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

FIRST SECTION

CASE OF WYSZYŃSKI v. POLAND

(Application no. 66/12)

JUDGMENT

This judgment was revised in accordance with Rule 80 of the Rules of Court in a judgment of 11 May 2023.

Art 1 P1 • Control of the use of property • Excessive burden on applicant, whose compensation claim for a tenant who occupied his flat without valid legal title was arbitrarily dismissed • Domestic court's imposition of requirements that were very difficult for applicant to fulfil, essentially depriving him of right to be redressed for damage

STRASBOURG

24 March 2022

FINAL

24/06/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Wyszyński v. Poland,

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

Marko Bošnjak, President,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Davor Derenčinović, judges,

and Liv Tigerstedt, Deputy Section Registrar,

Having regard to:

the application (no. 66/12) 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 Antoni Wyszyński ("the applicant"), on 29 December 2011;

the decision to give notice to the Polish Government ("the Government") of the complaint concerning Article 1 of Protocol No. 1 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 1 March 2022,

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

INTRODUCTION

1. The case concerns the domestic authorities' refusal to grant the applicant compensation for a tenant who had occupied his flat without a valid legal title, which the applicant claimed amounted to interference with his right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant was born in 1946 and lives in Poznań. He was represented by Mr A. Zielonacki, a lawyer practising in Poznań.

3. The Government were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicant is the owner of several flats situated in the same building in Poznań. The present case concerns one of the flats, no. 11.

6. The flat had been occupied by a tenant, R.S., who, for several years failed to pay the rent and service charges.

7. On 24 August 2007 the Poznań District Court (*Sąd Rejonowy*) gave a judgment against R.S., who was ordered to leave the flat and to take all his belongings with him. At the same time the District Court granted R.S. a right to be granted social housing from the Municipality of Poznań and decided that R.S.'s obligation to leave the flat should be suspended until such time as the municipality had provided R.S. with social housing. That judgment became final on 15 September 2007.

8. R.S. continued to occupy the flat until 22 June 2012, at which point the Municipality of Poznań offered him social housing. Consequently, R.S. moved out of the applicant's flat.

II. PROCEEDINGS FOR COMPENSATION

9. On 13 August 2008 the applicant lodged a claim for compensation against the Municipality of Poznań. He relied on section 18(5) of the Act of 21 June 2001 on the protection of the rights of tenants, housing resources of municipalities and on amendments to the Civil Code (*Ustawa o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego* – "the 2001 Act").

10. On 16 September 2009 the Poznań District Court granted the applicant's claim in part and ordered the Municipality of Poznań to pay the applicant 21,971 Polish zlotys in compensation. The court dismissed the remainder of the applicant's claim. In the course of the proceedings, the court obtained two expert opinions which outlined how much rent the applicant might expect to receive if he rented out the flat on the open market. The first opinion took into account the state of the flat as it stood at the time, while the calculations in the second opinion were based on the assumption that the flat would be renovated in due course; the applicant had made clear his intention to renovate the flat before renting it out. As regards the amount of compensation, the court relied on the second opinion.

11. Both parties appealed against that judgment.

12. On 11 May 2011 the Poznań Regional Court (*Sąd Okręgowy*) amended the first-instance judgment and dismissed the applicant's claim. The court held that on the basis of the provision relied on by the applicant, compensation could only be awarded if an applicant could prove that all the relevant conditions had been met, that is, the existence of a damage, its exact amount, and the existence of a causal link between the event in question and the damage incurred. The court further considered that, even if R.S. were to move out, the applicant had failed to prove that he would manage to find a new tenant from whom he would receive a rental income. The court underlined that the flat was in need of renovation and, in any event, it would not be rented out immediately after R.S. had left it.

Moreover, the applicant had not shown how long the renovation work would take and when the flat would be ready for renting out.

13. The applicant lodged a cassation appeal. He relied, among other things, on the fact that in other sets of proceedings against the Municipality of Poznań, with the same factual circumstances, the courts had in the past ruled in his favour.

14. On 3 June 2011 the Supreme Court refused to examine the applicant's cassation appeal. That decision was served on the applicant's lawyer on 30 June 2011.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

15. Section 18 of the 2001 Act provided, at the relevant time, as follows:

> "(1) Persons occupying a flat without legal title must pay compensation for each month until they vacate the flat.
>
> (2) Subject to subsection 3, such compensation shall be equal to the amount of rent the owner could obtain if the flat were rented out ...
>
> (3) Where persons are entitled to social housing and a court has decided to suspend their obligation to leave the flat until they have been offered social housing, they shall pay compensation equal to the amount of rent or other fees for using the flat which they would have to pay if the legal relationship still existed.
>
> (4) [repealed]
>
> (5) If a municipality fails to provide social housing to a person entitled to it in accordance with a final court judgment, the owner [of the flat] has the right to claim compensation from the municipality, on the basis of Article 417 of the Civil Code."

