



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

FOURTH SECTION

CASE OF BORYSIEWICZ v. POLAND

(Application no. 71146/01)

JUDGMENT

STRASBOURG

1 July 2008

FINAL

01/10/2008

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 Borysiewicz v. Poland,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 71146/01) 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, Ms Krystyna Borysiewicz (“the applicant”), on 1 February 2001.

2. The applicant was represented by Ms A. Bień, a lawyer practising in Łódź. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained under Article 8 of the Convention that the State had failed to protect her home from nuisance arising from the operation of a workshop run by her neighbour. She further complained, citing Article 6, that the proceedings in her case had lasted for an unreasonably long time.

4. On 24 November 2005 the President of the Fourth Section of the Court decided to give notice of the application 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

5. The applicant was born in 1947 and lives in Pabianice. She owns a semi-detached house located in a residential area. A tailoring workshop employing about 20 people was located in the other half of the building.

6. On 14 September 1993 the applicant made an application to the City Council for a ban on the operation of the workshop or at least for measures to be taken to reduce the level of noise it generated.

7. On 11 June 1994 the Director of the Pabianice District Office, to which the application of 14 September 1993 must have been transferred, issued a decision in which it found that the workshop was operating without the required permission. He obliged the owner of the workshop to take steps to remedy the situation, *inter alia* by obtaining an environmental impact assessment of the workshop and by carrying out adaptation works.

8. On 30 January 1995 the Governor of Łódź approved a “[t]echnical project on protection of the environment against noise”, and obliged the owner to comply with the project and to submit an evaluation of the noise level.

9. On 7 February 1995 the Governor of Łódź approved the location of the workshop on condition that the owner complied with the requirements set out in the decision of 30 January 1995.

10. On 15 March 1995 the Director of the Construction Supervision Department of the Town Office gave instructions as to the way in which the works to adapt the workshop should be conducted. The applicant appealed.

11. On 4 April 1995 the applicant lodged an appeal with the Governor of Łódź in which she complained that she had not been allowed to participate in the proceedings. She submitted that she should have been treated as a party to them and that she had not received an answer to her application of 14 September 1993.

12. On 11 May 1995 the applicant made an application to the Minister of Environment for the proceedings – which must have been discontinued on an unspecified earlier date – to be reopened in order to enable her to participate as a party to the proceedings in order to have her arguments taken into consideration.

13. On 17 May 1995 the Governor of Łódź stayed the appeal proceedings against the decision of 15 March 1995 until the request for reopening of 11 May 1995 had been considered. The workshop’s owner appealed.

14. On 7 August 1995 the General Inspector of Construction Supervision quashed the decision of 17 May 1995.

15. On 20 October 1995 the Governor of Łódź stayed the appeal proceedings against the decision of 15 March 1995. The workshop's owner appealed.

16. On 15 December 1995 the General Inspector of Construction Supervision upheld the decision of 20 October 1995. The applicant appealed.

17. On 25 February 1997 the applicant made an application to the Governor of Łódź requesting, *inter alia*, that the decisions of 7 August 1995 and 15 December 1995 be quashed and that the operation of the workshop be stayed until a decision was made on the merits of her request of 1993.

18. On 14 November 1997 the Minister of Environment quashed the decisions of 7 August 1995 and 30 January 1995. In the written grounds he stated that the noise pollution inside the applicant's home was not a matter of environmental protection, so that there was no legal basis for the proceedings to be instituted. The applicant appealed to the Supreme Administrative Court.

19. In a letter of 12 January 1998 to the Director of the Pabianice District Office the applicant requested that the appeal proceedings against the decision of 15 March 1995 be stayed until the appeal against the decision of 14 November 1997 lodged with the Supreme Administrative Court had been decided. On 30 January 1998 the Governor of Łódź, to whom this request must have been transmitted, stayed the proceedings as requested. The applicant's neighbour appealed.

20. On 18 March 1998 the General Inspector of Construction Supervision quashed the decision of 30 January 1998 and remitted the case for reconsideration.

21. On 26 August 1998 the Governor of the Town of Łódź upheld the decision of 15 March 1995 and set a new time-limit for the workshop's owner to comply with the imposed obligations.

22. On 25 November 1998 the Director of the Pabianice District Office granted permission for the operation of the workshop. The applicant appealed. On 23 March 1999 the Governor of Łódź quashed the decision of 25 November 1998 and remitted the case for reconsideration. The workshop's owner appealed.

