



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

FOURTH SECTION

CASE OF KLIBER v. POLAND

(Application no. 11522/03)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Kliber 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 11522/03) 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 Lech Kliber (“the applicant”), on 28 March 2003.

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

3. On 16 January 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was 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 1938 and lives in Otwock.

A. First set of administrative proceedings

1. Course of the proceedings before the disjointer

5. The applicant lives in a block of flats in Otwock.

6. In 1981 (according to the applicant) or in 1985 (according to the applicant's neighbour) the applicant's neighbour fitted bars to his balcony in such a way that they could serve as a ladder to the applicant's apartment on the first floor, and subsequently, in 1994, he adapted part of the staircase as a cellar by constructing a wall, allegedly without the required permit.

7. On 27 June 1994 the applicant informed the competent administrative authority about the construction works and requested that his neighbour be ordered to dismantle the bars and the wall on the staircase.

8. On 28 February 1995, following numerous letters from the applicant seeking to accelerate the proceedings, the Otwock District Office (*Urząd Rejonowy*) ordered the applicant's neighbour to carry out some reconstruction works on the bars. It did not refer to the wall on the staircase.

9. On an unspecified date the applicant appealed to the Warsaw Governor (*Wojewoda*).

10. The Warsaw Governor did not give a decision within the statutory fourteen-day time-limit. Therefore, on 12 March 1995, the applicant complained to the Chief Building Inspectorate (*Główny Urząd Nadzoru Budowlanego*).

11. On 18 July 1995 the Chief Building Inspector allowed the complaint and ordered the Governor to give a decision within fourteen days.

12. On 7 August 1995 the Warsaw Governor upheld the first-instance decision. The Governor did not refer to the wall.

13. On 7 September 1995 the applicant lodged a complaint with the Supreme Administrative Court (*Najwyższy Sąd Administracyjny*).

14. On 13 February 1997 the Supreme Administrative Court quashed the challenged decision and the decision of the first-instance authority.

15. Apparently the Supreme Administrative Court scheduled another hearing to deal with a second part of the applicant's complaint, concerning the wall constructed on his staircase.

16. On 4 June 1997 the Supreme Administrative Court gave another judgment and ordered the Otwock District Office to give a decision in the matter of the wall constructed by the applicant's neighbour, within one month of the date of delivery of the judgment.

17. From the day on which the Supreme Administrative Court gave its second judgment, the administrative proceedings were split into two separate sets of proceedings.

2. Proceedings concerning the bars fitted by the applicant's neighbour

18. On 6 November 1997 the Otwock District Office ordered that expert opinions concerning fire regulations be obtained and imposed on the applicant's neighbour an obligation to produce, within three months, a new specification for the installation of the bars on his balcony.

19. The applicant's neighbour failed to comply with the above-mentioned order and, on 10 June 1998, the Otwock District Office sent him a reminder, set an additional three-week time-limit to carry out the necessary works and informed him that failure to comply with the order within the new time-limit would result in compulsory demolition of the bars.

20. The applicant's neighbour again did not comply with the order.

21. On 16 September 1998 the Otwock District Office ordered compulsory demolition of the bars.

22. On 28 September 1998 the applicant appealed against that decision holding that the demolition order should have concerned not only the bars, but also the canopy over the applicant's neighbour's balcony.

23. On 17 February 1999 the applicant complained to the Supreme Administrative Court of inactivity on the part of the administration.

24. On 24 July 2002 the applicant again lodged with the Supreme Administrative Court a complaint of inactivity on the part of the administrative authorities.

25. On 21 October 2002 the Supreme Administrative Court acknowledged that "unreasonable delay" had occurred between 28 September 1998 (the date on which the applicant had lodged his appeal against the first-instance decision) and 9 October 2002 (the date on which the appellate administrative authority gave its decision, see below). However, the court, finding that the decision following the applicant's appeal had just been given by the Mazowsze Regional Inspector of Construction Supervision, discontinued the proceedings and refused to impose a fine on the authority for delay.

26. On 9 October 2002 the Mazowsze Regional Inspector of Construction Supervision quashed the Otwock District Office's decision of 16 September 1998 and discontinued the proceedings, finding that the challenged decision had been founded on a wrong legal basis.

27. On 9 November 2002 the applicant appealed.

28. On 25 June 2004 the Warsaw Regional Administrative Court quashed the challenged decision, which meant that the decision ordering demolition of the bars remained in force.

29. On 6 October 2004 the Mazowsze Regional Inspector of Construction Supervision upheld the decision of 16 September 1998, which had ordered the compulsory demolition of the bars.

30. On 10 October 2004 the applicant lodged with the Chief Inspector of Construction Supervision (*Główny Inspektor Nadzoru Budowlanego*), a complaint of inactivity on the part of the Warsaw Regional Building Inspector, who had failed to enforce the final judgment of the Regional Administrative Court.

