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

FOURTH SECTION

CASE OF KOSS v. POLAND

(Application no. 52495/99)

JUDGMENT

STRASBOURG

28 March 2006

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 Koss v. Poland,

The European Court of Human Rights (Fourth Section), sitting 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 Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 7 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 52495/99) 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”) by a Polish national, Mr Tadeusz Koss (“the applicant”), on 19 May 1999.

2. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and subsequently Mr. J Wołąsiewicz of the Ministry of Foreign Affairs.

3. On 17 June 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

A. Proceedings concerning the right of perpetual use

4. The applicant was born in 1936 and lives in Konstancin Jeziorna, Poland.

5. The applicant’s grandfather (“J.O.”) owned a plot of land and a house situated in the centre of Warsaw. During the Second World War the house was demolished. By virtue of the 1945 Decree on the Ownership and Use of Land in Warsaw (*Dekret o własności i użytkowaniu gruntów na obszarze*

m. st. Warszawy) all land in Warsaw was nationalised. In 1948 J.O. asked the administrative authorities to grant him a right of temporary ownership (*własność czasowa*) of his plot. On 24 December 1951 the Board of the Warsaw National Council (*Prezydium Rady Narodowej)* dismissed his application.

6. On 6 August 1993 the applicant and other J.O.'s heirs filed with the Minister of Town and Country Planning (*Ministerstwo Gospodarki Przestrzennej i Budownictwa*) an application for the annulment of the decision of 1951. They also asked for a right of perpetual use (*użytkowanie wieczyste*) of the plot in question to be granted to them. On 27 February 1995 the Minister quashed the 1951 decision and remitted the case to the Mayor of Warsaw (*Prezydent Miasta Warszawy*) for re-examination.

7. By June 1996 the Mayor had not delivered any decision. On 4 June 1996 the applicant lodged with the Warsaw Self-Governmental Board of Appeal (*Samorządowe Kolegium Odwoławcze*) a complaint alleging inactivity on the part of the Mayor of Warsaw.

8. On 31 July 1996 the Mayor stayed the proceedings until the applicant had submitted certain documents. On 13 August 1996, upon a further appeal by the applicant, the Board of Appeal quashed that decision. On 14 August 1996 the Board of Appeal ordered the Mayor to give a decision within 30 days. The Mayor failed to comply with this order.

9. On 13 September 1996 the Mayor of Warsaw asked the Board of Appeal to extend the time-limit as he needed to obtain some additional documents. On 30 September 1996 the Mayor asked for an extension of the time-limit until 30 November 1996.

10. On 15 November 1996 the Mayor again stayed the proceedings, this time until the conclusion of other administrative proceedings. On 13 February 1997, upon the applicant's appeal, the Board of Appeal quashed that decision and ordered the Mayor to proceed with the case.

11. On 11 March 1997 the Mayor refused the application for the grant of the right of perpetual use of the plot concerned. The applicant appealed. On 2 July 1997 the Board of Appeal set aside the first-instance decision and remitted the case.

12. On 27 October 1997 the Mayor of Warsaw for the second time refused the application for the grant of the right of perpetual use. On 25 February 1998 the Board of Appeal again quashed this decision and remitted the case.

13. Meanwhile, on 5 August 1997 the applicant lodged a complaint with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*), alleging inactivity on the part of the Mayor of Warsaw. On 12 October 1998 the Supreme Administrative Court delivered a judgment in which it ordered the Mayor to issue a decision within 30 days and awarded the applicant 5 PLN for costs and expenses.

14. On 14 December 1998 the Mayor stayed the proceedings until the conclusion of the administrative proceedings concerning the transfer of ownership to the Warsaw Municipality and the adoption of a local master plan (M*iejscowy plan zagospodarowania przestrzennego*). Upon the applicant's appeal, the Board of Appeal upheld this decision on 23 April 1999. On 14 March 2000 the Supreme Administrative Court confirmed the decision of 14 December 1998 and dismissed the applicant's further appeal.

15. Subsequently, the applicant asked the Supreme Administrative Court to impose a fine on the Mayor of Warsaw. In its judgment of 6 December 1999 the Supreme Administrative Court dismissed his application. The court held that the Mayor had failed to comply with the judgment of 12 October 1998 for objectively justified reasons. The Mayor's decision had depended on the conclusion of other administrative proceedings concerning the transfer of ownership to the Warsaw Municipality and the adoption of a local master plan. In addition, the court pointed out that, according to Section 31 § 4 of the 1995 Act, a party to proceedings who sustained damage as a result of a failure of the administrative body to act was entitled to claim compensation from the administrative authority concerned, according to principles of civil liability.

16. The proceedings were stayed and are thus pending before the Mayor of Warsaw.

B. Relevant domestic law

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

17. 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 ... can within six months after the taking of 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.

