



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KORCZ v. POLAND

(Application no. 33429/07)

JUDGMENT

STRASBOURG

29 September 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Korcz 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 8 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 3429/07) 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 Maria Korcz (“the applicant”), on 20 July 2007.

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

3. On 10 November 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 1937 and lives in Poznań.

A. Background of the case

5. By an administrative decision of 29 June 1978 of the Head of the Dominowo District (*Naczelnik Gminy*) the real estate owned by the applicant’s husband was transferred to his son – S.K. Neither the applicant’s

husband nor the applicant was informed by the authorities about this decision.

6. In 1990 the applicant's husband died in a car accident.

B. Administrative proceedings for retrospective leave to appeal

7. On 11 February 1999 the applicant filed a request with the Commune Office (*Urząd Gminy*) for retrospective leave to appeal against the decision of 29 June 1978.

8. On 23 February and 17 March 1999 the applicant was informed by the Mayor of the Dominowo Commune (*Wójt Gminy*) that her request had been left without consideration.

9. On 22 March 1999 she complained to the Head of the Commune Council (*Przewodniczący Rady Gminy*) about the fact that her case had been left without consideration and that no decision had been taken on it. She did not receive any answer.

10. On 14 January 2001 the applicant repeated her request for retrospective leave to appeal against the decision of 29 June 1978.

11. On 6 December 2000 the Commune Office (*Urząd Gminy*) informed the applicant that her request could not be dealt with since the case file had been sent to the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

12. On 3 March 2005 the applicant complained to the Commune Office about the delay. She asked for the proceedings to be accelerated.

13. On 5 April 2005 she lodged a complaint about the inactivity of the Mayor of the Commune with the Regional Administrative Court (*Wojewódzki Sąd Administracyjny*).

14. On 9 June 2005 the Regional Administrative Court rejected the applicant's complaint, since the applicant had failed to lodge it in accordance with the formal requirements set out in Polish law, namely she had failed to lodge a complaint with the administrative authority under Article 37 of the Code of Administrative Procedure.

15. On 3 February 2006 the applicant lodged a complaint about the inactivity of the Mayor of the Dominowo Commune with the Self-Government Board of Appeal (*Samorządowe Kolegium Odwoławcze*). The complaint was referred to the Dominowo Commune Council, being the competent administrative authority.

16. By a resolution of 30 August 2006 her complaint was dismissed as ill-founded.

17. On 4 January 2007 she lodged a complaint about the inactivity of the Mayor of the Dominowo Commune with the Regional Administrative Court. She submitted that she had lodged numerous complaints with different administrative authorities, her case had been pending for 8 years and no decision had been given on it.

18. On 5 December 2007 the Regional Administrative Court found the complaint well-founded. It held that the proceedings in the applicant's case had exceeded a reasonable time and ordered the Mayor of the Dominowo Commune to proceed speedily with the case.

19. On 8 April 2008 the Self-Government Board of Appeal decided to grant the applicant retrospective leave to appeal against the decision of 29 June 1978.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant domestic law and practice concerning the remedies for the inactivity of the administrative authorities at the material time are 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. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

21. On 22 April 2009 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* (preliminary objection) ([GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which the applicant had been involved. In respect of non-pecuniary damage, the Government proposed to award the applicant PLN 12,000 (the equivalent of approx. EUR 2,600). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

22. The applicant did not agree with the Government's proposal and requested the Court to continue the examination of the case. She maintained that the amount offered was too low.

23. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its

examination of the case (see *Tahsin Acar*, cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

24. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length of proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded where it has found a breach of the reasonable-time requirement (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-....; *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-....; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

25. On the facts and for the reasons set out above, in particular the amount of compensation proposed, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

26. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

27. 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..."

28. The Government refrained from taking a position on the merits of the applicant's complaint.

29. The period to be taken into consideration began on 11 February 1999 and ended on 8 April 2008. It thus lasted 9 years, 1 month and 28 days for one level of jurisdiction.

A. Admissibility

30. 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

31. 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).

32. 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).

33. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

36. The Government contested the claim.

37. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 7,200 under that head.

B. Costs and expenses

38. The applicant did not make any claim for costs and expenses involved in the proceedings.

C. Default interest

39. 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. *Dismisses* the Government's request to strike the application out of its list of cases;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 7,200 (seven thousand two hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President