



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KAMECKI AND OTHERS v. POLAND

(Application no. 62506/00)

JUDGMENT

STRASBOURG

9 June 2009

FINAL

09/09/2009

This judgment may be subject to editorial revision.

In the case of Kamecki and Others 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 19 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 62506/00) 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 three Polish nationals (two brothers and one sister), Mr Krzysztof Kamecki, Mr Sławomir Kamecki and Mrs Irena Kamecka-Kossowska (“the applicants”), on 20 March 2000.

2. The applicants were represented by Ms H. Opalska, a lawyer practising in Warsaw. In December 2006 the third applicant withdrew Ms Opalska’s power of attorney. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the length of the administrative proceedings had been unreasonable.

4. On 10 January 2006 the Court decided to give notice of the application to the Government. It 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 applicants, Mr Krzysztof Kamecki, Sławomir Kamecki and Irena Kamecka-Kossowska, were born in 1954, 1951 and 1949 respectively.

The first applicant lives in Vienna, Austria, the second in Puławy, Poland, and the third in Kleve, Germany.

6. The applicants own a plot of land and a house in Puławy, Poland. They have been involved in several sets of administrative proceedings relating to an apartment block constructed on a neighbouring plot of land.

A. The local development plan

7. In the local development plan the plots of land in question were intended for construction of one-family houses, multi-family houses and for services and commercial purposes. In 1997 the Południe housing cooperative applied to change the local development plan in view of their intention to construct an apartment block.

8. On 29 September 1997 the Puławy City Council (*Rada Miasta*) allowed the application and amended the local development plan deciding that the main purpose of the land would be housing. The applicants learned about the decision on an unspecified later date and complained about it to the Supreme Administrative Court.

9. On 18 February 1999 the Supreme Administrative Court examined the complaint and found that the impugned decision had been given in violation of the law as the applicants had not been informed about the proceedings. However, the court did not quash the decision as more than one year had elapsed and domestic law did not allow for it to be quashed after that period.

B. Planning permission

10. On 16 December 1997 the Mayor of Puławy (*Prezydent Miasta Puławy*) granted planning permission (concerning the construction of the apartment block).

11. The applicants appealed, but on 19 February 1998 the Lublin Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*) dismissed the appeal and upheld the decision. The applicants lodged a complaint with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

12. On 11 March 1999 the Supreme Administrative Court allowed the complaint and declared both decisions null and void (*stwierdzenie nieważności*). The court established that the local authorities “had violated the elementary rules of the Code of Administrative Procedure”. In particular they had not notified the applicants about the proceedings as they had addressed all letters to their late mother, which had deprived each applicant of their right to participate in the proceedings as a party.

C. Building permit

13. On 13 January 1998 the President of the Południe housing cooperative applied for a building permit for construction of the apartment block. The L-shaped block would share a border with the applicants' property on two sides.

14. On 25 March 1998 the Mayor of Puławy (*Prezydent Miasta Puławy*) granted the application. The applicants appealed.

15. On 14 May 1998 the Lubelski Governor (*Wojewoda Lubelski*) dismissed the appeal. The applicants lodged a complaint with the Supreme Administrative Court.

16. Subsequently, as the Governor's decision became final, the housing cooperative started construction of the apartment block.

17. The applicants applied to stay the enforcement of the Lubelski Governor's decision pending the examination of the complaint by the Supreme Administrative Court. However, on 14 August 1998 the Supreme Administrative Court dismissed their application.

18. On 19 June 1999 the Supreme Administrative Court allowed the appeal, quashed both impugned decisions and remitted the case. The court established that the local authorities had given decisions while the proceedings challenging the local development plan were pending.

19. The case was remitted to the local authorities. Subsequently, the applicants unsuccessfully attempted to obtain a decision ordering the demolition of the apartment block (see facts below).

20. On 7 October 1999 the Mayor of Puławy gave a decision in which he again granted a building permit and allowed the completion of the construction of the apartment block.

21. The applicants appealed. In their appeal they challenged, *inter alia*, the impartiality of the Mayor of Puławy submitting that he had a financial interest in the case.

22. On 29 October 1999 the Lubelski Governor dismissed the appeal. The applicants lodged a complaint with the Supreme Administrative Court.