> 5) In case no request, as provided for in paragraph (1), is filed, or the former owner is for any other reasons not granted a perpetual lease or the right to construct, the municipality is obliged to pay compensation pursuant to Article 9.
>
> Section 8. In case the former owner is not granted the right to a perpetual lease or the right to construct, all buildings located on the land shall become the property of the municipality, which is obliged to pay, pursuant to Article 9, compensation for the buildings which are fit to be used or renovated.
>
> Section 9.
>
> ...
>
> (2) The right to compensation begins to apply six months after the day of taking the land into possession by the municipality of Warsaw and expires three years after that date. ..."

18. Pursuant to Article 33 § 2 of the Act on Local State Administration of 20 March 1950, the ownership of land located in Warsaw was assigned to the State Treasury. According to the Section 5 § 1 of the Law of 10 May 1990 the 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

19. 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*).

20. 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. The transfer of that right, like the transfer of ownership, can be effected only in the form of a notarised deed, on pain of its being void *ab initio*. The "perpetual user" (*użytkownik wieczysty*) is obliged to pay the State Treasury (or the municipality, as the case may be) an annual fee which corresponds to a certain percentage of the value of the land in question.

3. Inactivity of the administrative authorities

21. Article 35 of the Code of Administrative Procedure ("the code") of 1960 lays down time-limits ranging from 1 month to 2 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.

22. 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 Article 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.

Article 26 of the Law 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."

23. Pursuant to Article 30 of the Law, 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.

24. 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 Article 17 of the Act, is entitled to claim compensation from the administrative authority concerned, according to principles of civil liability as set out in the Civil Code. Such a claim should be first 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.

25. 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

26. The applicant complained that the length of the administrative proceedings in his case had been incompatible with the "reasonable time" requirement, provided 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..."

27. The Government contested that argument.

28. The period to be taken into consideration began on 6 August 1993 and has not yet ended. It has thus lasted more than 12 years and 7 months.

A. Applicability of Article 6 § 1

29. The applicability of Article 6 § 1 to the relevant proceedings has already been determined by the Court (cf. *Potocka and Others v. Poland* (dec.), no. 33776/96, 6 April 2000 unpublished).

B. Admissibility

30. 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 inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The applicant's submissions.

31. The applicant maintained that the overall length of the proceedings and, in particular, the long periods of inactivity on the part of the authorities could not be considered a "reasonable time" within the meaning of Article 6

of the Convention. He further submitted that there had been a violation of Article 6 § 1 of the Convention.

2. The Government's submissions

32. The Government submitted that the case had been very complex as it involved complicated legal and factual issues. Furthermore, the Mayor of Warsaw could not have issued a decision concerning a right to perpetual use until the transfer of the ownership of that plot to the Warsaw Municipality had been completed. They further agreed that the applicant had not contributed to the length of the proceedings. Lastly, in view of the very complicated nature of the case the authorities had shown due diligence in the proceedings.

3. The Court's assessment.

33. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of 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, *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 60, *Beller v. Poland* no. 51837/99, § 67-71, 1 February 2005).

34. The Court considers that even though the case involved a certain degree of complexity on account of the legal and factual issues involved in it cannot be said that this in itself justified the overall length of the proceedings.

35. As regards the conduct of the applicant, the Court observes that the Government acknowledged that the applicant had not contributed to the prolongation of the proceedings (see, paragraph 32 above). It does not see a reason to hold otherwise.

36. As regards the conduct of the authorities, the Court notes that there was a significant period of inactivity. In particular the proceedings have remained stayed since 14 December 1998 (see, paragraph 14 above).

37. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time.

38. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

39. The applicant further complained under Article 13 about the lack of effective remedy in respect of the unreasonable length of administrative proceedings. This provision provides as follows:

> "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."

A. Admissibility

40. 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 inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

41. The applicant argued that he made use of the remedies indicated by the Government but to no effect. He further claimed that despite the judgment of the Supreme Administrative Court of 12 October 1998 obliging the Mayor to issue a decision within 30 days the proceedings were still pending before the Municipality authorities. He therefore contended that there had been a violation of Article 13.

2 The Government's submissions

42. The Government maintained that the applicant had at his disposal an effective remedy for his complaint concerning the length of administrative proceedings. With reference to Article 37 § 1 of the Code of Administrative Procedure they pointed out that if the case had not been handled within the time-limits set out in the Code, a party to the proceedings could lodge an appeal to the higher authority, alleging inactivity on the part of the administrative authority. In addition, under Article 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. Referring to the case of Futro v. Poland (*Futro v. Poland* (dec.), no. 51832/99, 3 June 2003) the Government concluded that the applicant had an effective remedy as required under Article 13

3. The Court's assessment

43. The Court recalls that, in the context of Article 13 and remedies for excessive length of proceedings, it has already held that such a remedy, or the aggregate of remedies, in order to be "effective" must be capable either of preventing the alleged violation of the right to a "hearing within a reasonable time" or its continuation, or of providing adequate redress for a

violation that had already occurred (see, *mutatis mutandis*, *Kudła v. Poland,* [GC], no. 30210/96, § 158 et seq, ECHR 2000-XI, *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002, unreported).

