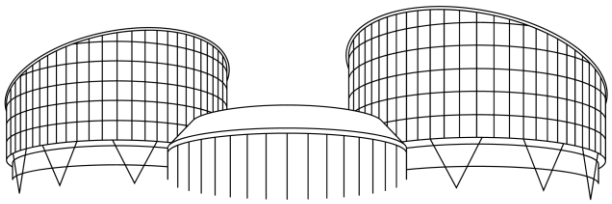

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FOURTH SECTION

CASE OF LEON AND AGNIESZKA KANIA v. POLAND

(Application no. 12605/03)

JUDGMENT

STRASBOURG

21 July 2009

FINAL

21/10/2009

This judgment may be subject to editorial revision.

In the case of Leon and Agnieszka Kania 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,
Ján Šikuta,
Mihai Poalelungi,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 30 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 12605/03) 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 two Polish nationals, Mr Leon and Mrs Agnieszka Kania ("the applicants"), on 7 April 2003.

2. The applicants, who had been granted legal aid, were represented by Mr Z. Cichoń, a lawyer practising in Cracow. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. On 21 April 2008 the President of the Fourth Section decided to give notice of the application to the Government. It 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 applicants were born in 1929 and 1936 respectively and live in Mielec.

1. Facts prior to 1 May 1993

5. In 1978 the craftsmen's cooperative (*spółdzielnia rzemieślnicza*) "Wielobranżowa" established its seat next to the applicants' home. It was engaged in a wide range of commercial activities, including various

maintenance services for lorries, metal cutting and grinding machines and other small-scale operations in the iron and steel industry.

6. On an unspecified date in 1985 the applicants instituted administrative proceedings to have the cooperative cease its activities. They alleged that the level of noise and pollution emitted by the cooperative exceeded a tolerable level.

7. On 25 March 1986 the Mielec District Office ordered the liquidation of the craftsmen's cooperative "Wielobranżowa" by the end of 1995 or alternatively that it switch to activities that did not cause a nuisance. During the remaining months of 1986 the cooperative was to adapt its activities in order to comply with the rules on the protection of the environment and the emission of noise.

8. On 5 September 1986 the Director of the Department for Architecture of the Provincial Office in Rzeszów upheld that decision. The applicants appealed, contesting the lengthy period foreseen for the cooperative's liquidation and urging its shutdown.

9. On 29 July 1987 the Supreme Administrative Court dismissed their appeal (thus the decision of 5 September 1986 became final).

10. On 30 May 1988 the applicants again lodged a complaint with the Provincial Office in Rzeszów alleging that the daily operations of the cooperative caused unbearable noise and were life-threatening for people living in the vicinity.

11. On 3 June 1988 the Director of the Department for the Environment of the Provincial Office in Rzeszów issued a decision establishing the maximum level of noise to be emitted.

12. Due to the non-compliance of the cooperative with the established noise-level limits, by a decision of 31 August 1989 the Director of the Department for the Environment of the Provincial Office in Rzeszów ordered the cooperative to suspend the operation of all its technical devices. The cooperative appealed to the Minister of the Environment.

2. Facts after 1 May 1993

13. On 25 February 1997, as the time-limit for the cooperative's liquidation established by the decision of 1986 had expired, the applicants lodged a motion with the District Office in Mielec to have the decision of 5 September 1986 executed.

14. On 9 April 1997 the applicants sent a letter to the Director of the Department for the Environment of the Provincial Office in Rzeszów repeating their allegations with regard to the unacceptable noise and pollution emitted by the cooperative. They invoked the decision of 25 March 1986 ordering the cooperative to cease its activities.

15. On 9 May 1997 in response to their above request the Provincial Office in Rzeszów stated that all documents issued between the years 1974 and 1986 had been destroyed, and thus the decision invoked by them no

longer existed. Subsequently the Provincial Office referred the case to the District Office in Mielec to determine its factual circumstances.

