



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

FOURTH SECTION

CASE OF PRZEPAŁKOWSKI v. POLAND

(Application no. 23759/02)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

01/12/2008

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 Przepałkowski v. Poland,

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

Giovanni Bonello, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 23759/02) 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 Bogumił Przepałkowski (“the applicant”), on 10 June 2002.

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

3. On 6 December 2007 the President of the Fourth Section decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it was decided to rule on the admissibility and merits of the application at the same time.

4. Having regard to the nature of the case and to the applicant’s age, the case was granted priority under Rule 41 of the Rules of Court.

5. The Government submitted their observations after the expiry of the prescribed time-limit. On 25 March 2008 they were informed that, pursuant to Rule 38 § 1 of the Rules of Court, the President of the Chamber had decided that the Government’s observations should not be included in the case file for consideration by the Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1923 and lives in Warsaw.

7. He is the owner of a plot of land in Legionowo. Apparently, since 1990 construction works without the required permit have been carried out by the applicant's neighbour, B.G., on his plot of land which adjoins the applicant's property.

8. On 9 December 1993 B.G. requested the Mayor of Legionowo (*Urząd Miejski w Legionowie*) to grant him a building permit for a garage to be used for repairing lorries.

9. The Mayor of Legionowo found that the garage adjoining the applicant's property had already been constructed without the required building permit and on 3 February 1994 ordered its demolition (*przymusowa rozbiórka*).

10. On 14 February 1994 B.G. lodged an appeal, submitting that he had already been granted a building permit which had subsequently been quashed.

11. On 29 June 1994 the Warsaw Regional Office (*Urząd Wojewódzki*) upheld the challenged decision.

12. On 18 July 1994 B.G. lodged an appeal with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

13. On 22 September 1994 the Supreme Administrative Court ordered that enforcement of the Warsaw Regional Office's decision be stayed pending the examination of B.G.'s appeal.

14. On 8 February 1995 the applicant, as a party to the administrative proceedings, requested the Supreme Administrative Court to dismiss the appeal and to uphold the challenged decision.

15. On 22 January 1996 the Supreme Administrative Court quashed the contested decision and the previous decision of 3 February 1994 and the proceedings were restarted. The court found that the administrative organs had not exhaustively examined all the circumstances of the case, in particular whether the construction in question constituted a danger to persons or property or whether it had a deleterious effect on the sanitary or other conditions of the surroundings.

16. On 10 February 1999 the Mayor of Legionowo (*Prezydent Miasta Legionowa*) imposed on B.G. an obligation to acquire a building permit by 30 June 1999.

17. On 25 February 1999 the applicant appealed against that decision and requested the Mazowsze Governor (*Wojewoda Mazowiecki*) to issue a demolition order.

18. On 23 August 1999 the Mazowsze Governor quashed the contested decision and remitted the case.

19. On 14 September 1999, following amendments to the provisions governing the powers of the administrative authorities, the President of Legionowo transferred the case to the Legionowo Local Inspector of Construction Supervision (*Powiatowy Inspektor Nadzoru Budowlanego*).

20. On 26 May 2000 the Legionowo Local Inspector of Construction Supervision gave a decision ordering demolition of the garage, finding that it had been constructed illegally and contrary to the local zoning plan (*plan zagospodarowania przestrzennego*).

21. On 12 June 2000 B.G. appealed against that decision.

22. On 20 January 2001 the applicant complained to the Chief Inspector of Construction Supervision (*Główny Inspektor Nadzoru Budowlanego*) of inactivity on the part of the administration. He referred to his appeal of 12 June 2000 lodged against the decision of the Legionowo Local Inspector of Construction Supervision of 26 May 2000 and requested the acceleration of the proceedings.

23. On 3 April 2001 the applicant again complained to the Chief Inspector of Construction Supervision of inactivity on the part of the administration. He referred to his previous complaint and stated that he had been informed that his appeal would be examined in February.

24. On 27 April 2001 the Chief Inspector of Construction Supervision, finding the applicant's complaint of inactivity well-founded, set a time-limit of 14 days for the Mazowsze Regional Inspector of Construction Supervision (*Wojewódzki Inspektor Nadzoru Budowlanego*) to examine the applicant's appeal.

25. On 29 May 2001 the Mazowsze Regional Inspector of Construction Supervision quashed the contested decision and remitted the case to the first-instance authority.

26. On 2 January 2002 the Legionowo Local Inspector of Construction Supervision, as the authority of first instance, ordered B.G. to carry out works to bring the construction in line with the relevant provisions.

27. On 17 January 2002 the applicant appealed against that decision and requested a demolition order.

28. On 28 February 2003 the Mazowsze Regional Inspector of Construction Supervision upheld the challenged decision.

29. On 2 April 2003 the applicant appealed against that decision to the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny*).

30. On 11 October 2004 the Warsaw Regional Administrative Court quashed the challenged decision and the previous decision of the Legionowo Local Inspector of Construction Supervision.

31. On 12 September 2005 the Legionowo Local Inspector of Construction Supervision again ordered B.G. to carry out construction works within three months of the date of the decision and to obtain a building permit.

32. On 27 September 2005 the applicant appealed.

33. On 16 January 2006 the Mazowsze Regional Inspector of Construction Supervision upheld the contested decision.

34. On 15 February 2006 the applicant lodged an appeal with the Warsaw Regional Administrative Court, submitting that the construction

works had been carried out illegally and demanding that a demolition order be issued.

