



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

FOURTH SECTION

CASE OF KANIEWSKI v. POLAND

(Application no. 38049/02)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

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 Kaniewski 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. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 38049/02) 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") by a Polish national, Mr Andreas Kaniewski ("the applicant"), on 14 October 2002.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and, subsequently, Ms S. Jaczewska, of the Ministry of Foreign Affairs.

3. On 17 December 2002 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1940 and lives in Köln, Germany.

5. On 14 October 1993 the applicant lodged an application with the Warsaw Śródmieście Municipality (*Urząd Gminy Warszawa Śródmieście*). He asked for the right to the grant of so-called "temporary ownership" of the property (a plot of land and a house).

6. On 18 August 1995 the Warsaw Śródmieście Municipality referred the application to the Warsaw Municipality (*Urząd Gminy Warszawa Centrum*).

7. On 13 November 1995 the applicant complained to the Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) that the Mayor of Warsaw (*Prezydent Warszawy*) had failed to handle his case within the prescribed time-limit.

8. On 28 December 1995 the Board of Appeal ordered the Mayor to deal with the applicant's application within a month.

9. On 29 March 1996 the Mayor stayed the proceedings.

10. The Board of Appeal quashed that decision on 17 March 1997.

11. On 20 August 1998 the applicant complained to the Self-Government Board of Appeal about inactivity on the part of the Mayor of Warsaw.

12. On 17 September 1998 the Mayor issued a decision. He refused to grant the applicant the right he sought. In consequence, the applicant withdrew his complaint of 20 August 1998.

13. On 20 April 1999 the Board of Appeal quashed the Mayor's decision and remitted the case.

14. The Mayor upheld his original decision on 30 November 1999.

15. On the same day the applicant appealed to the Board of Appeal.

16. The Board of Appeal quashed the Mayor's decision on 7 June 2000.

17. On 8 January 2002 the applicant complained to the Self-Government Board of Appeal that the Mayor had failed to handle his case within the prescribed time-limit.

18. On 10 June 2002 the Board ordered the Mayor to deal with the case by 30 June 2002.

19. On 24 September 2003 the Mayor of Warsaw refused to grant the applicant temporary ownership of the property.

20. The Self-Government Board of Appeal quashed that decision and remitted the case on 29 April 2004.

21. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Article 35 of the Code of Administrative Procedure lays down time-limits ranging from 1 month to 2 months for dealing with a case pending before an administrative authority. If those 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 dealt with within the time-limits referred to in Articles 35 and 36, a party to administrative proceedings may lodge a complaint to the higher authority, alleging inactivity. In cases where the allegations of inactivity are well-founded, the

higher authority fixes a new term for examining 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.

23. Until 1 October 1995, under Article 216 of the Code of Administrative Procedure, a party to administrative proceedings could, at any time, lodge a complaint with the Supreme Administrative Court about the fact that an administrative authority had failed to issue a decision.

24. On 1 October 1995, when the Law of 11 May 1995 on the Supreme Administrative Court (“the 1995 Act”) took effect, Article 216 of the Code of Administrative Procedure was repealed.

25. Under section 17 of the 1995 Act the Supreme Administrative Court was competent to examine complaints about inactivity on the part of an authority obliged to issue an administrative decision.

26. Section 26 of the Act provided:

“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.”

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

28. 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

29. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement. He relied on Articles 6 § 1 and 13 of the Convention.

Article 6 § 1 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...”

30. The Government contested that argument.

31. The period to be taken into consideration began on 14 October 1993 and has not yet ended. It has thus lasted approximately 12 years for 6 levels of jurisdiction.

A. Admissibility

1. The Government's plea on inadmissibility on the ground of non-exhaustion of domestic remedies

32. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that he had not lodged a complaint about inactivity on the part of the Mayor of Warsaw with the Supreme Administrative Court. They recalled further that, since 18 December 2001, the applicant had the possibility to lodge a claim for compensation for damages suffered due to the excessive length of proceedings with the Polish civil courts.

33. The applicant generally contested the Government's arguments.

34. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach.

35. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see the *Aksoy v. Turkey* judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

36. The Court notes that the applicant several times lodged complaints about inactivity on the part of the Mayor of Warsaw with the Self-Government Board of Appeal. The Board of Appeal twice found the complaints well-founded and ordered the Mayor to deal with the case. One such complaint was withdrawn by the applicant, as the Mayor issued the decision before it was examined by the Board of Appeal. The remedy the applicant used was therefore adequate and sufficient to afford him redress in

respect of the alleged breach. In consequence, the Court does not consider that the applicant should have lodged a further complaint about inactivity with the Supreme Administrative Court in order to fulfil his obligation under Article 35 § 1.

37. The Court also reiterates that, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that, in cases where the national law provides for several parallel remedies in various branches of law, the person concerned, after an attempt to obtain redress through one such remedy, must necessarily try all other means (see, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001).

38. The Court considers therefore that, having exhausted the possibilities available to him within the administrative procedure system, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation.

39. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies.

For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

2. Substance of the complaint

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

41. 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).

42. 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).

43. 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.

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

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

44. The applicant further complained that the length of the proceedings complained of had infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1.

45. The Government contested that argument.

46. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

47. Having regard to its finding under Article 6 § 1 (see paragraph 33 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Kroenitz v. Poland*, no. 77746/01, § 37, 25 February 2003).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed restitution of property in question or equivalent compensation in lieu in respect of pecuniary and non-pecuniary damage.

50. The Government contested the claim.

51. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 8000 under that head.

B. Costs and expenses

52. The applicant also claimed EUR 24,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

53. The Government contested the claim.

54. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of EUR 500 under this head.

C. Default interest

55. 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 it is not necessary to examine the complaint under Article 1 of Protocol No. 1;
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 national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 8000 (eight thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President