



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

FOURTH SECTION

CASE OF GRACZYK v. POLAND

(Application no. 21246/05)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Graczyk v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 21246/05) 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 Joanna Graczyk (“the applicant”), on 12 May 2005.

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

3. The applicant alleged, in particular, that the length of the administrative proceedings had exceeded a reasonable time.

4. On 10 January 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1927 and lives in Poznań.

6. The applicant owns a house. In 1980 her neighbours constructed their house as the other part of the semi-detached house. It appears that their plumbing system was placed in a wall separating the two houses without necessary acoustic insulation. The applicant repeatedly complained about the noise caused by the neighbours’ plumbing system.

7. On 6 May 1993 the applicant lodged a complaint with the Poznań Regional Prosecutor, alleging inactivity on the part of the administrative authorities in dealing with her grievances. On 9 July 1993 the Regional Prosecutor applied to the Poznań District Office to institute proceedings with a view to determining whether the plumbing system complied with the applicable legal regulations.

8. On 31 January 1994 the Mayor of Poznań, who had assumed the competences of the District Office, refused to institute proceedings. On 29 March 1994 the Poznań Governor quashed that decision. Subsequently, on 18 April 1994 the Mayor of Poznań instituted proceedings. On 15 July 1994 the Mayor of Poznań discontinued the proceedings. It found that the applicant's neighbours' house had been constructed in accordance with the construction permit and that there had been no need to conduct any further proceedings. The applicant lodged an appeal against that decision.

9. On 29 September 1994 the Poznań Governor quashed the Mayor's decision. It held that it was not necessary to determine whether the plumbing system had been built in accordance with applicable regulations. The applicant appealed against that decision to the administrative court.

10. On 23 May 1995 the Supreme Administrative Court quashed the Governor's decision and the preceding decision of the Mayor of Poznań. It held that the Mayor of Poznań had been obliged to determine by means of a decision whether the plumbing system in the neighbours' house complied with the Construction Act and other applicable laws.

11. On 1 June 2000 the applicant lodged with the administrative court a complaint about the inactivity of the Poznań District Inspector of Construction Supervision. This authority in the meantime had become competent to issue a decision in the case. The applicant alleged that the District Inspector had failed to issue a decision as required by the judgment of 23 May 1995.

12. On 11 January 2001 the Supreme Administrative Court gave judgment in favour of the applicant. It ordered the Poznań District Inspector of Construction Supervision to issue a decision on the compatibility of the plumbing system in the neighbours' house with the applicable regulations within 30 days. It noted that despite its ruling of 23 May 1995 and the applicant's repeated complaints the authorities had remained inactive for nearly five years.

13. On 5 April 2001 the District Inspector issued a decision. It found that the plumbing system at issue complied with the relevant regulations. That decision was quashed on appeal on 13 July 2001.

14. On 18 April 2002 the District Inspector ordered the applicant's neighbours to provide an expert's report on the plumbing system. On 5 November 2003 an expert delivered his opinion, which revealed certain irregularities in the structure of the plumbing system.

15. The District Inspector issued another decision on 28 June 2004. It ordered the applicant's neighbours to carry out works with a view to making their plumbing system compatible with the applicable regulations. The applicant's neighbours appealed against that decision.

16. On 5 August 2004 the Regional Inspector of Construction Supervision upheld the decision on appeal. The applicant's neighbours lodged an appeal with the Regional Administrative Court.

17. On 19 January 2005 the applicant asked the court to accelerate the proceedings.

18. On 6 September 2005 the neighbours complied with the District Inspector's decision of 28 June 2004.

19. The administrative court dismissed their appeal on 4 April 2006.

20. On 14 June 2007 the General Inspector of Construction Supervision conducted an inspection of the building which did not reveal any noise caused by the neighbour's plumbing system.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant domestic law concerning inactivity on the part of administrative authorities is stated in the Court's judgments in cases *Kaniewski v. Poland*, no. 38049/02, 8 February 2006, and *Koss v. Poland*, no. 52495/99, 28 March 2006.

22. 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 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

23. 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 ..."

24. The Government contested that argument.

25. The period to be taken into consideration began on 18 April 1994 at the latest and ended on 6 September 2005. It thus lasted nearly eleven years and five months.

A. Admissibility

26. The Government submitted that the applicant had not exhausted the remedies available under Polish law. Firstly, they stressed that in respect of the proceedings pending before the Poznan Regional Court following the neighbours' appeal of 2 September 2004, the applicant could have made use of the remedies available under the 2004 Act. In particular she could have lodged a complaint about inactivity or after the termination of the proceedings, an action for damages resulting from the length of the proceedings.

27. Secondly, the Government argued that the applicant had failed to lodge a compensation claim with a civil court in order to seek redress for the alleged damage which had resulted from the inactivity of the administrative authorities and the Poznan Regional Administrative Court. They relied on Article 417¹ § 3 of the Civil Code.

28. The applicant contested the Government's submissions.

29. However, the Court notes that on 1 September 2004 the proceedings in the applicant's case had already been pending for ten years. It also observes that prior to that date the applicant resorted to remedies designed to accelerate the process of obtaining an administrative decision, such as an appeal under Article 37 of the Code of Administrative Procedure and a complaint lodged with the Supreme Administrative Court about the inactivity of the administrative authorities (see paragraphs 11 and 12 above).

30. The Court further observes that according to Article 417¹ § 3 of the Civil Code no claim for damages resulting from the unreasonable length of administrative proceedings may arise unless it was formally determined that there had been an unlawful failure to issue an administrative decision within the relevant time-limits. The Court also notes that the Government provided no evidence of established judicial practice to show that a claim for compensation based on Article 417¹ § 3 of the Civil Code was an effective remedy and have thus failed to substantiate their contention (see *Grabiński v. Poland*, no. 43702/02, § 74, 17 October 2006). For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

31. The Court notes that the application 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

32. The applicant maintained that the overall length of the proceedings and, in particular, the almost five-year-long period of inactivity on the part of the authorities could not be considered a “reasonable time” within the meaning of Article 6 of the Convention. She further submitted that there had been a violation of Article 6 § 1 of the Convention.

33. The Government submitted that the case had been very complex as it involved complicated legal and factual issues. They further agreed that the applicant had not significantly contributed to the length of the proceedings. Lastly, in view of the very complicated nature of the case the authorities had shown due diligence in the proceedings.

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

35. The Court observes that the case involved a certain degree of complexity on account of the need to establish legal and factual issues dating back to 1970 when the applicant’s neighbours received their construction permit. However, it considers that this in itself cannot justify the overall length of the proceedings.

36. As regards the conduct of the applicant, the Court, having regard to the available evidence, does not find it established that the applicant contributed to the delays in the proceedings.

37. As regards the conduct of the relevant authorities, the Court notes that there was a significant period of inactivity between May 1995 and June 2000 (see paragraphs 10, 11 above).

38. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant did not claim any particular sum in respect of pecuniary and non-pecuniary damage. However, she requested the Court to grant her just satisfaction in an amount it considered equitable, given the detriment suffered by her on account of the length of the proceedings in her case.

41. The Government objected, submitting that the applicant should have specified the amount claimed.

42. The Court considers that the applicant has certainly suffered non-pecuniary damage, such as distress and frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by the 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 6,000 euros (EUR) under that head.

B. Costs and expenses

43. The applicant did not claim any amount for the costs and expenses incurred before the domestic courts and before the Court.

C. Default interest

44. 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 application admissible;
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 6,000 (six thousand 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.

Done in English, and notified in writing on 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President