35. On 10 July 2006 the Warsaw Regional Administrative Court dismissed the applicant's appeal.

36. It appears that the applicant did not lodge a cassation appeal with the Supreme Administrative Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Administrative proceedings and demolition orders

37. Section 28 of the Code of Administrative Procedure provides:

“Everyone whose legal interests or obligations are involved in [administrative] proceedings, or who requests that [certain] steps be taken by [an administrative] authority with regard to his legal interests or obligations, is a party to the proceedings.”

Section 37(1) of the 1974 Construction Act, in force at the relevant time, provided, in so far as relevant:

“Buildings or parts of buildings, which are being or have been erected in violation of the laws in force at the time of their erection, are subject to compulsory demolition ... if the administrative authority establishes that the building or relevant part:

1) ...

2) constitutes a danger ... to persons or property, or has an inadmissibly deleterious effect on the sanitary or functional conditions of the surroundings. ...”

B. Inactivity on the part of the administrative authorities

38. The relevant domestic law concerning inactivity on the part of administrative authorities is set out in *Grabiński v. Poland*, no. 43702/02, §§ 60-65, 17 October 2006.

C. Remedy against the excessive length of judicial proceedings

39. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of 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 ADMINISTRATIVE PROCEEDINGS

40. 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...”

41. The Government contested that argument.

42. The period to be taken into consideration began on 9 December 1993 and ended on 10 July 2006. It thus lasted 12 years, 7 months and 3 days.

A. Admissibility

43. In their comments on the applicant’s just-satisfaction claims, the Government submitted that the applicant had not exhausted domestic remedies since he had not availed himself of the 2004 Act.

44. The Court notes that the 2004 Act provides for a complaint about the unreasonable length of judicial proceedings and that proceedings before administrative authorities are not covered by its provisions. It further observes that the proceedings complained of lasted 12 years, 7 months and 3 days, out of which, after the entry into force of the 2004 Act, the proceedings were conducted by the Regional Administrative Court for 6 months only (from 17 September 2004 until 11 October 2004 and from 15 February 2006 until 10 July 2006, see §§ 29-30 and 34-35 above). Therefore, a domestic court dealing with a complaint under the 2004 Act would not be able to take into account the whole period of the administrative proceedings and find a violation of the applicant’s right to a trial within a reasonable time. It follows that in the present case a complaint under the 2004 Act cannot be regarded as an effective remedy with a sufficient degree of certainty and that the Government’s plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

45. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also

notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. The Government's observations were submitted after the expiry of the prescribed time-limit. The President of the Chamber therefore decided that they should not be included in the case file for consideration by the Court (see paragraph 5 above). In their comments on the applicant's Article 41 claims, they pointed to the complexity of the domestic proceedings and the applicant's own contribution to their length.

47. The applicant submitted that the "reasonable time" requirement laid down in Article 6 § 1 had not been complied with, referring to the long periods of unexplained inactivity on the part of the administrative authorities.

2. The Court's assessment

48. 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; *Beller v. Poland*, no. 51837/99, §§ 68-70, 1 February 2005).

49. The Court observes that the case involved a certain degree of complexity. However, it considers that this in itself cannot justify the overall length of the proceedings.

50. As regards the conduct of the applicant, the Court, having regard to the available evidence, does not find it established that the applicant substantially contributed to the delays in the proceedings. The Court acknowledges that the applicant lodged several appeals in the course of the impugned proceedings. However, following his appeals, the decisions given were several times quashed by the higher administrative authorities or by the courts and the case was remitted for further examination.

51. As regards the conduct of the relevant authorities, the Court notes that there were frequent periods of inactivity. By way of example, the Court observes that there was a period of almost 3 years of inactivity between 22 January 1996 when the Supreme Administrative Court quashed previous decisions and 10 February 1999, when the President of Legionowo imposed on the applicant's neighbour an obligation to obtain a building permit. Subsequently, there was a period of six months of inactivity between

25 February 1999 when the applicant appealed against the decision of the President of Legionowo and 23 August 1999 when the Mazowsze Governor quashed the challenged decision and remitted the case. The Court observes that there were other unexplained periods of inactivity in the subsequent proceedings, such as a period of twelve months between 26 May 2000 when the Legionowo Local Inspector of Construction Supervision made a demolition order and 29 May 2001 when the Mazowsze Regional Inspector of Construction Supervision quashed that decision and remitted the case.

52. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. Lastly, the applicant complained under Article 1 of Protocol No. 1 to the Convention, that the construction on a plot of land adjoining his property had reduced its value and limited his right to the peaceful enjoyment of his possessions. The Court observes, however, that the applicant did not lodge a cassation appeal against the judgment of the Warsaw Regional Administrative Court of 10 July 2006.

54. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 for failure to exhaust domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 20,000 euros (EUR) in respect of pecuniary damage.

57. The Government contested the claim.

58. The Court considers that the applicant must have suffered non-pecuniary damage, such as distress and frustration on account of the protracted length of the proceedings, which cannot be sufficiently compensated by the above finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant the overall sum of 10,000 euros (“EUR”) under that head.

B. Costs and expenses

59. The applicant also claimed 500 Polish zlotys (PLN) for the costs and expenses incurred before the domestic administrative authorities and courts.

60. The Government contested the claim.

61. 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 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 150 under this head.

C. Default interest

62. 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 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 and EUR 150 (one hundred and fifty euros) in respect of 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Giovanni Bonello
President