



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KARASIŃSKA v. POLAND

(Application no. 13771/02)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

06/01/2010

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 Karasińska 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 13771/02) 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, Mrs Hanna Karasińska (“the applicant”), on 17 September 2001.

2. The applicant was represented by Mr T. Grzybowski, a lawyer practising in Poznań. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 2 December 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 1952 and lives in Poznań.

A. Administrative proceedings for a demolition order

5. The applicant lives in a rented flat in a house in Poznań.

6. In 1995 a certain M.W. converted an attic above the applicant's flat into a flat and, without the required permit, moved in. She failed to carry out the necessary soundproofing work and, as a result, the applicant could be heard from her flat and is disturbed by noise coming from the flat above her.

7. In 1995 the applicant instituted administrative proceedings. She sought a demolition order in relation to the unauthorised flat.

8. On 28 June 1998 the mayor of Poznań gave a decision ordering the compulsory demolition “of the constituent elements of the flat” and imposing on the co-owners of the building an obligation to restore the attic to its former condition (*przywrócenie stanu poprzedniego*).

9. On an unspecified date the co-owners of the building and M.W. appealed against that decision.

10. On 24 September 1998 the Poznań Governor (*Wojewoda Poznański*) quashed part of the challenged decision in so far as it imposed obligations on the co-owners of the building and upheld the remainder of the decision.

11. On an unspecified date M.W. lodged a complaint with the Supreme Administrative Court. She requested that both decisions be declared null and void.

12. On 25 May 1999 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) gave judgment and, for procedural reasons, quashed part of the challenged decision in so far as it had set aside the first-instance decision. The court dismissed the remainder of the complaint, with the result that the co-owners of the house became obliged to carry out the demolition and to restore the attic to its previous condition.

B. Enforcement proceedings and the applicant's attempts to accelerate them

13. The obligations arising from the final judgment of the Supreme Administrative Court were not performed by the co-owners.

14. In November 1998 the administrative enforcement authority, namely the Poznań Local Inspector of Construction Supervision (*Powiatowy Inspektor Nadzoru Budowlanego*), sent a reminder to the co-owners to perform their obligations imposed by the final and enforceable decision of the Poznań Governor. The reminder remained ineffective.

15. In September 1999 another reminder, also ineffective, was sent to the debtors.

16. On 12 October 1999 the Poznań Local Inspector of Construction Supervision imposed a fine on the co-owners for non-performance of their obligations (*grzywna w celu przymuszenia*). The fine was subsequently enforced but, as the co-owners had appealed against the decision imposing the fine and the Supreme Administrative Court quashed it, the amount paid had to be returned to the debtors.

17. On 18 August 2000 the applicant's lawyer complained of the inactivity of the administrative authorities to the Regional Inspector of Construction Supervision. He relied on the newly amended section 54(2) of the 1966 Administrative Enforcement Proceedings Act (*ustawa o postępowaniu egzekucyjnym w administracji*), which allowed creditors to lodge complaints about the excessive length of administrative enforcement proceedings. It appears that the applicant's lawyer's complaint remained ineffective.

18. On 21 March 2002, relying on the same ground as previously, the applicant's lawyer again complained about the excessive length of the administrative enforcement proceedings to the Regional Inspector of Construction Supervision.

19. On 30 April 2002 the Regional Inspector of Construction Supervision dismissed the complaint, finding that the enforcement proceedings had been carried out properly and without undue delay. The Regional Inspector mentioned the Supreme Administrative Court's judgment, according to which the "necessity of enforcing the demolition order cannot lead to the carrying out of unlawful activities".

20. On 7 March 2003 the applicant's lawyer lodged a further complaint about the excessive length of the administrative enforcement proceedings with the Regional Inspector of Construction Supervision.

21. This complaint was not examined within the statutory time-limit. Therefore, on 6 May 2003, the applicant lodged an appeal with the Chief Inspector of Construction Supervision, complaining that the administrative case had not been examined within the prescribed time-limit.

22. On 21 May 2003 the Chief Inspector of Construction Supervision ordered the Regional Inspector to examine the complaint.

23. On 22 May 2003 the Regional Inspector of Construction Supervision dismissed the complaint.

24. On 2 June 2003 the applicant appealed against that decision.

25. On 9 July 2003 the Chief Inspector of Construction Supervision upheld the decision.

26. On 4 August 2003 the applicant lodged a complaint against that decision with the Supreme Administrative Court.

27. Following the reform of the administrative courts in Poland, the complaint was transferred to the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny*).

28. On 28 January 2005 the Warsaw Regional Administrative Court gave judgment and dismissed the complaint. The court found that the decisions of the administrative authorities at first and second instance dismissing the applicant's complaint about the excessive length of the enforcement proceedings had been given in accordance with the relevant provisions. It further found that the administrative authorities had conducted the proceedings "without undue delay" and that the enforcement could not

be performed because M.W. still lived in the flat in question and had refused to leave it. Therefore, the persons responsible for enforcement of the final decision had to institute civil proceedings for termination of the lease agreement with M.W. and the proceedings were still pending, which constituted an objective obstacle to enforcement.

