



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF WYPUKOŁ-PIĘTKA v. POLAND

(Application no. 3441/02)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 8 June 2010*

STRASBOURG

20 October 2009

FINAL

20/01/2010

*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 Wypukoł-Piętko v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 3441/02) 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, Ms Barbara Wypukoł-Piętko (“the applicant”), on 20 December 2001.

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

3. On 14 November 2007 the President of the Fourth Section of the Court 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

1. Main set of administrative proceedings

4. On 19 January 1990 the Józefów Municipality Representative approved an initial development project (*plan zabudowy*) and permitted the construction of a house on a plot of land adjacent to that of the applicant.

5. On 29 May 1992 the applicant’s neighbour was ordered by the authorities to demolish some of the appurtenances (including an outhouse) that had been built without a permit.

6. On 26 April 1993 a building permit for a cesspit was issued to the neighbour. The applicant appealed in writing against the construction of the cesspit, as it was to be placed close to where she lived. She also did not agree to the construction of an outhouse on the neighbouring plot.

7. On 31 October 1996 the Józefów Municipality Representative ordered the demolition of the outhouse, as it had been built unlawfully and had been contested by the applicant.

8. The applicant appealed against the decision, arguing, *inter alia*, that it had not indicated the time-limit for its implementation and failed to deal with all the issues she had raised, in particular the problem of the cesspit. She also complained to a higher authority about the delay in dealing with the case. On 23 April 1997 the Warsaw Governor's Office quashed the decision and remitted the case for re-examination.

9. On 16 January 1998, following the applicant's complaint about the inactivity of the authorities, the Warsaw Governor ordered the Józefów Municipal Office to examine the applicant's case within a 14 day time-limit.

10. On 6 February 1998 the Municipal Office granted the applicant's neighbour permission to use the cesspit, an outhouse and a stone fence adjacent to the road. It found that they had been built in accordance with building principles and had posed no threat to their users or to the environment. The applicant appealed, requesting that the outhouse and internal fence be demolished and the leak-tightness of the cesspit be checked.

11. On 22 October 1998 the Warsaw Governor quashed the decision of 6 February 1998. The Governor stated that the decision failed to take into account the applicant's allegations concerning, in particular, the leaking of the cesspit and remitted the case for reconsideration.

12. On 1 March 2000 the Supreme Administrative Court dismissed the applicant's neighbour's complaint against the decision of 22 October 1998.

13. On 13 June 2000 the applicant's lawyer requested the Józefów Municipal Office to accelerate the administrative proceedings.

14. On 26 June 2000 the Municipal Office granted the neighbour permission to use the cesspit and other outbuildings.

15. The decision was quashed on 23 February 2001 by the Mazowiecki Governor's Office and remitted for reconsideration.

16. On 3 December 2002 the neighbour's appeal against the Mazowiecki Governor's Office's decision was dismissed by the Supreme Administrative Court.

17. On 30 May 2003 the Józefów Municipal Office granted the neighbour permission to use the outhouse. The applicant appealed.

18. On 6 January 2004 the applicant's lawyer requested the Chief Building Inspector to set a time-limit for the examination of her appeal.

19. On 27 February 2004 the Mazowiecki Building Inspector quashed the decision of 30 May 2003 and remitted the case for re-examination. He

observed that it had not been possible to establish whether the impugned decision concerned the same constructions which should have been demolished on the basis of the decision given on 29 May 1992. There had also been no proof that the decision of 29 May 1992 had ever been quashed. It was observed that the constructions in dispute that predated 1994 (*inter alia*, a stone wall) should have been dealt with in a separate set of proceedings.

20. On 18 April 2005 the Supreme Administrative Court dismissed the applicant's neighbour's appeal against the decision of 27 February 2004. The court agreed with the Building Inspector that the question of the execution of the decision of 25 May 1992 should have been examined and the evidence gathering in this respect supplemented.

