



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

FOURTH SECTION

CASE OF LIDIA KITA v. POLAND

(Application no. 27710/05)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

This judgment may be subject to editorial revision.

In the case of Lidia Kita 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,

Päivi Hirvelä,

Ledi Bianku, *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. 27710/05) 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 Lidia Kita (“the applicant”), on 18 July 2005.

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

3. On 23 October 2007 the President of the Fourth Section of the Court 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Brzeg.

A. Proceedings concerning the issuance of a building permit

5. On 2 July 1997 the applicant applied for a building permit in order to join two flats she rented by way of building an internal stairway.

6. On 15 July 1997 the Brzeg District Office issued the building permit as requested. The chairman of the Brzeg Municipal Property Management Board (*Miejski Zarząd Mienia Komunalnego*) lodged an interlocutory appeal against that decision.

7. On 29 August 1997 the Governor of Opole upheld the District Office's decision. The chairman of the Brzeg Municipal Property Management Board lodged an appeal against that decision. The applicant built a stairway between the two apartments in compliance with the building permit.

8. On 24 March 1999 the Supreme Administrative Court quashed both decisions and referred the case back for reconsideration, stating *inter alia* that the applicant had no right to make use of the flat for construction purposes.

9. On 16 July 1999 the applicant lodged a complaint alleging inactivity on the part of the mayor of Brzeg with the Supreme Administrative Court.

10. On 18 April 2001 the Supreme Administrative Court admitted that the proceedings in question had been lengthy and ordered the mayor to deal with the case within two months of the judgment being served on the parties.

11. On 5 July 2001 the mayor of Brzeg discontinued the relevant proceedings as being without purpose (*bezprzedmiotowe*), given the fact that the stairway had already been built. The applicant lodged an interlocutory appeal against that decision.

12. On 24 September 2001 the Opole Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) quashed the contested decision and referred the case back for reconsideration.

13. On 29 January 2002 the Brzeg District Governor's Office discontinued the relevant proceedings on the same basis as the mayor of Brzeg. The applicant lodged an interlocutory appeal against that decision.

14. On 24 April 2002 the Governor of Opole upheld the impugned decision. The applicant appealed.

15. On 21 December 2004 the Opole Regional Administrative Court dismissed the applicant's appeal.

16. On 20 January 2005 the applicant applied for a legal-aid lawyer to be appointed in order to lodge a cassation appeal on her behalf against the Regional Administrative Court's decision.

17. On 7 March 2005 the Regional Administrative Court dismissed the applicant's request.

18. On 14 June 2005 the Supreme Administrative Court upheld the lower court decision.

19. Eventually, the applicant failed to lodge a cassation appeal.

B. Civil proceedings for payment

20. On an unspecified date the Brzeg Municipality instituted civil proceedings for payment against the applicant, also seeking to have the flat vacated.

21. On 8 September 1999 the Brzeg District Court allowed most of the plaintiff's claim. The applicant lodged an appeal against that judgment.

22. On 6 March 2000 the Opole Regional Court varied the lower court's judgment so as to reduce considerably the amount of the payment awarded to the plaintiff.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. For a presentation of the domestic law concerning inactivity on the part of administrative authorities, see: *Kaniewski v. Poland*, no. 38049/02, 8 February 2006, and *Koss v. Poland*, no. 52495/99, 28 March 2006.

THE LAW

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

24. 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..."

25. The Government contested that argument.

26. The period to be taken into consideration began on 2 July 1997 and ended on 14 June 2005. It thus lasted seven years and five months for three levels of jurisdiction.

A. Admissibility

27. The Government raised a preliminary objection that the applicant had not exhausted the domestic remedies available to her under Polish law, as required by Article 35 § 1 of the Convention. They maintained that it was open to the applicant to lodge a complaint with the relevant higher authority

alleging inactivity on the part of the administrative authorities, as provided by Article 37 § 1 of the Polish Code of Administrative Procedure.

28. The applicant contested the Government's arguments.

29. The Court notes that the applicant lodged a complaint alleging inactivity on the part of the administrative authorities with the Supreme Administrative Court (see paragraph 9 above). The remedy the applicant used was therefore adequate and sufficient to afford her redress in respect of the alleged breach and she cannot be reproached for not having lodged a further complaint about inactivity with the higher administrative authority in order to fulfil her obligation under Article 35 § 1 (see *Kaniewski*, cited above, § 36).

30. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

31. 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

32. 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).

33. 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).

34. 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 it took the Opole Regional Administrative Court almost two years and three months to examine the applicant's appeal against the decision of the Governor of Opole (see paragraphs 14-15 above). The Court further observes that the present case concerns primarily the length of administrative proceedings. 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.

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

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

36. The applicant first complained that the proceedings in her case had been unfair. In particular, she alleged errors of fact and law committed by the courts, which moreover had incorrectly assessed the evidence. She alleged a breach of Article 6 § 1 of the Convention.

37. Under Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted.

38. Having said that, the Court observes that the applicant failed to lodge a cassation appeal against the Opole Regional Administrative Court judgment of 21 December 2004.

39. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE CIVIL PROCEEDINGS FOR PAYMENT

40. Lastly, the applicant complained that the civil proceedings for payment had been unfair.

41. The Court observes, however, that under Article 35 § 1 of the Convention:

“ The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken... ”

42. The Court notes that the proceedings in question ended with the Opole Regional Court’s judgment of 6 March 2000, more than six months before 18 July 2005, the date on which this complaint was submitted to the Court.

43. It follows that this part of the application has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 5,598 Polish zlotys (PLN) in respect of pecuniary damage. She also claimed that she was not able to assess the amount of non-pecuniary damage sustained and left the matter to the Court's discretion.

46. The Government did not express an opinion on the matter.

47. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim. On the other hand, it considers that the applicant must have sustained 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. Making its assessment on an equitable basis and having regard to the sum awarded by the domestic authorities, the Court awards the applicant 1,800 euros.

B. Costs and expenses

48. The applicant did not make any claim for costs and expenses incurred in the proceedings before the Court.

C. Default interest

49. 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 1,800 (one thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys 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 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Giovanni Bonello
President