23. On 10 December 1999 the apartment block in question was finished and the tenants moved in.

24. On 19 February 2001 the Supreme Administrative Court allowed the complaint, quashed both impugned decisions and remitted the case. The court found that the decision given by the local authorities had been erroneous; nevertheless, since in the meantime the block had been finished the decisions on the merits were pointless and the proceedings should have been discontinued.

25. On 11 September 2001 the Mayor of Puławy decided to discontinue the proceedings. On 7 November 2001 the Lublin Governor upheld the decision.

26. The applicants lodged a complaint with the Supreme Administrative Court. On 4 July 2003 the Supreme Administrative Court quashed

the decisions and remitted the case. It found that the decisions had been given in violation of the law as the local authorities had failed to examine the applicants' reasoned submissions that the Mayor of Puławy should be excluded from the examination of the case.

27. Subsequently, on 30 December 2003, the Lubelski Governor decided that "taking into account the authority's concern to maintain objectiveness and impartiality," the Mayor of Puławy should be excluded from the examination of the case.

28. On 9 February 2004 the Mayor of the District (*Starosta Powiatowy*) discontinued the proceedings. The applicants lodged an appeal.

29. On 19 April 2004 the Lubelski Governor upheld the impugned decision to discontinue the proceedings.

30. The decision was upheld on 28 October 2004 by the Regional Administrative Court. The second applicant lodged an appeal with the Supreme Administrative Court complaining that not all the applicants had been informed about the proceedings.

31. On 15 November 2005 the Supreme Administrative Court allowed the appeal and quashed the judgment and both preceding decisions and remitted the case. It found that the administrative authority had failed to summon the third applicant. Nevertheless, the court underlined that the proceedings should be discontinued because the construction works had been completed.

32. On 30 March 2006 the Mayor of the District discontinued the proceedings.

33. On 18 September 2006 the Lubelski Governor upheld the decision. The applicants lodged a complaint with the Regional Administrative Court.

34. On 18 September 2007 the Lublin Regional Administrative Court dismissed the complaint. The first applicant lodged an appeal against this decision.

35. On 27 February 2009 the Supreme Administrative Court dismissed their cassation appeal and finally discontinued the proceedings.

D. Other sets of proceedings

36. In 1999 the applicants requested the District Building Inspector (*Powiatowy Inspektor Nadzoru Budowlanego*) to stop the construction and to demolish the apartment block. Their application was dismissed on 19 June 2001 by the Supreme Administrative Court. The court found that the block had been built on the basis of final building permits and thus it could not be considered illegal although the permits themselves had been retrospectively quashed.

37. On 23 February 2004 the applicants requested the District Building Inspector to order the cooperative to carry out certain works so the apartment block would comply with legal requirements. The case was

examined by various administrative authorities who dismissed the applicants' allegations finding that the building complied with the relevant standards. In the most recent decision, given by the District Building Inspector on 4 April 2007, the applicants were informed that no shortcomings regarding the construction of the block had been established. If the construction had caused negative consequences for the applicants, they should seek damages and compensation by lodging a civil action. Only the civil courts, and not the administrative authorities, were competent to deal with a claim for damages.

II. RELEVANT DOMESTIC LAW

38. Under Article 35 of the Code of Administrative Procedure ("the Code") of 1960 an administrative authority should give a decision on the merits of a case within two months. If this time-limit has not been complied with, the authority must, under Article 36 of the Code, inform the parties of that fact, explain the reasons for the delay and fix a new time-limit.

39. A party to administrative proceedings may make a complaint under Article 37 of the Code in order to urge the relevant administrative authority to issue a decision within the time-limits fixed in the Code. Moreover, in cases where an authority persistently failed to do so, a party could lodge, under sections 17, 26 and 30 of the Supreme Administrative Court Act 1995 ("the 1995 Act") as in force at the material time, a complaint with the Supreme Administrative Court about the authority's failure to give a decision.

40. In cases where allegations of inactivity were well-founded, the Supreme Administrative Court could oblige that authority to issue a decision. Under section 30 of the Act, the decision of the Supreme Administrative Court ordering an authority to put an end to its inactivity was legally binding on the authority concerned. If the authority did not comply with the decision, the court could, under section 31 of the 1995 Act, impose a fine on it. It could also itself give a ruling on the merits of the administrative case.

