



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

FOURTH SECTION

CASE OF KRZEWSKI v. POLAND

(Application no. 11700/04)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Krzewski 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 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 11700/04) 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 Zenon Krzewski (“the applicant”), on 3 December 2003.

2. 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 Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Wrocław.

5. On 23 April 1999 the applicant notified the authorities of the illegal conversion of premises (a former boiler room) adjacent to his apartment into a grocery shop.

6. On 23 June 1999 administrative proceedings were initiated by the District Inspectorate for the Supervision of Construction (*Powiatowy Inspektorat Nadzoru Budowlanego*).

7. On 15 July 1999 the applicant lodged a complaint with the Supreme Administrative Court – Regional Branch – in Wrocław alleging that the

Regional Construction Inspector had failed to take any action. On 8 September 1999 the applicant withdrew his complaint, as a result of which, on 20 September 1999, the court decided to discontinue its examination.

8. On 17 August 1999 the District Construction Inspector made an on-site inspection. The applicant failed to participate in the inspection, despite having been informed about it.

9. On 23 August 1999, following a visit to the site, the District Inspectorate for the Supervision of Construction issued an injunction against the illegal conversion of the premises in question.

10. On 7 September 1999 a party to the proceedings filed an appeal against the decision of 23 August 1999.

11. By a letter of 9 September 1999 the applicant was informed that all the evidence had been collected in the case.

12. By a letter of 21 September 1999 the owner of the premises, the housing co-operative “Maślice” (*Spółdzielnia Budowlano-Mieszkaniowa*), ordered Mr J. Sz., who had been leasing the former boiler room and running the grocery shop, to cease his activities with immediate effect.

13. On 29 September 1999 the District Inspectorate for the Supervision of Construction ordered the housing co-operative to bring the existing situation of the premises into conformity with the law by submitting a set of required documents (post-construction documentation and expert opinions). The Inspectorate alleged that the construction was not compatible with the local master plan.

14. On 5 October 1999 the applicant lodged an interlocutory appeal against that decision.

15. On 26 October 1999 the housing co-operative filed with the District Inspectorate the documents requested in the decision of 29 September 1999. The co-operative further requested that permission be granted for the grocery shop.

16. On 20 December 1999 the Regional Inspectorate for the Supervision of Construction upheld the impugned decision, finding that it had been issued in accordance with the law.

17. On 28 December 1999 the applicant lodged an appeal with the Supreme Administrative Court.

18. On 2 June 2000 the applicant filed an application to have the decision of 20 December 1999 suspended. His application was dismissed by the Supreme Administrative Court on 12 June 2000 due to the applicant’s failure to substantiate his allegations that he would incur damage.

19. On 9 August 2000 the District Inspectorate decided to have the case transferred to the relevant department of the Municipality Office.

20. On 19 October 2000 the Supreme Administrative Court dismissed the applicant’s appeal of 28 December 1999. The court found that the

construction works carried out in the grocery shop met the technical requirements and were in compliance with the local master plan.

21. On 13 December 2000 the Mayor of Wrocław granted the housing co-operative the requested permission. Relying on all the documents collected in the case, the Mayor found that the premises met all the technical requirements and could be converted into a grocery shop.

22. On 3 January 2001 the applicant lodged an interlocutory appeal against that decision.

23. On 28 February 2001 the Dolnośląski Governor quashed the impugned decision and remitted the case to the first-instance body for reconsideration, finding the proceedings to be tainted with procedural shortcomings. He stressed, in particular, that no on-site inspection had been carried out.

24. On 11 May 2001 the Mayor of Wrocław again granted the housing cooperative the requested permission, following visits to the site in question on 17 and 20 April 2001.

25. On 9 July 2001 the applicant appealed against that decision. On 28 August 2001 the Dolnośląski Governor upheld the Mayor's decision.

26. On 3 September 2001 the applicant lodged an appeal against the Governor's decision with the Wrocław Regional Administrative Court.

27. On 16 June 2004 the Wrocław Regional Administrative Court dismissed the applicant's appeal. The applicant lodged a cassation appeal against that judgment.

28. On 31 May 2005 the Supreme Administrative Court quashed the contested judgment and remitted the case to the Wrocław Regional Administrative Court for reconsideration.

29. On 22 November 2005 the Wrocław Regional Administrative Court quashed the Governor's decision of 28 August 2001. It found that some evidence had been disregarded during the examination of the case and that some of the discrepancies in the findings of the various administrative bodies had not been clarified.

