

FOURTH SECTION

**CASE OF BERENT-DERDA v. POLAND**

*(Application no. 23484/02)*

JUDGMENT

STRASBOURG

1 July 2008

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of *Berent-Derda v. Poland*,

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

Nicolas Bratza, *President*,  
Lech Garlicki,  
Ljiljana Mijović,  
David Thór Björgvinsson,  
Ján Šikuta,  
Päivi Hirvelä,  
Mihai Poalelungi, *judges*,  
and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 June 2008,

Delivers the following judgment, which was adopted on that date:

#### PROCEDURE

1. The case originated in an application (no. 23484/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 31 May 2002 by a Polish national, Mrs Zofia Berent-Derda (“the applicant”).
2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołaszewicz of the Ministry of Foreign Affairs.
3. The applicant complained under Article 6 of the excessive length of the proceedings and under Article 13 of the Convention that the domestic remedies in respect of the length of administrative proceedings were ineffective in her case.
4. On 13 September 2007 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

#### THE FACTS

##### I. THE CIRCUMSTANCES OF THE CASE

###### A. Prior to 1 May 1993

5. In 1948 the applicant's legal predecessor, her father, Roman Pawłowski, lodged an application under Article 7 of the Decree of 26 October 1945 on real property in Warsaw for temporary ownership of a plot of land situated in Warsaw at Szczęśliwicka Street 43. This application remained unanswered.
6. In 1981 the Bydgoszcz District Court declared that the applicant had acquired one-half of the estate of her late father and had thereby become his legal successor.
7. On 20 December 1988 the applicant reiterated her father's request submitted in 1948 and requested that possession of the plot be restored to her. In 1990 she again requested the authorities to issue a decision.

###### B. After 1 May 1993

8. In 1993 the Board of Association of Districts of Warsaw City (*Zarząd Związku Dzielnic-Gmin Warszawy*), by a decision of 17 June, declared that ownership of the property concerned had been acquired by the City of Warsaw Taxi Enterprise. The applicant appealed, pointing out that the decision was unlawful because her request had already been pending before the authorities at that time.
9. On 23 February 1995 the Land Administration Division of the Warsaw Municipality found that it

was not competent to examine the case. The case file was subsequently transmitted, on an unknown later date, to the Board of Warsaw City.

10. On 12 June 2001 the Board of Warsaw City (*Zarząd Miasta st. Warszawy*) examined the request and dismissed it in its part concerning a surface area of 2,205 square metres. Apparently the plot had been divided, on an unspecified earlier date, into two parts, the other part covering 478 square metres, with the State Treasury listed as its owner in the local land register. The applicant appealed.

11. On 21 September 2001 the Local Government Board of Appeal quashed the decision of 12 June 2001 and remitted the case for reconsideration.

12. On 11 October 2001 the applicant complained to the Local Government Board of Appeal about the second-instance authority's failure to issue a decision regarding the plot of 478 square metres. In March 2002 she reiterated her complaint.

13. On 8 July 2002 the applicant complained to the Supreme Administrative Court about the authorities' failure to give a decision on the merits of the case.

14. By two decisions dated 25 June 2002, the Local Government Board of Appeal found that the applicant's complaints about the excessive length of the proceedings were unfounded.

15. On 22 March 2002 the Local Government Board of Appeal found that the decision by which the City of Warsaw Taxi Enterprise had acquired ownership of the part of the property concerned was unlawful and had to be quashed. Warsaw City appealed.

16. On 7 January 2003 the Warsaw Municipal Office (*Urząd Miasta st. Warszawy*) stayed the proceedings, having regard to the fact that the proceedings to establish the owner of the property were pending.

17. On 28 February 2003 the Supreme Administrative Court dismissed the applicant's complaint about the authorities' failure to give a decision, having regard to the fact that on 7 January 2003 the proceedings had been stayed. Hence, it could not be said that the authorities had failed to act in the case. Subsequently, the proceedings were resumed.

18. On 22 March 2003 the applicant complained to the Local Government Board of Appeal about the first-instance authority's failure to issue a decision. On 18 May 2004 the Board gave a decision by which it ordered the Mayor to give a decision within one month.

19. On 2 April and 25 May 2003 the applicant complained to the Supreme Administrative Court about the Mayor's failure to give a decision in the case.

20. On 26 April 2004 the Mayor of Warsaw stayed the proceedings, having regard to the fact that in the absence of a valid land development plan for the city it was impossible to decide on the applicant's request.

21. The applicant appealed. The Local Government Board of Appeal allowed her appeal and quashed the decision to stay the proceedings. The Mayor appealed. On 28 July 2005 the Supreme Administrative Court dismissed his appeal and discontinued the appellate proceedings.