16. Article 417 § 1 of the Civil Code provides:

> "The State Treasury, or [as the case may be] a self-government entity or other legal person responsible for exercising public authority, shall be liable for any damage *(szkoda)* caused by an unlawful act or omission [committed] in connection with the exercise of public authority."

17. On 7 April 2006 the Supreme Court issued a resolution (III CZP 21/06) which read as follows:

> "A claim of an owner of a flat against a municipality referred to in Section 18(4) [current 18(5)] of the 2001 Act is of a compensatory nature. A municipality is under an obligation to pay compensation on the basis of that provision only if the owner shows that in result of the flat being occupied by a third party without a legal title, he or she suffered damage."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

18. The applicant complained that the refusal to grant him compensation from a tenant who had occupied his flat without a valid legal title amounted

to an interference with his right to peaceful enjoyment of his possessions in breach of Article 1 of Protocol No. 1, which reads 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

1. The applicant's victim status

19. The Government submitted that the applicant had lost his victim status since on 22 June 2012 the Municipality of Poznań had informed the applicant's tenant of the social housing granted to him. In this way the domestic authorities had fulfilled the obligation imposed on them by the Poznań District Court in its judgment of 24 August 2007. The applicant's tenant had moved out of the flat and, therefore, the applicant's situation had been redressed. Consequently, the Government invited the Court to declare the present application inadmissible as incompatible *ratione personae* with Article 1 of Protocol No. 1.

20. The applicant submitted that in order to be able to conclude that an applicant had lost victim status, the domestic authorities firstly had to recognise that there had been a violation of the Convention and, secondly, they should award adequate compensation. He further submitted that, on 22 June 2012, his tenant had indeed been granted social housing. However, between 15 September 2007 and 22 June 2012 the applicant had been unable to enjoy his property, and his claim for compensation for that period had been dismissed by the domestic courts. In the applicant's view the authorities had failed to redress the interference with his Convention rights. Therefore, he concluded that he remained a victim of a violation of his rights under Article 1 of Protocol No. 1.

21. The Court notes that it is beyond dispute that the applicant's tenant moved out of the flat after having been granted social housing from the municipality. However, this occurred almost five years after the eviction order became final; indeed, from 15 September 2007 to 22 June 2012, the applicant could not freely make use of his property and he was refused compensation on that account by the domestic authorities. It follows that, as regards that period, the applicant remains a victim of the alleged violation of his rights under the Convention and its Protocols.

Consequently, the Court dismisses the Government's objection.

2. Exhaustion of domestic remedies

(a) The parties' submissions

22. The Government further submitted that the present application should be declared inadmissible on account of the applicant's failure to exhaust domestic remedies. They argued, firstly, that the applicant's claim against the Municipality of Poznań had been dismissed by the national courts owing to the applicant's failure to provide relevant evidence in support of his demands. Secondly, they argued that under section 18(5) of the 2001 Act he had had at his disposal a further claim for compensation against the tenant, which he had failed to make use of.

23. The applicant submitted that he had exhausted the available domestic remedies and satisfied all conditions to be granted compensation referred to in section 18(5) of the 2001 Act. As regards the Government's argument that he should have lodged a claim against R.S., he maintained that such a remedy, even assuming a positive outcome of the judicial proceedings, would not be effective because R.S. had been insolvent: not only had he failed to pay the applicant the rent due, he had also neglected to pay the service charges for the flat in question.

(b) The Court's assessment

24. The Court reiterates that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants to first use the remedies provided by the national legal system, thus exempting States from answering before the Court for their acts before they have had an opportunity to put matters right through their own legal system. Recourse should therefore be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. As a consequence, complaints intended to be made before the Court should have first been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law, and any procedural means that might prevent a breach of the Convention should have been used (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014).

25. As regards the claim for damages against the municipality under section 18(5) of the 2001 Act read in conjunction with Article 417 of the Civil Code, the Court has already examined this remedy and found it effective in that it had enabled landlords to obtain compensation for losses incurred owing to the municipal authorities' failure to provide social housing to tenants (see *Wasiewska v. Poland* (dec.), no. 9873/11, § 31, 2 December 2014, and *Strzelecka v. Poland* (dec.), no. 14217/10, § 44, 2 December 2014).