31. On an unspecified date the applicant's neighbour appealed against the decision of 6 October 2004 to the Warsaw Regional Administrative Court.

32. On 10 January 2005 the Warsaw Regional Administrative Court ordered the applicant's neighbour to rectify some procedural shortcomings of his appeal. He failed to do so within the prescribed time-limit and consequently on 7 February 2005, the Warsaw Regional Administrative Court dismissed his appeal.

33. On 6 January 2005 the Chief Inspector of Construction Supervision found the applicant's complaint of inactivity ill-founded and informed the applicant that the competent authority to enforce the final judgment and order demolition of the bars was the Otwock Local Inspector of Construction Supervision (*Powiatowy Inspektor Nadzoru Budowlanego*).

34. On 12 July 2008 the applicant informed the Registry that the bars had been dismantled in 2005.

3. Proceedings concerning the wall constructed by the applicant's neighbour

35. On 29 September 1997, relying on the Supreme Administrative Court's judgment of 4 June 1997, the Otwock District Office discontinued the proceedings in respect of the wall constructed on the applicant's staircase, finding that, at the relevant time, no building permit for such a wall had been necessary.

36. On 27 October 1997 the applicant appealed.

37. On 6 February 1998 the Warsaw Governor upheld the challenged decision.

38. On 25 March 1998 the applicant lodged a complaint with the Supreme Administrative Court.

39. On 4 July 2002 the Supreme Administrative Court ordered the Mazowsze Regional Inspector of Construction Supervision (*Wojewódzki Inspektor Nadzoru Budowlanego*), who had meanwhile become the authority with jurisdiction to deal with that case, to send it the file concerning the challenged decision.

40. On 24 July 2002 the applicant lodged with the Supreme Administrative Court a complaint of inactivity on the part of the administrative authorities.

41. On 7 October 2002 the Supreme Administrative Court dismissed the applicant's complaint against the Warsaw Governor's decision of 6 February 1998.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

THE LAW

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

43. The applicant complained that the length of the proceedings concerning the demolition order in respect of the bars 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..."

44. The Government submitted their observations on the admissibility and merits of the application after the expiry of the prescribed time-limit. For that reason, the President of the Chamber refused to admit them.

45. The Court notes that the proceedings commenced on 27 June 1994, when the applicant requested the administrative authorities to give an order imposing on his neighbour an obligation to dismantle the bars and terminated on 7 February 2005. The period to be taken into consideration thus lasted ten years, seven months and fifteen days.

A. Admissibility

46. The Court 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

47. 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).

48. The Court observes that the case concerned an order to dismantle the bars, constructed without a required permit. There is no appearance that the administrative authorities faced any particular difficulties in resolving that problem.

49. 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.

50. 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 one and a half years of inactivity between 7 September 1995, when the applicant lodged a complaint with the Supreme Administrative Court, and 4 June 1997, when the court gave judgment. Subsequently, there was a period of over three years of inactivity between 28 September 1999, when the applicant appealed against the decision of the Otwock District Office, and 9 October 2002, when the Mazowsze Regional Inspector of Construction Supervision quashed the challenged decision and discontinued the proceedings. The Court further observes that the decisions given in the applicant's case were subsequently quashed and the case remitted for re-examination on numerous occasions.

51. 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

52. The applicant further complained about the length of the proceedings concerning the wall constructed by the applicant's neighbour.

53. The Court notes that this set of proceedings, which was not communicated to the Government, commenced on 27 June 1994 and terminated on 7 October 2002. The period to be taken into consideration thus lasted eight years, three months and twenty-two days, of which the period of examination of the case by the administrative courts amounts to four years, six months and fourteen days.

54. The Court reiterates that it had already found an action for damages under Article 417 of the Civil Code taken together with section 16 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”) to be an effective remedy in relation to judicial proceedings which terminated less than three years before the entry into force of the 2004 Act (*Krasuski v. Poland*, no. 61444/00, § 72, ECHR 2005-V). The applicant did not avail himself of that remedy.

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

56. Lastly, the applicant complained under Article 8 of the Convention, without further explanation.

57. Having examined all material submitted to it, the Court observes that there is no appearance that the administrative proceedings had such an impact on the applicant’s family life as to raise an arguable issue under Article 8 of the Convention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

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

62. 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 EUR 8,500 in respect of non-pecuniary damage.

B. Costs and expenses

63. The applicant also claimed EUR 1,600 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

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

65. 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 are reasonable as to quantum. In the present case, regard being had to the information in its

possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 150 for the proceedings before the Court.

C. Default interest

66. 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 first set of administrative 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 Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 8,500 (eight thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 150 (one hundred and fifty euros) in respect of costs and expenses, 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 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President