30. On 21 March 2006 the Dolnośląski Governor remitted the case for re-examination by the District Inspectorate for the Supervision of Construction.

31. On 27 March 2006 the applicant lodged a complaint with the Wrocław Regional Administrative Court alleging that the Dolnośląski Governor had failed to take any action following the court's judgment of 22 November 2005.

32. In January 2007 the applicant received a letter from the District Inspectorate for the Supervision of Construction informing him that clarification proceedings (*postępowanie wyjaśniające*) had been instituted in order to establish the current facts of the case.

33. By a letter of 23 July 2007 the applicant asked the Municipality Office whether the lessee of the premises had a licence to sell alcoholic

beverages in the grocery shop. In reply, on 22 August 2007, the applicant was informed that the licence had been granted in 2006 following consultations with the relevant authorities.

34. On 29 August 2007 the District Inspectorate for the Supervision of Construction decided to reinstate administrative proceedings.

35. On 30 January 2008 the District Inspectorate decided that the obligations imposed by the decision of 29 September 1999 had been complied with and that the construction works carried out in the premises had been brought into line with the law.

36. It appears that the applicant filed an appeal against that decision and that the proceedings are currently pending.

B. Proceedings under the 2004 Act

37. On 9 August 2005 the applicant lodged a complaint with the Supreme Administrative Court under section 5 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”). He sought a ruling declaring that the length of the proceedings before the Wrocław Regional Administrative Court had been excessive and just satisfaction in the amount of 10,000 Polish zlotys (PLN) – the maximum amount of compensation available under section 12 of the 2004 Act (approximately 2,941 euros (EUR)).

38. On 19 September 2005 the Supreme Administrative Court gave a decision in which it acknowledged the excessive length of the proceedings, finding that there had been three years and ten months of unjustified inactivity on the part of the Wrocław Regional Administrative Court. It awarded the applicant PLN 1,000 (approx. EUR 294) in just satisfaction. In determining the amount of just satisfaction the court relied on the nature of the case and the period of time the applicant had had to wait to have his case examined, but also on the “lack of initiative on the part of the applicant in terms of requesting the court to give his case priority or to examine the case under the simplified procedure”.

39. The Supreme Administrative Court examined only the part of the administrative proceedings which had been held before the Regional Administrative Court. It did not take into account the period during which the case had been handled by administrative bodies, because the 2004 Act referred only to “judicial proceedings”.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. *Inactivity of administrative authorities*

40. For a summary of the relevant domestic law, see *Kaniewski v. Poland*, no. 38049/02, 8 February 2006 and *Koss v. Poland*, no. 52495/99, 28 March 2006.

2. *Length of proceedings*

41. 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 UNFAIRNESS OF THE PROCEEDINGS

42. The applicant first complained that the proceedings in his case had been unfair. In particular, he alleged that errors of fact and law had been committed by the administrative bodies and the administrative courts. He alleged a breach of Article 6 § 1 of the Convention, which, in its relevant part, reads:

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

43. The Court notes, however, that, as can be seen from the case file, the administrative proceedings in the applicant’s case are currently still pending, so his complaint in this respect is premature.

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

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

44. 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...”

45. The Government contested that argument.

46. The period to be taken into consideration began on 23 June 1999 and on 30 January 2008 had not yet ended. On that date it had already lasted eight years and seven months for three levels of jurisdiction.

A. Admissibility

1. The Government’s plea of non-exhaustion of domestic remedies

47. 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 he had failed several times to lodge a complaint about the inactivity of the administrative authorities as he could have done under Polish law. They admitted, however, that on one occasion, namely on 27 March 2006, the applicant had lodged a complaint with the Wrocław Regional Administrative Court alleging that the Dolnośląski Governor had failed to take any action.

48. The Government further maintained that, following the Supreme Administrative Court’s decision of 19 September 2005, the applicant could have filed an action for damages under Article 417 of the Civil Code read in conjunction with section 15 of the 2004 Act.

49. The applicant contested the Government’s arguments and stressed that he had had recourse to all available domestic remedies: he had filed a complaint about the inactivity of the administrative bodies and a complaint under the 2004 Act.

50. The Court reiterates 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. 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 *Aksoy v.*

Turkey, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

51. In this connection the Court notes that the applicant did lodge a complaint with the relevant higher authority alleging inactivity on the part of the administrative authorities, as provided for by Article 37 § 1 of the Polish Code of Administrative Procedure of 1960 (see paragraph 31 above). The Court further notes that the applicant also had recourse to the remedies available under the 2004 Act (see paragraphs 37–39 above). As to the latter, the Court observes that it has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak v. Poland* (dec.) no. 24549/03, §§ 37–43).