2. Administrative proceedings following the judgment of the Supreme Administrative Court of 18 April 2005

(a) Proceedings concerning the execution of the decision of 25 May 1992

21. Following the remittal of the case by the Supreme Administrative Court, the subsequent proceedings concerning the unlawfully built outhouse were conducted by the District Building Inspector. On 12 February 2006 he ordered the Józefów Municipal Office to provide information as to whether the decision of 25 May 1992 had become final. If so, the municipality was ordered to submit documents showing whether that decision had been executed or not.

22. On 31 January 2006 the Office informed the Inspector that it was not able to provide the requested information as it did not have the complete case file.

23. On 20 November 2006 the District Building Inspector stayed the proceedings pending receipt of information from the Mazowiecki Governor's Office as to whether any appellate proceedings had been brought against the decision given in 1992.

24. On 19 March 2007 the Governor's Office replied that it had not retained files concerning appeals older than 5 years.

25. On 30 August 2007 the Building Inspector requested the parties to submit relevant information.

26. The proceedings are still pending.

(b) Proceedings concerning the cesspit

27. On 17 October 2006, as no decision concerning the cesspit had yet been given, the applicant's lawyer requested the District Building Inspector's Office to accelerate the procedure.

28. On 20 November 2006 the Building Inspector ordered the parties to pay an advance fee for the costs of the proceedings.

29. On 7 February 2007 the neighbours submitted an expert opinion stating that the cesspit was in a good technical state and was safe.

30. On 27 August 2007 the Building Inspector discontinued the proceedings, relying on the conclusions of the expert opinion. The applicant appealed.

31. On 30 January 2008 the Mazowiecki Regional Building Inspector upheld the decision.

32. The applicant was informed of the possibility of lodging an appeal with the Warsaw Regional Administrative Court, but failed to do so.

(c) Proceedings concerning other constructions on a neighbouring plot

33. While awaiting the administrative decision relating to the use of the cesspit and the outhouse, the applicant's neighbour erected the outhouse and the stone barrier attached to it, building a wall about 3 to 4 metres high along the border between their plots and directly in front of the windows of the applicant's house.

34. On 15 and 25 May 1998 two expert opinions were prepared at the applicant's request, stating that the wall seriously interfered with the use of her property. In particular, the experts stressed that the wall was causing decay to a line of trees on the applicant's land. These trees were, according to the experts, of environmental importance to the area.

35. On 28 August 1998 the applicant lodged an application with the Józefów Municipality Representative to have the wall brought into conformity with building regulations.

36. Following the applicant's intervention, on 6 October 1998, the Warsaw Governor ordered the Józefów Municipal Office to examine her application within 14 days.

37. On 15 October 1998 the Municipal Office refused to institute administrative proceedings, arguing that a building permit was not required to construct a fence.

38. On 31 March 1999 the Mazowiecki Governor quashed the decision and remitted the case for re-examination.

39. On 13 June 2001 the Supreme Administrative Court dismissed the neighbour's appeal against the decision of 31 March 1999.

40. On 22 March 2002 the Regional Building Inspector ordered that the wall be partly demolished, so as to comply with the height requirement of 2.20 metres. He found that the construction was 27.50 metres long and had been built up to 2.73 metres. It constituted a wall rather than a fence and as such required a building permit.

41. On 31 October 2002 the order was quashed by the Mazowiecki Building Inspector on the ground that the construction had pre-dated the entry into force of the 1997 amendment to the 1994 Building Act and discontinued the proceedings. In the written grounds for his decision, the Building Inspector pointed out that until the entry into force of the

amendment in question, the construction of fences had not required building permits or notifications.

42. On 20 May 2004 the Supreme Administrative Court dismissed the applicant's appeal against the decision of the Mazowiecki Building Inspector of 31 October 2002. However, the court suggested that further proceedings should be conducted concerning the nature, height, location and technical state of the wall.

43. Following the explanatory proceedings and the inspection of the plot, on 29 August 2005 the District Inspector ordered the applicant's neighbour to make some technical alterations to the wall or to replace it by a plastic fence of the same height.