41. The 1995 Act was repealed and replaced by the Law of 30 August 2002 on Proceedings before Administrative Courts (*Prawo o postępowaniu przed sądami administracyjnymi*) ("the 2002 Act"), which entered into force on 1 January 2004. Section 3 (2) of the 2002 Act contains provisions analogous to section 17 of the 1995 Act. It provides that administrative courts examine complaints about inactivity on the part of authorities obliged to issue an administrative decision or to carry out enforcement proceedings. Under section 149, if a complaint is well-founded, an administrative court shall oblige the authority concerned to issue a decision, to perform

a specific act, or to confirm, declare, or recognise a right or obligation provided for by law.

42. On 17 September 2004 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”) entered into force. It sets out various legal means designed to counteract and/or redress the undue length of judicial proceedings. For further references concerning the relevant domestic law and practice in respect of remedies available for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, see 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

43. The applicants complained that the length of the administrative proceedings concerning the building permit 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 contested that argument.

45. The Court notes that the impugned set of proceedings started on 13 January 1998 and ended with the Supreme Administrative Court’s judgment of 27 February 2009.

Thus the period to be taken into consideration lasted over eleven years.

A. Admissibility

46. The Government raised a preliminary objection that the applicants had not exhausted domestic remedies available to them under Polish law, as required by Article 35 § 1 of the Convention. They maintained that it was open to the applicants to make use of the usual remedies to counteract the inactivity of the authority obliged to give an administrative decision in the case. They relied on Article 37 of the Code of Administrative Procedure and on sections 16 and 17 of the Supreme Administrative Court

Act 1995, submitting that the applicants could lodge complaints about the inactivity of the relevant administrative body, first with the higher authority and, subsequently, with the Supreme Administrative Court. In addition they submitted that it was open to the applicants to lodge a complaint under the 2004 Act about the length of the judicial stages of the proceedings.

47. The applicants contested these arguments.

48. The Court first notes that the remedies relied on by the Government can be used against the inactivity of an authority obliged to give an administrative decision, as provided for by Article 35 of the Code. However, in the present case the inactivity, and the substantial delay thus caused, occurred not before an administrative authority but on three occasions before the Supreme Administrative Court. It occurred firstly between 14 May 1998 and 19 June 1999, secondly, between 29 October 1999 and 19 February 2001, and lastly, between 7 November 2001 and 7 July 2003. The Court has already held that at the material time there was no remedy that could be regarded as an effective remedy for delays occurring before the Supreme Administrative Court (see *Olesiński v. Poland*, no. 12550/02, § 28, 18 December 2007). Furthermore, the Court is not persuaded that prior to the date of its entry into force on 7 September 2004 the 2004 Act would have offered such a remedy in the applicants' case.

49. Secondly, the Court considers that the total length of the proceedings should be attributed not to the inactivity of the administrative authorities but to a repeated pattern of issuing decisions with various, mostly procedural, shortcomings that were subsequently quashed by the administrative courts. As a result, the administrative courts quashed the decisions and remitted the case to the local authorities on four occasions (see paragraphs 18, 24, 26 and 31 above). Thus, the Court finds that the usual remedies to counteract the inactivity of an administrative authority available in the Code of Administrative Procedure would not have been effective in the present case (see *Stevens v. Poland*, no. 13568/02, § 45, 24 October 2006).

50. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

51. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

52. 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 applicants and the relevant authorities and what was

at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

53. 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).

54. 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 the case lay dormant before the Supreme Administrative Court on several occasions (see paragraph 49 above). No explanation has been provided by the Government for such substantial delays. Having regard to its case-law on the subject, and particularly the fact that the proceedings in this case had been pending before various administrative authorities for over eleven years, the Court considers that 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicants complained that the proceedings were unfair in that the local authorities and the District Building Inspector had not been impartial and had issued decisions in violation of domestic law. They complained, invoking Article 13 of the Convention, that the Supreme Administrative Court’s judgments had not been enforced.