23. On 13 November 2001 proceedings were instituted to determine whether the operation of the workshop was lawful. On the same day the applicant was informed that on 13 December 2001 an inspection of the building would be carried out. On the same day the Supreme Administrative Court dismissed the owner's appeal against the decision of 23 March 1999.

24. On 29 November 2001 the Mayor of Pabianice stayed the proceedings concerning the granting of permission until the Pabianice District Inspector of Construction Supervision had given a decision as to

whether the operation of the workshop complied with the applicable legal requirements. The applicant appealed.

25. On 8 March 2002 the Mayor of Pabianice issued an operation permit for the workshop. The applicant appealed. On 26 April 2002 the Governor of Łódź informed the applicant that the time-limit set by law to decide on her appeal had been extended because of the need for checks to be done by the building inspection authorities.

26. On 7 June 2002 the Governor of Łódź upheld the decision of 8 March 2002. The applicant lodged a complaint with the Supreme Administrative Court.

27. By a decision of 29 October 2002 the Pabianice District Inspector of Construction Supervision authorised the operation of the workshop. The applicant appealed.

28. On 25 February 2003 the Supreme Administrative Court quashed the decision of 7 June 2002 and the preceding decision of 8 March 2002. It observed that noise evaluation tests were necessary for a decision allowing the operation of the workshop. Such tests had already been carried out in the case, but not in an appropriate manner. They should have been carried out during the working hours of the workshop and at different times and should have allowed for the applicant's involvement to enable her to put forward her arguments to the person conducting the tests.

29. On 18 March 2003 the Pabianice Inspector of Construction Supervision stayed the proceedings concerning the permission to operate the workshop. The applicant appealed and they were resumed at an unspecified later date.

30. On 3 July 2003 the Mayor of Pabianice issued a decision obliging the workshop's owner to supplement the submitted documentation by, *inter alia*, submitting an evaluation of the noise level before 30 September 2003.

31. On 29 October 2003 the District Inspector of Construction Supervision gave permission to operate the workshop on the basis of noise evaluation tests carried out by a certain S.K. The applicant appealed, challenging the soundness of the outcome of the tests and the way they had been carried out.

32. On 28 January 2004 the Łódź Regional Inspector of Construction Supervision quashed the decision of 29 October 2003, finding that the applicant had not been given an opportunity to be sufficiently involved in the noise evaluation tests.

33. On 22 October 2004 the applicant lodged a complaint with the Łódź Regional Inspector of Construction Supervision about inactivity on the part of the Pabianice District Inspector of Construction Supervision, to whom the case had been remitted for reconsideration on the strength of the decision of 28 January 2004.

34. On 20 October 2004 the Łódź Regional Inspector of Construction Supervision gave a decision in which it found inactivity on the part of the

Pabianice District Inspector of Construction Supervision and obliged him to give a decision by 20 February 2005.

35. On 14 January 2005 the applicant lodged a complaint with the General Inspector of Construction Supervision about the administration's failure to act in her case.

36. By a decision of 7 March 2005 the General Inspector of Construction Supervision stated that no inactivity on the part of the Łódź Regional Inspector of Construction Supervision had been found.

37. On 18 March 2005 the Pabianice District Inspector of Construction Supervision stayed the proceedings concerning the request for permission to operate, pending the outcome of noise tests to be carried out by the Regional Inspector of Environmental Protection. The applicant appealed. On 23 June 2005 the Łódź Regional Inspector of Construction Supervision allowed her appeal, quashed the decision staying the proceedings and ordered that they should be conducted further.

38. On 27 July 2005 the applicant complained to the administrative court about the District Inspector's failure to take any steps to have a proper noise evaluation carried out and to give a decision on the merits of the case. In his reply of 25 August 2005 the Regional Inspector summarised the developments in the proceedings since the applicant's complaint of 22 October 2004 and reiterated that the proceedings were, after its decision of 23 June 2005, pending before the first-instance authority. It noted that the applicant's appeal against the decision of 18 March 2005 to stay the proceedings was fully justified.

39. By a judgment of 20 October 2005 the Łódź regional administrative court partly allowed the applicant's complaint and set a one-month time-limit for the District Inspector to give a decision. It summarised the conduct of the proceedings since its judgment of 25 February 2003. It further observed that the proceedings had been conducted exceedingly slowly and that no valid justification for this unreasonable delay had been adduced by the administrative authorities.