26. It follows that, in the present case, the applicant was under an obligation to make use of that remedy and he did so. He made his complaint to the competent domestic court in compliance with the procedural requirements and within the relevant time-limits. His claim was not time-barred or rejected on formal grounds. On the contrary, it was examined on the merits at two judicial instances. It follows that the applicant properly exhausted the available domestic remedies.

27. As regards the Government's second argument, the Court notes that in another similar case (see *Kołpaczewska v.* Poland (dec.), no. 10872/11, 6 December 2016) the Government argued that the claim against the tenant was not an effective remedy and that an applicant should claim compensation from the municipality. In that case, the Court agreed with the Government and declared the application inadmissible for failure to exhaust domestic remedies. The Government has not submitted evidence showing that a lawsuit against the tenant would have been an effective remedy in the present case. As a result, the Court dismisses the Government's objection in this respect.

28. Turning to the Government's argument concerning the alleged non-fulfilment of the statutory requirements of a claim for compensation, the Court considers that this argument is closely linked to the merits of the applicant's complaint. The Court therefore considers that it should be examined under the substantive provision of the Convention relied upon by the applicant (see, in particular, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32; *Gnahoré v. France*, no. 40031/98, § 26, ECHR 2000-IX; and *Isayeva v. Russia*, no. 57950/00, § 161, 24 February 2005). It accordingly joins the Government's objection to the merits of the case.

29. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 parties' submissions

30. The applicant complained that the refusal to grant him compensation from a tenant who had occupied his flat without a valid legal title amounted to interference with his right to peaceful enjoyment of his possessions in breach of Article 1 of Protocol No. 1.

31. The applicant further submitted that he had satisfied all conditions to be granted the compensation referred to in section 18(5) of the 2001 Act, in that the tenant occupying his flat had been granted a right to social housing and the municipality had failed to provide the tenant with social housing for more than four years. In the applicant's view, the question whether he

would renovate the flat and how long the work would take was irrelevant *vis-à-vis* the municipality's obligation to pay compensation.

32. The Government did not contest that there had been an interference with the applicant's peaceful enjoyment of his property. They submitted, however, that the interference had been in accordance with the law and had pursued a legitimate aim, namely the protection of the public interest and the need to counter evictions onto the street. They further submitted that the interference complained of had been offset by the possibility of seeking compensation and that the individual burden imposed on the applicant might have been minimised or eliminated had he properly proved certain circumstances before the domestic courts.

2. *The Court's assessment*

(a) General principles

33. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, *inter alia*, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A, no. 98, which reiterates in part the principles laid down by the Court in *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; see also *Broniowski v. Poland* [GC], no. 31443/96, § 134, ECHR 2004-V).

34. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws".

35. Not only must an interference with the right of property pursue, on the facts as well as in principle, a "legitimate aim" in the "general interest", but there must also be a reasonable relation of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures designed to control the use of the individual's property. That requirement is expressed by the notion of a "fair

balance" that must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (*Hutten-Czapska v. Poland* [GC], no. 35014/97, § 167, ECHR 2006-VIII).

(b) Application of these principles to the present case

36. The Government did not contest the fact that in the present case there was an interference with the peaceful enjoyment of the applicant's possessions. Indeed, the fact that the tenant was allowed to remain in the applicant's flat for more than four and a half years following the eviction order must be classified as interference with the applicant's property rights. The measure in question amounted to a control of the use of property to be examined under the second paragraph of Article 1 of Protocol No. 1 and with reference to the case-law concerning similar context (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 46, ECHR 1999-V; *Ghigo v. Malta*, no. 31122/05, § 50, 26 September 2006; and *Kasmi v. Albania*, no. 1175/06, § 72, 23 June 2020). The Court accepts that the interference in question had a basis in domestic law and pursued a legitimate aim, namely the protection of the public interest and the need to prevent evictions onto the street. It remains to be examined whether in the proceedings for compensation a fair balance was struck by the domestic authorities and whether an excessive burden was imposed on the applicant.