Moreover, the applicants complained that the facts of the case, in particular allowing the construction of the apartment block, disclosed a violation of Article 8 of the Convention and Article 1 of Protocol No.1 to the Convention. They submitted that the investor had built the block in spite of the fact that the decision granting him the building permit had been subsequently quashed. Their right to respect for private and family life had also been violated by the authorities’ failure to protect them from the illegal construction on the neighbouring property which had not been foreseen in the local development plan. The privacy of everyday life had been destroyed by the fact that they had to tolerate 100 new neighbours. Moreover, the applicants submitted that they had exhausted all available domestic remedies available to them.

56. The Government contested these arguments and maintained that the apartment block in question had not been an illegal construction although the administrative proceedings concerning the building permit disclosed some irregularities of a procedural nature. They submitted that the major part of the land in question had been, at least since the 1970s, designated for multi-family housing. It could not therefore be said that the local development plan was suddenly altered to a substantial degree. Moreover,

the applicants did not sustain any damage on account of the apartment block having been constructed on the adjacent plot of land. In particular, they were not prevented from constructing on the land belonging to them as the local authorities had granted the first applicant planning permission in 1997 and 2001. Only one of the three applicants still lived in Puławy and the others had been living in Austria and in Germany and therefore they could not claim a violation of their right to respect for their “home” within the meaning of Article 8 of the Convention. Finally, the Government indicated several types of remedies which the applicants should have exhausted before making their complaint to the Court. In particular they should have brought a civil action for compensation if they had sustained any damage in consequence of the actions of public authorities or the private investor. The Government underlined that the apartment block had been built legally, in accordance with all safety and technical requirements, and that thus there had been no obligation on the authorities to demolish it or to prevent its construction.

57. Firstly, in so far as it can be understood that the applicants complain about the proceedings concerning the changes in the local development plan and the proceedings concerning the planning permission, the Court observes that these sets of proceedings ended on 18 February 1999 and 11 March 1999 respectively, thus more than six months before the date on which the application was submitted to the Court.

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

58. As regards the applicants’ complaint referring to the alleged unfairness of the proceedings seeking a building permit, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national authority unless and in so far as they may have infringed rights and freedoms protected by the Convention. In the present case the applicants did not substantiate any particular failure on the part of the relevant authorities to respect their right to a fair hearing. The Court finds no indication that the impugned proceedings were conducted unfairly.

Moreover, there is no indication that the judgments of the Supreme Administrative Court had ever imposed any obligation on the administrative authority. Thus, the allegation that these judgments were not enforced is manifestly ill-founded.

59. The Court further notes that the applicants complained that a private investor had built an apartment block on the plot of land next to theirs. It appears from the domestic decisions that the building was constructed legally although subsequently the building permit was revoked

by the authorities. However, domestic law did not allow for demolition of the block in such circumstances as no legal or technical shortcomings that would have justified it had been established. The applicants failed to provide any evidence that demonstrated that the construction on the neighbouring plot of land had caused a nuisance to them that attained the minimum level of severity required for it to constitute a violation of Article 8 (see *Furlepa v. Poland* (dec.), no. 62101/00, 18 March 2008). Therefore, it has not been established that the State failed to take reasonable measures to secure the applicants' rights under Article 8 of the Convention or that there was an interference with this right by the State's authorities.

60. Likewise, the Court does not find that the applicants substantiated in any way that there had been interference with the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention. In particular, there is no evidence that the construction of the block made it impossible for the applicants to use their plot of land or to build on it.

61. In the light of all the material in its possession, and in so far as the matters complained of are within its competence and regardless of other possible grounds of inadmissibility, the Court finds nothing in the case file which might disclose any appearance of a violation of this Convention provision.

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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicants claimed 935,000 euros (EUR) in respect of pecuniary and EUR 500,000 in respect of non-pecuniary damage.

64. The Government considered these claims excessive and unrelated to the alleged violations.

65. 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 applicants jointly EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicants also claimed EUR 15,000 for costs and expenses incurred before the Court.

67. The Government contested the claim.

68. 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 sum of EUR 1,000 for the proceedings before the Court.

C. Default interest

69. 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 unreasonable length 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 applicants jointly, 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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President