



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

FOURTH SECTION

CASE OF OLESIŃSKI v. POLAND

(Application no. 12550/02)

JUDGMENT

STRASBOURG

18 December 2007

FINAL

18/03/2008

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 Olesiński v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 12550/02) 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 two Polish nationals, Mr Zdzisław Olesiński and Mrs Helena Olesińska (“the applicants”), on 28 March 2001.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 19 January 2006 the President of the Fourth Section of the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1925 and 1927, respectively, and live in Lublin, Poland.

5. On 21 May 1993 the applicants' neighbours were granted a permission to construct a shop on the ground floor of their house. The applicants appealed but the decision was upheld on 19 July 1993.

6. On an unspecified date in 1994 the applicants applied to have the decision declared null and void. They submitted that the decision had been

issued in violation of the local zoning plan and that the shop had been causing them nuisance.

7. On 11 April 1994 the Minister of Planning (*Minister Gospodarki Przestrzennej i Budownictwa*) dismissed their application. The applicants appealed.

8. On 22 February 1995 the Chief Building Inspector (*Główny Inspektor Nadzoru Budowlanego*) allowed the appeal and quashed the impugned decision.

9. The Chief Building Inspector informed the applicants in his letters of 30 December 1995, 30 January, 28 February and 26 March 1996 that the proceedings could not be terminated yet and that he had fixed new time-limits. The Inspector explained that the main reason for the delay had been the necessity to obtain an expert opinion, which had been ultimately submitted on 9 April 1996.

10. On 18 April 1996 the Chief Building Inspector refused to annul the decision of 21 May 1993. The Inspector informed the applicants that the decision was final and that they could lodge a complaint with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

11. On 4 June 1996 the first applicant lodged a complaint against the decision with the Supreme Administrative Court.

12. On 23 April 1998 the Supreme Administrative Court held a hearing and rejected the applicant's complaint as it had been lodged in breach of procedural requirements. The court established that the applicant should have first lodged an appeal with the Chief Building Inspector asking him to reconsider the case. The court further advised the applicant that since the procedural mistake had occurred due to his being wrongly advised by the Inspector in the decision of 18 April 1996, he could apply for leave to appeal out of time.

13. On 25 May 1998 the first applicant appealed to the Inspector to reconsider the case and applied for leave to lodge an appeal out of time.

14. On 4 June 1998 the Chief Building Inspector granted leave to appeal out of time, examined the appeal, and upheld his decision of 18 April 1996.

15. On 30 September 1998 the first applicant lodged a complaint with the Supreme Administrative Court against the decision of 4 June 1998.

16. On 5 October 2000 the Supreme Administrative Court dismissed the complaint.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. Under Article 35 of the Code of Administrative Procedure (“the Code”) of 1960 an administrative authority should give a decision on the merits of a case within two months. If this time-limit has 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.

18. A party to administrative proceedings may make a complaint under Article 37 of the Code in order to urge the relevant administrative authority to issue a decision within the time-limits fixed in the Code. Moreover, in cases where an authority persistently failed to do so, a party could lodge, under sections 17, 26 and 30 of the Supreme Administrative Court Act 1995 (“the 1995 Act”) as in force at the material time, a complaint with the Supreme Administrative Court against the authority's failure to give a decision.

19. In cases where allegations of inactivity were well-founded, the Supreme Administrative Court could oblige that authority to issue a decision. Pursuant to section 30 of the 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 of the 1995 Act, impose a fine on it. It also could itself give a ruling on the merits of the administrative case.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

20. The applicants complained that the proceedings in their case had been unfair. They relied on several Articles of the Convention. However, this complaint falls to be examined under Article 6 § 1 of the Convention which, in its relevant part, reads:

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

21. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

22. In the present case the applicants did not allege any particular failure to respect their right to a fair hearing on the part of the relevant authorities.

Indeed, their complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

23. The applicants 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...”

24. The Government contested that argument.

25. The Court notes that the exact date on which the applicants initiated the proceedings in the instant case is unspecified. The Government failed to clarify this issue and they submitted that the proceedings had started when the applicants had initiated the proceedings for annulment of the 1993 decision. Thus, in the particular circumstances of the case, the Court considers that the period to be taken into consideration began on 11 April 1994, the date on which the Minister of Planning dealt with the applicants' motion to declare the impugned decision null and void. The proceedings ended on 5 October 2000 when the Supreme Administrative Court gave a final decision in the case.

The period to be taken into consideration thus lasted 6 years and almost 6 months.

A. Admissibility

26. The Government raised a preliminary objection that the applicants had not exhausted domestic remedies available to them under Polish law, as required by Article 35 § 1 of the Convention. They maintained that it was open to the applicants to make use of the usual remedies to counteract inactivity of the authority obliged to give an administrative decision in the case. They relied on Article 37 of the Code of Administrative Procedure and on Articles 16 and 17 of the Supreme Administrative Court Act 1995, submitting that the applicants could lodge complaints about the inactivity of the relevant administrative body, first with the higher authority and, subsequently, with the Supreme Administrative Court.

27. The applicants contested these arguments.

28. The Court first notes that the remedies relied on by the Government can be used against the inactivity of an authority obliged to give an administrative decision, as provided for by Article 35 of the Code. However, in the present case the inactivity, and the substantial delay thus caused, occurred not before an administrative authority but on two occasions before the Supreme Administrative Court. It occurred first between 4 June 1996 and 23 April 1998, and, on second occasion, between 30 September 1998 and 5 October 2000. The Court observes that the Government did not point to the existence of any domestic remedy that could be regarded, at the material time, as an effective remedy for delays occurring before the Supreme Administrative Court.

29. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

31. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

32. 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).

33. 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. In particular, the Court notes that the case lay dormant before the Supreme Administrative Court on one occasion for over 21 months and on a second one for 24 months. No explanation has been provided by the Government for such substantial delays. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicants claimed 40,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 50,000 for non-pecuniary damage.

36. The Government contested these claims.

37. 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, it considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, the Court awards the applicants 3,500 euros (EUR) under the head of non-pecuniary damage.

B. Costs and expenses

38. The applicants also claimed PLN 10,000 for the costs and expenses incurred both before the domestic courts and before the Court.

39. The Government contested the claims and submitted that only costs actually incurred by the applicant before the Court should be taken into consideration.

40. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the applicants, who were not represented before the Court by a lawyer, the sum of EUR 100 for the proceedings before the Court.

C. Default interest

41. 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 excessive length of the 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 applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage and EUR 100 (one hundred euros) for costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of 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 amounts 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President