16. On 3 June 1997 the District Office in Mielec carried out an inspection of the cooperative.

17. On 5 June 1997 the Provincial Office informed the applicants about the state of their case.

18. On 18 July 1997 the District Office in Mielec notified the applicants of an extension of the time-limit granted to settle their case.

19. On 14 August 1997 the District Office in Mielec referred the case to the President of Mielec to decide on the legality of the cooperative's activities.

20. On 19 August 1997 the District Office in Mielec informed the applicants about the state of their case.

21. On 26 August 1997 the District Office in Mielec informed the applicants that there were no grounds for the cooperative's liquidation. It also requested the State Fire Services (*Państwowa Straż Pożarna*), the Provincial Inspectorate for Environmental Protection in Rzeszów, and the State Sanitary Inspectorate (*Państwowa Inspekcja Sanitarna*) to carry out an inspection of the cooperative. The inspections took place on 3 and 10 September and 30 October 1997, as well as on 20 January 1998. It was established that the cooperative's activities did not cause a nuisance.

22. On 22 October 1997 the applicants submitted to the District Office in Mielec an original copy of the decision of 5 September 1986.

23. On 2 December 1997 the applicants sent a letter to the President of Mielec requesting the liquidation of the cooperative. Their request was transferred to the District Office in Mielec, which in a letter of 22 January 1998 informed the applicants that there were no grounds for the cooperative's shutdown, having regard to the results of the inspections carried out in 1997 and 1998.

24. On 4 and 30 March 1998 the Provincial Inspectorate for Environmental Protection in Rzeszów checked the level of noise emitted by the cooperative. It was found that it exceeded the permissible threshold.

25. In a letter of 27 April 1998 addressed to the Director of the District Office in Mielec the Rzeszów Province Governor ordered the execution of the decision of 5 September 1986 on the basis of those documents which had not been destroyed. On the same day the Provincial Office in Rzeszów informed the applicants about the state of their case.

26. On 12 May 1998 the District Office in Mielec reprimanded (*udzielił nagany*) the cooperative and ordered it to bring its activities into compliance with the established noise-levels.

27. On 6 May 1998 the cooperative filed a motion with the Provincial Office in Rzeszów to have the decision of 3 June 1988 amended in respect of the permissible level of noise.

28. On 27 May 1998 the District Office in Mielec informed the applicants about the state of their case.

29. On 19 June 1998 the Provincial Inspectorate for Environmental Protection in Rzeszów carried out an inspection of the cooperative's premises and found the level of noise emitted to be in conformity with the permissible threshold.

30. On 30 June 1998 the District Office in Mielec informed the applicants that there were no grounds to begin enforcement proceedings.

31. On 10 September 1998 the Director of the Department for the Environment of the Provincial Office in Rzeszów established the noise threshold at a lower level. The applicants appealed to the Minister of the Environment.

32. On 15 February 1999 the Minister of the Environment quashed the decision of 10 September 1998 and remitted the case, initiating proceedings for amending the decision of 3 June 1988 in respect of the permissible level of noise.

33. On 23 February 1999 the Provincial Inspectorate for Environmental Protection in Rzeszów carried out an inspection and found the level of noise emitted by the cooperative to be in conformity with the threshold. On 21 April 1999 an additional inspection was carried out with the same results.

34. On 19 May 1999 the District Office in Mielec informed the applicants about the state of their case.

35. On 18 June 1999 the Regional Construction Inspector informed the applicants that there were no grounds to begin enforcement proceedings.

36. On 12 July 1999 the Minister of the Environment quashed the decision of 3 June 1988 and discontinued the proceedings in the case since, according to a test performed on 21 April 1999, the level of noise emitted by the cooperative was in conformity with the established noise threshold.

37. Subsequently, the applicants lodged a motion to have their case re-examined. On 5 August 1999 the Minister of the Environment upheld the decision of 12 July 1999. The applicants lodged an appeal with the Supreme Administrative Court.