22. On 2 February 2006 the applicant lodged a new complaint with that court about the authorities' failure to give a decision in the case.

23. On 24 March 2006 the Mayor of Warsaw refused to allow the applicant's request to grant to her the right to perpetual use. The applicant appealed. On 24 July 2006 the Local Government Board of Appeal quashed the impugned decision and ordered that the merits of the case should be re-examined. It observed:

“It should be noted that the grounds of the impugned decision are erroneous: the first-instance body had failed to take into proper consideration both the provisions of the Decree of 1944 and other legal provisions currently applicable to the case. Its slowness in dealing with the case justifies a

negative assessment of the impugned decision which also seems to indicate that the first-instance authority had not been, so far, intending to deal with the case properly.”

24. On 7 June 2006 the Supreme Administrative Court dismissed the applicant's complaint of 2 February 2006, having observed that a decision on the merits of the case had been given by the Mayor on 24 March 2006.

25. On 20 August 2007 the applicant again complained to the Local Government Board of Appeal about the Mayor's failure to issue a decision on the merits. On 11 September 2007 the Board found that the complaint was well-founded and ordered the Mayor to give a decision within a two-month time-limit.

26. On 20 November 2007 the applicant again complained to the Supreme Administrative Court about the excessive length of the proceedings. Shortly afterwards she was informed that on 19 November 2007 the Mayor had again refused her application. The applicant appealed and the case is currently pending before the second-instance authority.

## II. RELEVANT DOMESTIC LAW

### 1. Decree on the Ownership and Use of Land in Warsaw

27. The Decree on the Ownership and Use of Land in Warsaw of 26 October 1945 expropriated owners of real property located in Warsaw and transferred the ownership of land to the municipality of Warsaw. The 1945 Decree provided, in so far as relevant:

“Section 7. (1) The owner of a plot of land ... may, within six months of the taking possession of the land by the municipality, file a request to be granted ... the right to a perpetual lease (*wieczysta dzierżawa*) with a peppercorn rent (*czynsz symboliczny*). ...

(2) The municipality shall grant the request if the use of the land by the former owner is compatible with its function set forth in the development plan (*plan zabudowania*). ...

(4) In case the request is refused, the municipality shall offer the person entitled, as long as it has spare land in its possession, a perpetual lease of land of equal value, on the same conditions, or the right to construct on such land.

28. Pursuant to Article 33 § 2 of the Local State Administration Act of 20 March 1950, the ownership of land located in Warsaw was assigned to the State Treasury. According to section 5 § 1 of the Law of 10 May 1990 ownership of the land which had previously been held by the State Treasury and which was within the administrative territory of municipalities was transferred to the latter.

### 2. Right of perpetual use

29. Under Article XXXIX of the Decree of 11 October 1946 introducing the Property Law (*prawo rzeczowe*) and the Law on Land and Mortgage Registers, the right to construct and the right to a perpetual lease could be transferred into temporary ownership (*własność czasowa*). Section 40 of the Law of 14 July 1961 on Administration of Land in Towns and Estates (*Ustawa o gospodarce terenami w miastach i osiedlach*) replaced temporary ownership with perpetual use (*użytkowanie wieczyste*).

30. The right of perpetual use is defined in Articles 232 *et seq.* of the Civil Code (*Kodeks Cywilny*). It is an inheritable and transferable right *in rem* which, for ninety-nine years, gives a person full benefit and enjoyment of property rights attaching to land owned by the State Treasury or municipality. It has to be registered in the court land register in the same way as ownership.

### 3. Inactivity of the administrative authorities

31. Article 35 of the Code of Administrative Procedure (“the code”) of 1960 lays down time-limits ranging from one month to two months for dealing with a case pending before an administrative authority. If these time-limits have not been complied with, the authority must, under Article 36 of

the Code, inform the parties of that fact, explain the reasons for the delay and fix a new time-limit. Pursuant to Article 37 § 1, if the case has not been handled within the time-limits referred to in Articles 35 and 36, a party to administrative proceedings can lodge an appeal to the higher authority alleging inactivity. In cases where the allegations of inactivity are well-founded, the higher authority fixes a new term for handling the case and orders an inquiry in order to determine the reasons for the inactivity and to identify the persons responsible for the delay. If need be, the authority may order that measures be applied to prevent such delays in the future.

32. On 1 October 1995 a new Law of 11 May 1995 on the Supreme Administrative Court (“the 1995 Act”) came into force. According to the provisions of section 17 of the 1995 Act, a party to administrative proceedings may, at any time, lodge with the Supreme Administrative Court a complaint about inactivity on the part of an authority obliged to issue an administrative decision.