40. The proceedings are pending.

II. RELEVANT DOMESTIC LAW

41. Under domestic law inactivity on the part of authorities is open to challenge.

Firstly, a party to administrative proceedings can make a complaint to a hierarchically higher authority under Article 37 § 1 of the Code of Administrative Procedure in order to urge the relevant authority to issue a decision within the time-limits fixed in that Code.

42. If unsatisfied with the outcome of the proceedings initiated by a complaint under Article 37 of the Code of Administrative Procedure, up to 1 January 2004 a party could have lodged a complaint about inactivity on the

part of the administrative authorities with the Supreme Administrative Court under Article 17 of the Act of 1995 on the Supreme Administrative Court. This provision was repealed with effect from 1 January 2004.

43. On 1 January 2004 the 1995 Act was replaced by the Act on Proceedings before Administrative Courts of 30 August 2002, which provides for similar remedies.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. The applicant complained that the State had failed to protect her home from nuisance arising from the operation of the workshop run by her neighbour. She relied on Article 8 of the Convention which, in so far as relevant, provides as follows:

“1. Everyone has the right to respect for his ... home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

45. The Government argued that the applicant had failed to exhaust the available domestic remedies. She should have lodged a claim with a civil court, referring to Article 144 in conjunction with Article 222 § 2 of the Civil Code of 1964. They were of the view that if there had been any disturbances affecting the applicant's right to respect for her home, such as noise pollution, she should have addressed herself to a civil court in order to seek protection for her rights. They referred to the case-law of the Supreme Court which had held that the protection under Article 144 of the Code encompassed not only the owner's obligation to abstain from direct interferences with the neighbouring property, but also from acts which could negatively affect persons living on it (III CZP 89/74). She should also have had recourse to the provisions of the Civil Code governing liability in tort. The administrative authorities had not been under any obligation to act in the applicant's case.

46. The applicant disagreed. She submitted that the authorities had been obliged to take positive measures to protect her against interferences with her right to respect for home and referred to the Court's findings in *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C and *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A

no. 307-B. In the circumstances of the case it was the task of the public administration to act as an arbiter and find, by way of taking necessary active steps provided for by law, the proper balance between the applicant's interests and those of her neighbour, taking also into consideration the interests of the community. The authorities had failed to do so. In these circumstances, the applicant should not be obliged to have recourse to the available instruments of civil law.

47. The Court finds that it is not required to decide whether or not the applicant has exhausted domestic remedies, as the complaint is in any event inadmissible for the following reasons.

48. The Court has recognised in its case-law that the individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect for the home are not confined to concrete or physical breaches, such as unauthorised entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII).

49. Thus in *Powell and Rayner v. the United Kingdom* (judgment of 21 February 1990, Series A no. 172, p. 18, § 40) the Court declared Article 8 applicable because "[i]n each case, albeit to greatly differing degrees, the quality of the applicant's private life and the scope for enjoying the amenities of his home ha[d] been adversely affected by the noise generated by aircraft using Heathrow Airport". In *López Ostra* (cited above, pp. 54-55, § 51), which concerned pollution caused by the noise and odours generated by a waste-treatment plant, the Court stated that "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health". In *Surugiu v. Romania* (no. 48995/99, 20 April 2004), which concerned various acts of harassment by third parties who entered the applicant's yard and dumped several cartloads of manure in front of the door and under the windows of the house, the Court found that the acts constituted repeated interference with the applicant's right to respect for his home and that Article 8 of the Convention was applicable.

50. Article 8 may apply in environmental cases, whether the pollution is directly caused by the State or whether State responsibility arises from failure to regulate private-sector activities properly. Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly

similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole (see *Powell and Rayner*, p. 18, § 41, and *López Ostra*, pp. 54-55, § 51, both cited above).

51. However, as demonstrated by the above-mentioned cases, in order to raise an issue under Article 8, the interference must directly affect the applicant's home, family or private life and the adverse effects of the environmental pollution must attain a certain minimum level of severity. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects (see *Fadeyeva v. Russia*, no. 55723/00, §§ 68-69, ECHR 2005-IV and *Fägerskiöld v. Sweden* (dec.), no. 37664/04).

52. Turning to the present case, the Court accepts that the applicant and her family might have been affected by the operation of the workshop in her neighbour's house. However, the Court must also establish whether it has been shown that this nuisance reached the minimum level of severity set by its case-law.