44. It has further held on several occasions that the combination of the remedies as advanced by the Government (see paragraph 40), could have enabled the applicant to put the issue of the length of the proceedings in question before the national authorities and to seek a decision terminating those proceedings "within a reasonable time" (see, *Bukowski v. Poland* and *Futro v. Poland* cited above, *Grabinski v. Poland* (dec.) no. 43702/02, 18 October 2005).

45. Turning to the facts of the present case the Court observes that the applicant did not contest the availability of the remedy relied on by the Government. He stated, on the other hand, that in his case this remedy had proved ineffective (see paragraph 41 above).

46. It is true that in the present case the Supreme Administrative Court confirmed that the proceedings had been indeed lengthy and ordered the Mayor to issue a decision within 30 days. However, subsequently, the Supreme Administrative Court altered its position and held that there had been reasons which had justified the delay in the proceedings conducted by the Mayor of Warsaw (see, paragraphs 13 and 15 above).

47. Furthermore, the Court notes that the proceedings in the applicant's case were stayed as they depended on the outcome of the other set of administrative proceedings (see paragraph 14 above).

48. In addition, under section 31 of the Supreme Administrative Court Act, 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 that court, is entitled to claim compensation from the administrative authority concerned, according to principles of civil liability as set out in the Civil Code. It appears that the applicant had not availed himself to this remedy.

49. Having regard to the above the Court finds no reason to depart from its view expressed in the earlier decisions.

50. There has accordingly been no violation of Article 13 in the present case.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

51. The applicant lastly complained under Article 1 of Protocol No 1 about his prolonged inability to regain his rights to the property in question This provision provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

52. The Government claimed that this complaint should be rejected as being incompatible *ratione materiae*. They pointed to the fact that at the time of entry into force of Protocol No 1 the applicant had not had any property right with respect to the plot located in Warsaw. On that date, the plot had belonged to the Warsaw Municipality. Accordingly, the applicant's action had not concerned his "existing possessions" and the applicant did not have the status of an owner.

53. The applicant objected to the Government's submissions.

54. The Court observes that the applicant's grandfather lodged an application for temporary ownership in 1948, but it was dismissed by a decision given in 1951. On 27 February 1995 the Minister of Planning and Construction quashed the decision refusing the application. As a result, the 1948 application for the grant of the right of perpetual use filed by the applicant's grandfather has yet to be examined.

55. It follows that the applicant has claims, in respect of which he can argue that he has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see, among other authorities, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII), Therefore, his claims can be said to fall within the ambit of the provision relied on by him.

56. Accordingly, the Government's preliminary objection should be dismissed.

57. The Court further observes that this complaint is linked to the one under Article 6 of the Convention and must therefore likewise be declared admissible.

B. Merits

58. The Court observes that the domestic proceedings to determine the applicant's claim are currently pending before the Mayor of Warsaw. Therefore, in so far as the applicant relies on Article 1 of Protocol No. 1 to the Convention, the Court considers that it would be premature to take a position on the substance of this complaint. In so far as the applicant complains about the length of those proceedings, the Court considers that the Article 1 of Protocol No.1 complaint does not give rise to any separate issue (see, for example, *Zanghi v. Italy,* judgment of 19 February 1991, Series A no. 194-C, § 23, *Di Pede v. Italy*, judgment of 26 September 1996,

Reports of Judgments and Decisions 1996-IV, p. 17, § 35; *Beller v. Poland* cited above § 74, *Szenk v. Poland* no. 67979/01, § 63, 22 March 2005).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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."

A. Damage

60. The applicant sought an award of 125 000 euros in respect of pecuniary damage. He calculated that amount on the basis of the fact that he had not been able to use the property in question for a long period, in particular since 12 October 1998, that is to say the date of the judgment of the Supreme Administrative Court.

He further claimed the sum of 50,000 euros for non-pecuniary damage that he had suffered as a result of the protracted length of the proceedings.

61. The Government submitted that the applicant's claims were excessive. They further argued that there was no direct link between the pecuniary damage claimed and the alleged violation of the Convention.

62. As regards the pecuniary damage, the Court's conclusion, on the evidence before it, is that the applicant had failed to demonstrate that the pecuniary damage pleaded was actually caused by the unreasonable length of the impugned proceedings. Consequently, there is no justification for making any award to him under that head (see, *mutatis mutandis, Kudla v. Poland* [GC], § 164 cited above).

63. The Court further considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration on account of the protracted length of the proceedings, which cannot be sufficiently compensated by finding a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant a total sum of 7,000 euros ("EUR") under that head.

B. Costs and expenses

64. The applicant did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

65. 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 application admissible;

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

3. *Holds* that there has been no violation of Article 13 of the Convention;

4. *Holds* that there is no need to examine at this stage the complaint under Article 1 of Protocol No. 1;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
(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;

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

Done in English, and notified in writing on 28 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President