38. On 29 October 1999 the Regional Construction Inspector upheld his opinion given on 18 June 1999.

39. On 27 April 2000 the Regional Construction Inspector transferred the case to the District Construction Inspector, requesting that an inspection of the cooperative's premises be carried out. The inspection took place on 11 May 2000. It was found that the cooperative was not acting in violation of the binding provisions of the construction law, although it had failed to produce valid documents concerning vehicle weighing equipment.

40. On 8 June 2000 the Regional Construction Inspector informed the applicants about the state of their case.

41. On 10 August 2000 the applicants lodged a motion with the Mielec District Municipality to have the decision of 5 September 1986 executed and the cooperative liquidated. They further requested that, in accordance with Section III (Chapter II) of the 1966 Law on enforcement proceedings in administration (*ustawa o postępowaniu egzekucyjnym w administracji*), a fine be imposed on the cooperative for non-implementation of a legally binding decision.

42. On 1 September 2000 the District Construction Inspector requested the cooperative to acquire valid documents for the vehicle weighing device. The applicants filed a complaint against this decision. On 23 October 2000 the Regional Construction Inspector quashed the decision and remitted the case for re-examination. On 23 November 2000 the District Construction Inspector again ordered the cooperative to acquire documents for the weighing device. The applicants filed a complaint. On 5 February 2001 the decision was upheld by the Regional Construction Inspector.

43. On 5 September 2000 the District Construction Inspector ordered the applicants to supplement their motion of 10 August 2000 with the decision of 5 September 1986 joined by an enforcement clause. On 26 October 2000 the District Construction Inspector returned the motion due to the applicants' failure to submit those documents.

44. On 17 November 2000 the Supreme Administrative Court quashed the contested decision of 5 August 1999 and remitted the case for reconsideration.

45. On 20 December 2000 the Minister of the Environment again upheld its decision of 12 July 1999. On 3 February 2001 the applicants appealed to the Supreme Administrative Court, contesting the results of the test performed on 21 April 1999.

46. On 19 February 2001 the Regional Construction Inspector informed the applicants about the state of their case.

47. On 18 April 2001 the District Construction Inspector requested the cooperative to produce additional documents for the vehicle weighing equipment.

48. On 25 May 2001 the District Construction Inspector informed the District Office in Mielec that the cooperative had acquired the requisite documents for the equipment.

49. On 4 September 2001 the District Office in Mielec suspended the proceedings until the question whether the level of noise emitted by the cooperative was in conformity with the threshold had been examined by the Supreme Administrative Court.

50. On 9 October 2002 the Supreme Administrative Court quashed the decision of 12 July 1999 due to procedural shortcomings.

51. On 26 May 2003 the Provincial Inspectorate for Environmental Protection in Rzeszów carried out an inspection on the cooperative's

premises and found that the level of noise emitted was in conformity with the relevant provisions.

52. On 7 July 2003 the applicants filed a motion with the District Office in Mielec requesting to have the decision of 25 March 1986 enforced and the cooperative liquidated. Their request was transferred to the District Construction Inspector.

53. On 23 July 2003 the District Prosecutor decided to join the proceedings concerning the cooperative's shutdown.

54. On 7 August 2003 the District Construction Inspector ordered the District Office in Mielec and the applicants to provide the original copy of the decision of 25 March 1986.

55. On 12 August 2003 the applicants lodged a complaint with the Principal Construction Inspector about the administrative authorities' inactivity with regard to the cooperative continuing its activities. The complaint was transmitted to the Regional Construction Inspector on 25 August 2003.

56. On 5 September 2003 the District Office in Mielec discontinued the proceedings concerning the level of noise emitted by the cooperative.

57. On 7 October 2003 the Regional Construction Inspector found that the applicants' complaint about inactivity was well-founded and informed the applicants about his intention to lodge a motion with the District Construction Inspector to have administrative enforcement proceedings instituted.

58. On 14 October 2003 the Regional Construction Inspector gave the District Construction Inspector an instruction to implement the decision of 5 September 1986.