52. With regard to the Government's second claim that the applicant failed to institute proceedings for damages under Article 417 of the Civil Code read in conjunction with section 15 of the 2004 Act, the Court 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, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001; *Kaniewski v. Poland*, no. 38049/02, §§ 32–39, 8 November 2005; and *Cichla v. Poland*, no. 18036/03, §§ 23–26, 10 October 2006).

53. The Court considers therefore that, having exhausted the available remedies provided by the Polish Code of Administrative Procedure of 1960, as well as the 2004 Act, the applicant was not required to embark on another attempt to obtain redress by bringing an additional civil action for compensation. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

2. The applicant's victim status – compatibility ratione personae

54. In the present case the Supreme Administrative Court acknowledged a breach of the applicant's right to a hearing within a reasonable time and awarded him the equivalent of EUR 294 in respect of non-pecuniary damage. The just satisfaction granted by the court amounts to approximately 8.3% of what the Court would be likely to have awarded the applicant at that time in accordance with its practice, taking into account the particular circumstances of the proceedings. Therefore the Court finds that the redress afforded to the applicant at domestic level, considered on the basis of the

facts of which he complains in the Convention proceedings, was insufficient.

55. Having regard to the criteria for determining victim status in respect of length-of-proceedings complaints (as set out in: *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-....; *Scordino v. Italy* (no.1) [GC], no. 36813/97, §§ 193-215, 29 March 2006; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004), the Court concludes that the complaint cannot be rejected as being incompatible *ratione personae* with the Convention.

56. 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

57. 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).

58. 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).

59. 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.

III ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

60. Regarding the applicant’s allegations that his complaint about a breach of his right to a trial within a reasonable time was not effective, the Court considers it appropriate to raise of its own motion the issue of Poland’s compliance with the requirements of Article 13 of the Convention on account of indications that the applicant had no effective domestic remedy in respect of the protracted length of proceedings in his case. Article 13 provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

61. The Government refrained from making any comments in this respect.

62. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. However, the “effectiveness” of a “remedy” within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudla v. Poland* [GC], no. 30210/96, §§ 154 et seq., ECHR 2000-XI, §§ 156-57).

63. While the subsidiarity principle underlying the Convention system requires the Contracting States to introduce a mechanism addressing complaints about the excessive length of proceedings within the national legal system, they are afforded – subject to compliance with the requirements of the Convention – some discretion as to the manner in which they provide individuals with the relief required by Article 13 and conform to their Convention obligation under that provision. In particular, where the State has introduced a compensatory remedy, the Court must leave to it a wide margin of appreciation and allow it to organise the remedy – including the interpretation and application of the notion of “damage” in a given case – in a manner consistent with its own legal system, traditions and the standard of living in the country concerned (see *Kudla*, *ibid.*, and *Scordino (no. 1)*, cited above, §§ 188-89).

64. The fact that in the present case the applicant’s claim for just satisfaction failed and that the redress obtained from the domestic court was not sufficient for Convention purposes does not in itself render the remedy under the 2004 Act incompatible with Article 13, albeit that it has consequences for the Court’s assessment of his victim status in respect of the alleged breach of the reasonable-time requirement (see paragraph 54 above, with references to the Court’s case-law, and, *mutatis mutandis*, *Zarb v. Malta*, no. 16631/04, §§ 49-52, 4 July 2006, and *Figiel v. Poland*, no. 38190/05, §29, 17 July 2008).

65. As stated above, the expression “effective remedy” used in Article 13 cannot be interpreted as a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see paragraph 61 above, and, also, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006).

In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant’s right to an effective remedy under Article 13 of the Convention has not been respected.

66. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government contested the claim, finding the amount to be exorbitant.

70. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 3,300 under that head.

B. Costs and expenses

71. The applicant also claimed EUR 60¹ for the costs and expenses incurred before the Court. He attached receipts for postal stamps he had paid for while corresponding with the Court during the examination of the present application.

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

73. 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 that it should award the full sum claimed.

¹ PLN 207

C. Default interest

74. 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, the following amounts to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,300 (three thousand three hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 60 (sixty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (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.

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

Lawrence Early
Registrar

Nicolas Bratza
President