



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

FOURTH SECTION

CASE OF RYGALSKI v. POLAND

(Application no. 11101/04)

JUDGMENT

STRASBOURG

22 January 2008

FINAL

22/04/2008

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 Rygalski v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Stanislav Pavlovski,

Lech Garlicki,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 11101/04) 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 Wojciech Rygalski (“the applicant”), on 19 March 2004.

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

3. On 7 December 2006 the Court declared the application partly inadmissible and 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 1931 and lives in Częstochowa.

5. On 29 July 1999 the applicant lodged a complaint with the City Council. He claimed that his neighbour, who lived upstairs, had carried out illegal construction work as a result of which the walls of the applicant's flat had begun to crack.

6. On 16 November 1999 an on-site inspection was conducted by the authorities.

7. On 27 November 1999 the applicant lodged a complaint about the inactivity of the authorities with the Principal Construction Inspector (*Główny Inspektor Nadzoru Budowlanego*).

8. On 1 December 1999 the District Construction Inspector discontinued the proceedings. It was found that the work had been carried out in conformity with the law. The applicant appealed to the Regional Construction Inspector.

9. On 16 December 1999 the applicant's complaint about inactivity was transferred to the Regional Construction Inspector. It appears that the proceedings concerning this complaint remained dormant until 19 February 2002.

10. On 25 February 2000 the Regional Construction Inspector quashed the decision of 1 December 1999 and remitted the case.

11. On 1 August 2000 the applicant lodged a complaint about inactivity with the Minister of the Interior.

12. On 7 August 2000 his complaint of 1 August 2000 was transferred to the Principal Construction Inspector.

13. On 1 September 2000 his complaint was transferred to the Regional Construction Inspector.

14. On 19 February 2002 the Regional Construction Inspector found the complaint about inactivity, not specifying which one, well-founded and fixed a new time-limit for the authorities to take all necessary action.

15. On 15 May 2002 the District Construction Inspector issued a decision. It found that the work had been brought into conformity with the law. The applicant appealed.

16. On 17 June 2002 the applicant again lodged a complaint about inactivity.

17. On 24 June 2003 the Regional Construction Inspector quashed the decision of 15 May 2002 and remitted the case. The applicant appealed to the Supreme Administrative Court.

18. On 8 July 2003 the Principal Construction Inspector found the applicant's complaint about inactivity of 17 June 2002 well-founded and fixed a new 30 days' time-limit for the authorities. However the administrative authorities do not appear to have complied with the time-limit.

19. Eventually, as it transpires from the submissions of the applicant as well as from the observations submitted by the Government, on 21 September 2005 the Regional Administrative Court gave a judgment on the merits of the applicant's case. It further transpires that the applicant failed to lodge a cassation appeal with the Supreme Administrative Court. Hence, the judgment of 21 September 2005 became final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Inactivity of administrative authorities

20. For a presentation of domestic law, see: *Kaniewski v. Poland*, no. 38049/02, 8 February 2006; *Koss v. Poland*, no. 52495/99, 28 March 2006.

2. Length of proceedings

21. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”), are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

22. 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...”

23. The Government contested that argument.

24. The period to be taken into consideration began on 29 July 1999 and ended on 21 September 2005. It has thus lasted 6 years, 1 month and 25 days for 2 levels of jurisdiction.

A. Admissibility

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

25. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies available to him under Polish law, as required by Article 35 § 1 of the Convention. They maintained that from 17 September 2004, the date of entry into force of the 2004 Act, the applicant had a possibility of seeking compensation for the damage resulting from the excessive length of proceedings before Polish courts, under section 16 of the 2004 Act read in conjunction with Article 417 of the Civil Code. The Government noted that section 3 (6) of the 2004 Act explicitly provided for such a possibility in the context of judicial administrative proceedings.

26. The applicant contested the Government's argument.

27. 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.

28. 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).

29. The Court notes that the applicant several times lodged complaints alleging inactivity on the part of the administrative authorities with the respective higher authority, as provided by Article 37 § 1 of the Polish Code of Administrative Procedure of 1960. His complaints were twice found to be well-founded by the Regional as well as by the Principal Construction Inspector. Both these officials fixed time-limits for dealing with the applicant's case (see paragraphs 14 and 18 above). The remedy the applicant used was therefore adequate and sufficient to afford him redress in respect of the alleged breach.

30. 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, *Kaniewski*, cited above, § 37). In any event, the provisions of the 2004 Act relied on by the Government could not be invoked in respect of delays attributable to the administrative authorities since that Act only addresses complaints about length of proceedings before the domestic courts .

31. 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.

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

33. 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

34. 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

35. 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).

36. 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).

37. 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

38. Lastly, the applicant complained that the length of the proceedings complained of had infringed her right to the peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1.

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

40. Having regard to its finding under Article 6 § 1 (see paragraph 37 above), the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 1 of Protocol No. 1 (see *Kroenitz v. Poland*, no. 77746/01, §§ 36 and 37, 25 February 2003).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 2,268 euros (EUR) without specifying whether this amount related to pecuniary or non-pecuniary damage and further claimed a sum of between EUR 2,500 – 3,000 in compensation for damage to his property.

43. The Government contested these claims.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects these claims. On the other hand, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant did not make any claim for costs and expenses.

C. Default interest

46. 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 remainder of 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 separately the complaint under 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, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 amount 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 22 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President