59. On 21 October 2003 the District Construction Inspector ordered that the cooperative be liquidated.

60. On 14 November 2003 the Regional Construction Inspector again found their complaint about the non-execution of the decision well-founded and informed the applicants that the motion to have the decision of 1986 enforced had already been lodged with the District Construction Inspector.

61. On 10 December 2003 an on-site inspection took place on the cooperative's premises.

62. As a result of the above, in a letter of 29 December 2003 the District Construction Inspector stated that some of the cooperative's buildings had not been constructed in conformity with the law. He further stated that the vehicle weighing device was to be destroyed.

63. On 4 February 2004 the applicants lodged a complaint with the Principal Construction Inspector complaining about the excessive length of the enforcement proceedings, the inactivity of the District Building Inspector and, further, the authorities' failure to dismantle the cooperative's buildings.

64. On 18 February 2004 the cooperative lodged a motion with the Regional Construction Inspector to have the decision of 5 September 1986 declared null and void and its execution suspended.

65. On 27 February 2004 the District Construction Inspector initiated the enforcement proceedings, imposed a fine on the cooperative and issued a document joined by an enforcement clause ordering dismantlement of the weighing equipment.

66. On 15 March 2004 the cooperative filed an objection with regard to the enforcement proceedings. On 22 March 2004 the District Construction Inspector decided to overrule their objection.

67. On 30 April 2004 the Regional Construction Inspector discontinued the proceedings for annulment, finding that the competent authority to examine the case was the Principal Construction Inspector. Their complaint was thus subsequently transferred for reply to the Principal Construction Inspector.

68. On 10 May 2004 the Regional Construction Inspector quashed the decision of 22 March 2004 and discontinued the enforcement proceedings, finding that the enforcement clause had not been issued in accordance with the decision of 5 September 1986. The applicants failed to appeal.

69. On 20 October 2004 the Principal Construction Inspector refused to suspend the decision of 5 September 1986 and, in addition, found no grounds for its annulment.

70. On 28 October 2004 the cooperative informed the District Construction Inspector that it had terminated its commercial activities on 25 September 2004.

71. On 25 November 2004 the Principal Construction Inspector upheld his own decision of 20 October 2004 (after having reconsidered the case). The applicants failed to appeal to the Supreme Administrative Court, although it was open to them to do so.

72. On 29 November 2004 the District Construction Inspector conducted an on-site inspection on the cooperative's premises. It found that the cooperative had ceased its activities and that the vehicle weighing device had been destroyed. Thus, the proceedings were regarded as completed. The record of the inspection was signed by the applicants without reservation. A subsequent inspection on 18 May 2006 did not provide any evidence indicating that the cooperative had resumed its activities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Inactivity of administrative authorities

For a presentation of the relevant domestic law, see *Kaniewski v. Poland*, no. 38049/02, 8 February 2006; *Koss v. Poland*, no. 52495/99, 28 March 2006; and *Borysiewicz*, no. 71146/01, 1 July 2008.

2. Enforcement proceedings involving the administration

The relevant domestic remedies for non-enforcement of a final administrative decision are listed in the Law of 17 June 1966 on enforcement proceedings in administration (*ustawa o postępowaniu egzekucyjnym w administracji*). In particular, Section III applies to the execution of non-pecuniary obligations. Chapter II in so far as relevant (Articles 119 et seq.) provides for a possibility of imposing a pecuniary penalty on an individual or a natural person compelling him to comply with an imposed obligation.

3. Length of proceedings

The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions 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"), are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V; *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.

4. Provisions on permissible level of noise

The relevant provisions on acoustic pollution levels emitted into the environment are provided for by the Law of 27 April 2001 on the protection of the environment (*Ustawa o ochronie środowiska*). Article 113 of the said Law gives the Minister of the Environment the authority to determine permitted external noise-reception levels by reference to the main user of each of the areas. By the Regulation of 29 July 2004 the Minister of the Environment (*Rozporządzenie Ministra Środowiska*) established permissible noise thresholds for different areas marked on the city development plans, to be issued by the competent administrative authorities.