Section 26 of the Act provides:

“When a complaint alleging inactivity on the part of an administrative authority is well-founded, the Supreme Administrative Court shall oblige that authority to issue a decision, or to perform a specific act, or to confirm, declare, or recognise a right or obligation provided for by law.”

33. Pursuant to section 30 of the Act, the decision of the Supreme Administrative Court ordering an authority to put an end to its inactivity is legally binding on the authority concerned. If the authority has not complied with the decision, the court may, under section 31 of the 1995 Act, impose a fine on it and may itself give a ruling on the right or obligation in question.

34. Under the same provision, a party to the proceedings who sustains damage as a result of a failure of the administrative body to act in compliance with the judgment of the Supreme Administrative Court given under section 17 of the Act, is entitled to claim compensation from the administrative authority concerned, according to the principles of civil liability set out in the Civil Code. Such a claim should first be lodged with that authority. A decision on the compensation claim should be taken by that administrative authority within three months. If the authority concerned fails to give a ruling in this respect within this time-limit, or if the party is not satisfied with the compensation granted, a compensation claim against the administrative body can be lodged with a civil court.

35. The 1995 Act was repealed and replaced by the Law of 30 August 2002 on Proceedings before Administrative Courts (“the 2002 Act”) which entered into force on 1 January 2004. Section 3 § 2 of the 2002 Act contains provisions analogous to section 17 of the 1995 Act. A party to administrative proceedings can lodge a complaint about inactivity on the part of an authority obliged to issue an administrative decision with an administrative court. Under section 149, if a complaint is well-founded, an administrative court shall oblige the authority concerned to issue a decision, or to perform a specific act, or to confirm, declare, or recognise a right or obligation provided for by law.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

37. The Government made no submissions concerning this claim.

38. The Court notes that the proceedings commenced, at the latest, on 20 December 1988, when the applicant reiterated her father's request submitted in 1948. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual

petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

39. The Court further notes that the proceedings are still pending. The period under consideration has accordingly lasted fifteen years for two levels of jurisdiction.

#### A. Applicability of Article 6 § 1

40. The applicability of Article 6 § 1 to proceedings concerning claims arising against the background of the Decree on the Ownership and Use of Land in Warsaw of 26 October 1945 has already been determined by the Court (*Potocka and Others v. Poland* (dec.), no. 33776/96, 6 April 2000; *Koss v. Poland*, no. 52495/99, § 29, 28 March 2006).

#### B. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not admissible on any other grounds. It must therefore be declared admissible.

#### C. Merits

42. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

43. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

44. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

45. There has accordingly been a breach of Article 6 § 1.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant complained that the domestic remedies in respect of the protracted length of the administrative proceedings had been ineffective in her case. She invoked Article 13 of the Convention, which reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

47. The applicant argued that on several occasions she made use of the various remedies available to her within the administrative procedure system but they had proved ineffective. Moreover, the Supreme Administrative Court, having regard to the decision to stay the proceedings given shortly afterwards, discontinued the proceedings instituted by her complaint about the administration's failure to act in her case. The Mayor had failed to act in compliance with the decisions of the Appeals Board, which urged him to give a decision on the merits of the case within the time-limits. She stressed that the proceedings had been pending for fifty-nine years and no final decision on the merits had been given.

48. The Government maintained that the applicant had at her disposal various remedies in respect of the excessive length of the administrative proceedings. It had been open to her to have recourse to the remedy provided for by Article 37 § 2 of the Code of Administrative Procedure and by section 17 of the 1995 Act.

49. The Court reiterates that it has already found that the complaint under section 17 of the Supreme Administrative Court Act was an effective remedy in cases in which an applicant complains of excessive length of administrative proceedings (see, *Zynger v. Poland* (dec.), no. 66096/01, 7 May 2002, and *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002). It further reiterates that the word “remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, e.g., *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006). In the light thereof, the Court finds that the fact that the Supreme Administrative Court did not find that the applicant's complaints about the length of the administrative proceedings well-founded (see paragraphs 17 and 24 above) does not render this remedy, in the circumstances of the present case, incompatible with Article 13 of the Convention (see also *Solárová and Others v. Slovakia*, no. 77690/01, § 56, 5 December 2006, with further reference).

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

52. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and 2,205,000 US dollars (USD) in respect of pecuniary damage.

53. The Government contested these claims.

54. The Court considers that in the circumstances of the case the applicant must have sustained non-pecuniary damage. It therefore awards the applicant EUR 12,000.

### B. Costs and expenses

55. The applicant did not make any claim under this head.

### C. Default interest

56. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, together with any tax that may be applicable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza  
Registrar President

BERENT-DERDA v. POLAND JUDGMENT

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