings can make a complaint under Article 37 §1 of the Code of Administrative Procedure in order to urge the relevant authority to issue a decision within the time-limits fixed in that Code.

If unsatisfied with the outcome of the proceedings initiated by a complaint under Article 37 of the Code of Administrative Procedure a party could, until 1 January 2004, lodge a complaint about the inactivity of the administrative authorities with the Supreme Administrative Court under Article 17 of the Act of 1995 on the Supreme Administrative Court. After that date a regional administrative court became competent to examine the complaint about the inactivity of the administrative authorities. Against a judgment or a decision of the regional administrative court, given in respect of a complaint of inactivity, a party may lodge an appeal with the Supreme Administrative Court under Article 173 of the Law of 30 August 2002 on proceedings before administrative courts.

Secondly, a party may challenge the length of the judicial part of administrative proceedings under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time, referred thereafter as "the 2004 Act"), this being in force as from 17 September 2004.

Pursuant to Article 3:

> "A complaint may be lodged: ...
>
> 6) in the judicial-administrative proceedings by a claimant and a participant in the proceedings acting as a party;"

Article 2 of the Act provides for a special action by which a party can seek a declaration that his or her right to have the case heard within a reasonable time has been breached. The court shall take into consideration the following criteria: the conduct of the court before which the case is pending; the character of the case and the complexity of the legal and factual issues involved therein; what was at stake for the complainant, and the conduct of the parties. The length complaint must be lodged when the proceedings concerned are still pending.

Pursuant to Article 12, if the court finds that the length complaint is well-founded, it shall give a ruling to this effect. If the complainant so requests, the court can also recommend that the court before which the case is pending takes certain procedural measures in the impugned proceedings. The court may also, award an appropriate amount of money to the complainant, in the amount not exceeding PLN 10,000.

COMPLAINTS

The applicant complains under Article 6 of the Convention about the excessive length of the administrative proceedings, including the enforcement proceedings, instituted in respect of the Supreme Administrative Court's judgment of 28 April 1998.

The applicant also complains under Article 13 that she did not have an effective remedy to challenge the excessive length of the proceedings held before the Supreme Administrative Court.

Finally the applicant complains under Article 1 of Protocol No. 1 that the works conducted by her neighbour encroached on land which she claims to be her property.

THE LAW

1. The applicant complains under Article 6 of the Convention that the length of the proceedings was excessive.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with the Rule 54 § 2 (b) of the Rules of the Court, to give notice of this part of the application to the respondent Government.

2. The applicant also complains under Article 13 that she did not have an effective remedy to challenge the excessive length of the proceedings held before the Supreme Administrative Court.

The Court observes that Article 13 of the Convention requires that any individual who considers himself injured by a measure allegedly contrary to the Convention should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress (*Leander v. Sweden*, judgment of 26 March 1987, Series A no. 116, pp. 29-30, § 77). That provision does not, however, require the certainty of a favourable outcome (see the D. v. the United Kingdom judgment of 2 May 1997, *Reports* 1997-III, p. 798, § 71).

The Court reiterates that on 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time entered into force. On 1 March 2005 the Court gave decisions in two leading cases - Charzyński v. Poland no. 15212/03 (criminal proceedings) and Michalak v. Poland no. 24549/03 (civil proceedings) - holding that persons complaining about the length of proceedings before the Polish courts were required by Article 35 § 1 of the Convention to lodge a complaint about the breach of the right to a trial within a reasonable time under the 2004 Act. The Court held that this remedy provided by Polish law was effective in respect of excessive length of judicial proceedings as 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 any violation that had already occurred. The Court further observes that according to the Polish law (the 2004 Act) the excessive length of the administrative judicial proceedings can be challenged by means of a complaint lodged with the Supreme Administrative Court

The applicant lodged such a complaint, although unsuccessfully as no breach of the right to trial within a reasonable time was found. The Court considers that the mere fact that it proved unsuccessful does not suffice for a finding that no effective remedy was available to her in respect of the excessive length of judicial proceedings.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Finally, the applicant complains under Article 1 of Protocol No. 1 in that the works conducted by her neighbour encroached on the land estate which she claims to be her property.

The Court observes that in order to complain under Article 1 of Protocol No. 1 the applicant must have "possessions" within the meaning of this Article. As the civil proceedings concerning the demarcation of land have not yet been completed, it has not been confirmed that the applicant has any rights to the disputed part of land. Hence, she cannot claim to have "possessions" within the meaning of Article 1 of Protocol no. 1. The Court observes that this complaint is inadmissible as being manifestly ill-founded and as such must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the administrative proceedings, including the enforcement proceedings instituted in respect of the Supreme Administrative Court judgment of 28 April 1998;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President