THE LAW

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

73. The applicants complained that the length of the administrative proceedings to have a final administrative decision issued and subsequently

implemented 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..."

74. The Government contested that argument.

75. The Court notes that the proceedings commenced in 1985. However, the period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

The period in question ended on 29 November 2004. It thus lasted eleven years and seven months for three levels of jurisdiction.

A. Admissibility

76. The Government raised a preliminary objection that the applicants had not exhausted domestic remedies available to them under Polish law in respect of excessive length of administrative proceedings as required by Article 35 § 1 of the Convention. They argued that the applicants had the opportunity to lodge a civil claim for compensation for damage caused by the excessive length of the administrative proceedings, as well as the authorities' failure to give a decision where there is a statutory duty to do so as provided by Articles 417 and 417[1]§3 of the Civil Code.

77. The applicants contested these arguments in general terms.

78. The Court notes that the applicants lodged several complaints alleging inactivity on the part of the administrative authorities with the respective higher authority, as provided by the Polish Code of Administrative Procedure of 1960 (see paragraphs 55 and 63 above), which were found to be well-founded (see paragraph 57 above). Further, the Court notes that the applicants also had recourse to the remedy available under the Law on enforcement proceedings in administration of 1966 (see paragraph 41 above). It follows that the remedies the applicants used were adequate and sufficient to afford them redress in respect of the alleged breach.

79. In this connection, the Court reiterates that although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been first 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 *Kaniewski v. Poland*, no. 38049/02, §§ 32-39, 8 November 2005; *Cichla v. Poland*, no. 18036/03, §§23-26, 10 October 2006; and *Rygalski v. Poland*, no. 11101/04, §30, 22 January 2008).

80. The Court considers therefore that, having exhausted the possibilities available to them within the administrative procedure system, the applicants were not required to embark on another attempt to obtain redress by bringing a civil action for compensation. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicants have exhausted domestic remedies and the Government's plea of inadmissibility on this ground must be dismissed.

81. 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

82. 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).

83. 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).

84. 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 of the Convention.

II ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

85. The applicants also alleged, in connection with their claim raised under Article 6 of the Convention, a breach of Article 13 of the Convention in that they had no effective domestic remedy in respect of the final decision's non-implementation by competent authorities. Article 13 reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

86. The Government contested that argument. In particular they argued that the applicants had at their disposal numerous remedies in respect of the inactivity of the administrative authorities in implementing the decision, as

well as the proceedings' excessive length, which proved to be effective in their case.

87. The applicants failed to submit any observations in this respect.

88. The Court recalls that, in the context of Article 13 of the Convention and remedies for excessive length of proceedings, as well as the inactivity of relevant authorities, it has already held that in order to be "effective" such a remedy, or the aggregate of remedies, must be capable either of preventing the alleged violation of the right to a "hearing within a reasonable time" or its continuation, or of providing adequate redress for a violation that has already occurred (see, *mutatis mutandis*, *Kudła v. Poland*, [GC], no. 30210/96, § 158 et seq, ECHR 2000-XI, and *Koss v. Poland*, no. 52495/99, § 43, 28 March 2006).

89. In this connection, the Court reiterates that it has held on several occasions that the numerous remedies available to the applicants under the relevant domestic laws, as advanced by the Government (see paragraph 87 above), were designed to put the issue of length of the proceedings in question before the national authorities and to seek their termination "within a reasonable time" (see *Futro v. Poland* (dec.), no. 51832/99, 3 June 2003, and *Koss*, cited above).

90. In the case at hand the Court observes that the applicants availed themselves on several occasions of the remedies available to them within the administrative procedure system with success. Accordingly, the remedies the applicants used were therefore adequate and sufficient to afford them redress in respect of the alleged breach (see paragraph 79 above).

91. In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant's right to an effective remedy under Article 13 of the Convention has not been respected.