53. In this connection, the Court observes that in the course of the proceedings noise evaluation tests were carried out at an unspecified date before February 2003 and again in 2003. The Court is aware that the applicant criticised the procedure by which these tests had been carried out before the domestic authorities and that the administrative court accepted her arguments (see paragraphs 28, 31 and 32 above). In these circumstances it is not wholly implausible that the results of those tests were not fully reliable. However, the Court notes that the applicant has not submitted the results of those tests to the Court. Nor has she submitted, either in the domestic proceedings or in the proceedings before the Court, any alternative noise tests which would have allowed the noise levels in her house to be ascertained, and for it to be determined whether they exceeded the norms set either by domestic law or by applicable international environmental standards, or exceeded the environmental hazards inherent in life in every modern town (see, in this connection, *Fadeyeva v. Russia*, cited above, § 69).

54. The Court further observes that the applicant has not submitted, either to the national authorities or to the Court itself, any documents to show that her health or that of her family had been negatively affected by the noise emitted by the workshop.

55. In the absence of such findings it cannot be established that the State failed to take reasonable measures to secure the applicant's rights under Article 8 of the Convention (compare and contrast the Court's findings in noise pollution cases such as *Moreno Gómez v. Spain*, no. 4143/02, §§ 59-62, ECHR 2004-X; *Ashworth and Others v. the United Kingdom*, 20 January 2004 (dec.), no. 39561/98.).

56. Having regard to the above considerations and its case-law, the Court finds that it has not been established that the noise levels complained of in the present case were so serious as to reach the high threshold established in cases dealing with environmental issues. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

57. The applicant complained of a violation of her right to a hearing within a reasonable time. She relied on Article 6 § 1 of the Convention which, in so far as relevant, reads:

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

58. The period to be taken into consideration began in September 1993 when the applicant requested that the lawfulness of the workshop’s operation be determined, and has not yet ended. It has thus lasted over fourteen years for three levels of jurisdiction.

A. Admissibility

59. The Government submitted that the applicant had not exhausted remedies available under Polish law in respect of excessive length of administrative proceedings. They argued that the applicant had had the opportunity to lodge with the Polish civil courts a claim for compensation for damage caused by the excessive length of the administrative proceedings under Article 417 of the Civil Code.

60. The applicant argued that she should not be required to avail herself of the compensatory remedy relied on by the Government.

61. The Court has already found that the complaint under section 17 of the Supreme Administrative Court Act was a sufficient and effective remedy in cases in which an applicant complains about the excessive length of administrative proceedings (see *Zynger v. Poland* (dec.), no. 66096/01, 7 May 2002 and *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002). The same applies to the analogous remedy introduced by sections 3 and 149 of the Law on Procedure before Administrative Courts. Having regard to the fact that the applicant has availed herself of these remedies by lodging relevant complaints with the administrative courts, the Court sees no ground on which to depart from its established case-law and to find that the applicant should also have availed herself of the compensatory remedy relied on by the Government (see *Olszewska v. Poland*, no. 13024/05, §§ 32-37, 8 December 2007).

62. The Court concludes that, having availed herself of the remedy provided by administrative law, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation. Accordingly, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. The Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must therefore be dismissed.

63. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

64. The Government refrained from making submissions on the merits of this complaint.

65. The applicant reiterated that the proceedings had lasted too long. She stressed that their excessive length and various unjustified delays had been repeatedly acknowledged by various domestic authorities, in particular by the administrative courts.

66. 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).

67. 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).

68. Having examined all the material submitted to it and in particular the findings of the domestic authorities that the proceedings were not conducted expeditiously, the Court has not found any grounds on which it could reach a different conclusion in the present case.

69. 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.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed 125,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage. The Government contested this claim.

73. 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 awards the applicant 10,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

74. The applicant also claimed PLN 3,800 for legal costs borne in the proceedings before the Court. She did not submit any documents in support of her claim.

75. The Government submitted that the applicant should obtain reimbursement of costs and expenses only in so far as it had been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

76. 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 are reasonable as to quantum. The Court observes that the applicant failed to produce any documents in support of his claim. In those circumstances, the Court makes no award under this head (see *Adamiak v. Poland*, no. 20758/03, § 49, 19 December 2006).

C. Default interest

77. 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 length of 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President