29. Irrespective of the official complaints about the excessive length of the enforcement proceedings lodged in accordance with the 1966 Administrative Enforcement Proceedings Act, the applicant sent reminders and letters to the administrative authorities, urging them to act (letters of 13 March 2003, 30 May 2003 and 17 November 2003). These letters, however, remained unanswered.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. As regards the excessive length of administrative enforcement proceedings

30. Section 54(2) of the 1966 Administrative Enforcement Proceedings Act (*ustawa o postępowaniu egzekucyjnym w administracji*) provides, in its relevant part, that a complaint about the excessive length of enforcement proceedings may also be lodged by a creditor who is not the administrative authority responsible for conducting the enforcement proceedings.

B. As regards demolition orders

31. Section 48(1) of the Construction Act of 7 July 1994 (*Prawo budowlane*), as applicable at the material time, provided, in so far as relevant, as follows:

“The relevant authority shall order that a building or part of a building be demolished if it is under construction or has been constructed without an appropriate permit or notification thereof, or contrary to the building permit...”

THE LAW

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

32. 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...”

33. The Government contested that argument.

34. The overall period of the administrative and enforcement proceedings to be taken into consideration began on an unspecified date in August 1995 and has not yet ended. It has thus lasted almost 14 years to date.

A. Admissibility

35. The Government submitted that the applicant had not exhausted the remedies available under Polish law in respect of the excessive length of administrative proceedings. They argued that the applicant had the possibility of lodging with the Polish civil courts a claim for compensation for damage caused by the excessive length of the administrative proceedings under Article 417 of the Civil Code.

36. The applicant did not comment on those arguments.

37. The Court first notes that it has already examined whether after 18 December 2001 a compensation claim in tort as provided for by Polish civil law was an effective remedy in respect of complaints about the length of proceedings. It held that no persuasive arguments had been adduced to show that Article 417 of the Civil Code could at that time be relied on for the purpose of seeking compensation for the excessive length of proceedings or that such an action offered reasonable prospects of success (see *Małasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003, and, for administrative proceedings, *Boszek v. Poland*, no. 4054/03, § 35, 5 December 2006). The Court sees no grounds on which to depart from those findings in the present case.

38. Secondly, the Court notes that the applicant lodged several complaints about the inactivity of the Local Inspector of Construction Supervision in accordance with the domestic law (see paragraphs 17, 18 and 20, above). The complaint of 7 March 2003 was dismissed by the Regional Inspector of Construction Supervision and, subsequently, following the applicant's appeal, it was dismissed by the Warsaw Regional Administrative Court on 28 January 2005. This remedy was designed to accelerate the administrative enforcement proceedings (see, Relevant domestic law, paragraph 30, above). The Court also notes that the proceedings concerning the alleged inactivity on the part of the administrative authorities lasted a considerable amount of time, having been pending solely before the Regional Administrative Court from 4 August 2003 until 28 January 2005, that is, for about 17 months.

39. The Court concludes that, having exhausted the available remedies provided by domestic law, particularly with a view to accelerating the administrative enforcement proceedings, the applicant was not required to

embark on another attempt to obtain redress by bringing a civil action for compensation. Accordingly, 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.

40. 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

41. The Government submitted that the proceedings in the present case had been particularly complex. They relied on the fact that, in order to enforce the final judgment of the Supreme Administrative Court of 25 May 1999, the co-owners of the building in which the applicant lived were obliged to obtain a civil judgment ordering the eviction of the applicant's neighbour. The relevant judgment was finally given by the Poznań District Court on 22 May 2003; however, its enforcement was made dependent on providing the applicant's neighbour with an alternative dwelling. The Government further submitted that the proceedings in the applicant's case had not concerned issues of employment or pensions; thus, no special diligence had been required. As regards the conduct of the authorities, the Government submitted that they had taken the necessary steps to clarify all the circumstances of the case and had not contributed to the overall length of the proceedings.

42. The applicant's lawyer did not comment on the Government's arguments.

43. 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).

44. The Court admits that the case was of a certain complexity and that the domestic authorities, especially at the early stage of the proceedings, made some efforts to enforce the Supreme Administrative Court's final judgment (see paragraphs 14-16, above). However, the Court considers that the complexity of the case and the fact that it did not concern an issue in which special diligence is required cannot justify the overall length of proceedings which have already lasted almost 14 years. Even taking into account the objective obstacles relied on by the Government, that period must be in any event considered excessive.

45. Having examined all the material submitted to it and taking into account all the arguments put forward by the Government, the Court considers that in the instant case the length of the proceedings failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

46. The applicant complained that the neighbour who had converted the attic above her flat into another flat had failed to carry out the necessary soundproofing work and that she had therefore been disturbed by the noise coming from the flat above her. She relied on Article 8 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to respect for his private and family life, [and] his home...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... public safety or the economic well-being of the country, ..., for the protection of health ..., or for the protection of the rights and freedoms of others.”

47. To the extent that this complaint raises under Article 8 a separate issue from that examined above under Article 6 § 1 of the Convention, the Court notes that the applicant did not institute any proceedings which would have allowed the domestic courts to assess the level of the alleged interference with the applicant's right to respect for her home and private life.

48. Having examined all the material submitted to it, the Court considers 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

49. 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

50. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government contested the claim.

52. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and having regard to complexity of the case and some objective obstacles which prevented the authorities from enforcing the final judgment, it awards her EUR 9,000 under that head.

B. Costs and expenses

53. The applicant's lawyer did not make any claim for the costs and expenses involved in the proceedings.

C. Default interest

54. 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, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to be converted into the currency of the respondent State 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President