44. The applicant appealed, complaining that the recommendations had been insufficient.

45. On 24 August 2006 the Mazowiecki Regional Inspector upheld the decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Inactivity on the part of the administrative authorities

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

B. Remedy against the excessive length of judicial proceedings

47. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of 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 UNREASONABLE LENGTH OF THE PROCEEDINGS

48. The applicant complained that the length of all sets of administrative proceedings in her case had been incompatible with the “reasonable time” requirement, as 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...”

49. The Government contested that argument.

50. The Court notes that, although the administrative proceedings were formally divided into separate sets concerning particular constructions on the disputed plot, the applicant filed her initial complaint in 1993 seeking satisfaction of all her relevant claims. Accordingly, the period under consideration commenced in 1993 and is still pending with respect to most of the claims. It has thus lasted approximately sixteen years for three levels of jurisdiction.

A. Admissibility

51. The Government raised a preliminary objection that the applicant had not exhausted all domestic remedies available to her under Polish law, as required by Article 35 § 1 of the Convention. They maintained that the applicant had failed to lodge a compensation claim with a civil court in order to seek redress for the alleged damage which had resulted from the inactivity of the administrative authorities. They relied on Article 417¹ § 3 of the Civil Code. In addition, they maintained that the applicant could have brought an action for damages under Article 417 of the Civil Code.

52. The Government further argued that with respect to the proceedings before the Supreme Administrative Court and the Regional Administrative Court concluded after 17 September 2001, it had been open to the applicant to file a complaint under the 2004 Act. They referred to the case-law of domestic courts.

53. Finally, the Government submitted that the applicant could have challenged the prolongation of the proceedings as being incompatible with the principle of promptness of proceedings (as laid down in Article 2 of the Code of Administrative Procedure).

54. The applicant contested the Government’s submissions.

55. With regard to the Government's submissions that the applicant had failed to institute proceedings for damages under Article 417¹ § 3 or Article 417 of the Civil Code, the Court observes that according to Article 417¹ § 3 of the Civil Code no claim for damages resulting from the unreasonable length of administrative proceedings may arise unless it has been formally determined that there was an unlawful failure to issue an administrative decision within the relevant time-limits. The Court also notes that the examples of domestic case-law furnished by the Government do not constitute evidence of sufficiently established judicial practice to show that a claim for compensation based on Article 417¹ § 3 of the Civil Code was an effective remedy and they have thus failed to substantiate their contention (see *Grabiński v. Poland*, no. 43702/02, § 74, 17 October 2006, and *Pióro and Łukasik v. Poland*, no. 8362/02, § 35, 2 December 2008). It follows that this part of the Government's objection must be rejected.

56. Regarding the remedy provided for by the 2004 Act, the Court notes that the law in question provides for a complaint about the unreasonable length of judicial proceedings and that proceedings before administrative authorities other than administrative courts are not covered by its provisions. The Court observes that the applicant had used remedies the purpose of which was to accelerate the process of obtaining an administrative decision, including an appeal under Article 37 § 1 of the Code of Administrative Procedure and a complaint about the inactivity of the administrative authorities (see paragraphs 13 and 18 above). Moreover, the Court observes that the proceedings complained of lasted approximately sixteen years. After the entry into force of the 2004 Act, the proceedings were conducted by the Supreme Administrative Court in periods which did not exceed several months (see paragraphs 19 and 20 above). Therefore, a domestic court dealing with a complaint under the 2004 Act would not be able to take into account the whole period of the administrative proceedings for the purposes of the alleged violation of the applicant's right to a hearing within a reasonable time. Consequently, in the present case a complaint under the 2004 Act cannot be regarded as an effective remedy with a sufficient degree of certainty.

57. With regard to the Government's claim that the applicant failed to use other available remedies, namely that she could have challenged the prolongation of the proceedings as being incompatible with the principle of promptness of proceedings (as laid down in Article 12 of the Code of Administrative Procedure), the Court reiterates that although Article 35 § 1 of the Convention 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).