37. In this respect the Court notes that the applicant relied on a clear provision of the 2001 Act providing for a right to compensation in the event of the municipality failing to secure social housing to an entitled person (see paragraph 15 above). The claim based on that provision requires that all conditions of eligibility for compensation have to be fulfilled. In this connection the Court notes that according to the Regional Court's judgment, the applicant had failed to prove that his damage had been a normal consequence of the municipality's unlawful inactivity. In the court's view, not only had he failed to prove that he would be able to rent the flat out to someone else and earn profits therefrom, but also when the flat would actually be ready for renting out, bearing in mind that it needed renovation (see paragraph 12 above).

38. The Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret domestic law. The Court will not question the interpretation of domestic law by the domestic courts unless such an interpretation can be regarded as arbitrary or manifestly unreasonable (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 90, 29 November 2016, and *Anđelković v. Serbia*, no. 1401/08, § 24, 9 April 2013).

39. The Government submitted that the individual burden imposed on the applicant by delaying the eviction of his tenant could be minimised or even eliminated by the possibility of seeking compensation from the

municipality. The Court would agree that had the applicant received adequate compensation for the period in which his tenant occupied his flat after the eviction order became final, the interference with the applicant's right would not have been excessive. The applicant's claim for compensation was however dismissed. In these circumstances the Court has to examine the judgments given by the domestic courts and analyse whether the reasoning adopted by them was not arbitrary or manifestly unreasonable.

40. The domestic courts found that in order to grant compensation, all criteria of compensational liability had to be fulfilled namely, the defendant's illegal act or inactivity, damage and causal link between the act or inactivity and the damage. They further agreed that failure on the part of the municipality to provide a social accommodation to the tenant as ordered by a final domestic judgment constituted an illegal inactivity that could be the basis of compensational liability. In these circumstances it remained to establish whether the damage complained of was a normal consequence of the municipality's inactivity. The Regional Court found that the applicant had failed to prove that, had the municipality delivered the social accommodation, he would have received rent from his flat, because he had failed to prove that he would renovate and rent it. The court further held that even assuming that the flat would be renovated and rented, the applicant had failed to indicate the date from which he could receive the rent. The damage complained of could occur only once the renovation works would be finished (see paragraph 12 above). As regards the amount of damage, the Court notes that in the course of the domestic proceedings two expert opinions had been produced, specifying the amount of rent that the applicant could expect to ask for before and after the renovation of the flat in question (see paragraph 10 above). The domestic court considered that the applicant had failed to prove whether and from which moment he would be able to obtain the amount of rent calculated by an expert for the flat once renovated. However, the reasoning of the Regional Court's judgment does not explain on what grounds that court refused to grant the applicant the compensation equivalent to the lower amount calculated for the flat before renovation.

41. The Court considers that the requirements that the Regional Court expected the applicant to have met, as formulated in its judgment, namely to prove that he would renovate the flat, how long the renovation works would take and that he would rent the flat after renovation were in fact very difficult to fulfil and that their imposition amounted to an excessive burden which, in consequence, led to the arbitrary dismissal of his compensation claim.

42. The Court considers that the requirements imposed on the applicant by the domestic courts in the course of the proceedings for compensation essentially deprived the applicant of the right to be redressed for the damage he had suffered. It follows that the interference complained of cannot be

considered to have struck a "fair balance" between the means employed and the aims sought to be realised.

43. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of Protocol No. 1 to the Convention. The Government's objection in this respect (see paragraph 28 above) should be therefore dismissed.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 13,189 euros (EUR) in respect of pecuniary damage and EUR 6,091 in respect of non-pecuniary damage. As regards the pecuniary damage, the applicant relied on the calculation method adopted in the judgment of the first-instance court.

46. The Government considered these claims exorbitant.

47. The Court finds that the applicant was deprived of the compensation which was due to him under domestic law and must take into account the fact that he undoubtedly suffered some pecuniary and non-pecuniary damage. Making an assessment on an equitable basis, as is required by Article 41 of the Convention, the Court awards the applicant EUR 14,600 to cover both heads of damage.

B. Costs and expenses

48. The applicant also claimed EUR 5,720 for the costs and expenses incurred before the domestic courts and before the Court.

49. The Government submitted that in spite of the fact that the applicant had submitted certain documents supporting his claim, the amount claimed was exorbitant and partly irrelevant to any damage sustained.

50. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the whole sum claimed, covering costs under all heads.

C. Default interest

51. The Court considers it appropriate that the default interest rate 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. *Decides* to join to the merits the Government's preliminary objection concerning non-exhaustion of domestic remedies due to the alleged non-fulfilment of the statutory requirements of a claim for compensation and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 14,600 (fourteen thousand six hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 5,720 (five thousand seven hundred and twenty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Marko Bosnjak President