58. The Court observes that the applicant on three occasions complained of the delay in the proceedings (see paragraphs 9, 13, 18 above). It further notes that his complaints to hierarchical bodies had a positive effect on the conduct of the proceedings. Accordingly, the applicant cannot be reproached for having failed to use an effective remedy. On that account, she was not required to pursue further remedies.

59. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies in respect of the administrative proceedings. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

60. The Court further 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

61. 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).

62. As regards the administrative proceedings in the present case, the Court, having regard to the evidence available, does not find it established that the applicant contributed to the delays in the proceedings. The Court acknowledges that the applicant lodged several appeals and complaints in the course of the impugned proceedings. However, all of these appeals and complaints proved well-founded.

63. By contrast, the Court is struck by the conduct of the relevant administrative authorities and the manner in which they handled the applicant's case. The Court notes that there were long delays in dealing with the case and frequent periods of inactivity, notwithstanding the fact that the Warsaw Governor on at least two occasions instructed the authorities to issue a decision and set relevant time-limits.

64. The Court observes that in most of the sets of proceedings, each authority which examined the applicant's case took on average two years to issue a decision on the merits. By way of example, there was a period of twenty months between the quashing of the decision of 6 February 1998 and the Jozefów Municipality's decision of 26 June 2000 (see paragraphs 9 and

12 above) and a period of three years when the District Building Inspector had been trying to obtain information as to whether the decision of 25 May 1992 had become final and had been executed (see paragraphs 19-24 above).

The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case has not been heard within a reasonable time. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

65. The applicant further complained that as a result of the failure of the authorities to deal with the unlawful constructions on the adjacent property she had been deprived of the peaceful enjoyment of her house.

66. She invoked Article 8 of the Convention, which reads as follows:

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

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 national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

67. The Government contested that argument.

A. Admissibility

68. The Government submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. They pointed to the fact that the applicant had failed to lodge an appeal with the Warsaw Regional Administrative Court against the Mazowiecki Regional Building Inspector's decision of 30 January 2008 in the part of the proceedings concerning the cesspit, although she had been informed of that possibility. Likewise, she did not lodge such an appeal against the decision of 24 August 2006 given by the Mazowiecki Regional Inspector with respect to the stone wall built on the neighbouring plot.

69. The Court reiterates that Article 35 § 1 obliges the applicant to use any available remedies that relate to the breach alleged. The States must have a chance to put matters right through their own legal system before having to answer before an international body for their acts. In that way Article 35 § 1 obliges the applicant to use available remedies that relate to the breach alleged by him (see *Zynger v. Poland* (dec.), no. 66096/01, 7 May 2002, and *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002).

70. The Court observes that the applicant has not contested the availability of the remedy relied on by the Government.

71. Having regard to the criteria laid down in its case-law, the Court holds that the Government's objection should be allowed (see *Bukowski v. Poland*, cited above).

72. It follows that the part of the complaint related to the set of proceedings concerning the cesspit, as well as to the set of proceedings on the issue of the lawfulness of the stone wall built by the applicant's neighbour, is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

73. The Court further notes that the complaint in so far as it concerns the execution of the decision of 29 May 1992 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other ground. It must therefore be declared admissible. However, the Court considers that the applicant's argument amounts to a restatement of her case under Article 6 § 1 of the Convention with respect to the non-execution of the contested decision. For this reason, it concludes that no separate issue arises under this head.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed non-pecuniary damage without specifying a particular amount by way of just satisfaction.

76. The Government contested the claim.

77. The Court considers that the applicant must have sustained non-pecuniary damage on account of the length of the enforcement proceedings. Ruling on an equitable basis, it awards her 14,000 euros (EUR) under that head.

B. Costs and expenses

78. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts.

79. The Government contested the claim.

80. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 to cover costs under all heads.

C. Default interest

81. 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 under Article 6 § 1 and the part of the complaint under Article 8 related to the proceedings concerning the execution of the decision of 25 May 1992 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* that the applicant's complaints under Article 8 of the Convention do not give rise to any separate issues with respect to the non-execution of the decision of 25 May 1992;
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 14,000 (fourteen thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, 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 amounts 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 20 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President