92. 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. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

93. Lastly, the applicants complained that due to the cooperative's continuous activities they were subjected to serious noise and pollution for a number of years, which resulted in their sustaining very serious and long-term health problems, *inter alia*, heart and hearing complaints. They relied in substance on Article 8 of the Convention which, in so far as relevant, provides as follows:

> "1. Everyone has the right to respect for 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 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."

94. The Government firstly stressed that the present case did not concern interference by the public authorities with the right to respect for the private life and home but their alleged failure to take action to put a stop to third party breaches of the right relied on by the applicant.

95. Further, the Government stressed that that the administrative authorities remained active and determined to duly examine the applicants' case. Most of the inspections which were carried out revealed that the cooperative's activities complied with the rules on the protection of the environment and that the level of noise emitted by it did not exceed the threshold of permissible noise established by competent authorities.

96. Lastly, they maintained that even considering that the applicants could have been affected by the pollution and noise emitted by the cooperative, it had to be determined whether the nuisance reached the minimum level of severity required for it to constitute a violation of Article 8 of the Convention. In this connection they stressed that the applicants had failed to submit medical records to substantiate their claim of sustaining very serious and long-term health problems, *inter alia*, heart and hearing complaints. Furthermore, it could not be disregarded that eventually the applicants' claim had been satisfied and the cooperative ceased all of its commercial activities.

97. The applicants failed to submit any observations in this respect.

98. The Court reiterates at the outset that there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 of the Convention (see *Hatton and Others v. the United Kindgom* [GC], no. 36022/97, § 96, ECHR 2003-VIII; *López Ostra v. Spain,* judgment of 9 December 1994, Series A no. 303-C; *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 18, § 40; and *Furlepa v. Poland* (dec.), no. 62101/00, 18 March 2008).

99. Furthermore, Article 8 of the Convention may apply in environmental cases, regardless of whether the pollution is directly caused by the State or the State's responsibility arises from failure to regulate private-sector activities properly. Whether the case is analysed in terms of a positive duty on the part of the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 or in terms of interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar (see *Powell*

and Rayner, § 41, and *López Ostra*, § 51, both cited above, and *Borysewicz v. Poland*, no. 71146/01, §50, 1 July 2008).

100. Accordingly, as it stems from the Court's settled case-law in order to raise an issue under Article 8 of the Convention, the interference must directly affect the applicant's home, family or private life and the adverse effects of the environmental hazard must attain a certain minimum level of severity. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects (see *Fadeyeva v. Russia*, no. 55723/00, §§ 68-69, ECHR 2005-IV, and *Fägerskiöld v. Sweden* (dec.), no. 37664/04).

101. Turning to the present case the Court accepts that the applicants might have been affected by the daily operations of the cooperative. However, the Court must establish whether the nuisance caused went beyond the minimum level of severity set by its case-law.

102. Having this in mind, the Court notes that after the initial order of 1986 that the cooperative should adapt its activities to comply with the rules on the protection of the environment and the emission of noise, numerous inspections of the cooperative's premises were carried out (see paragraphs 16, 33 and 51 above). They all resulted in the finding that the cooperative's activities did not cause a nuisance and did not exceed the permissible level of noise established for the applicants' neighbouring area (see paragraphs 21, 23, 29, 36, 39 and 51 above). Further, the Court takes note that the cooperative eventually ceased all its activities (see paragraphs 70 and 72 above). Lastly, the Court observes that the applicants failed to submit, either during the domestic proceedings or the proceedings before the Court, a valid claim supported by a medical record that they had sustained serious and long-term health problems, *inter alia*, heart and hearing complaints, as a result of the noise.

103. Accordingly, in the absence of such findings it cannot be established that the State failed to take reasonable measures to secure the applicants' rights under Article 8 of the Convention (see similar conclusion reached in *Borysewicz*, §55, cited above).

104. Having regard to the above considerations and its case-law, the Court finds that it has not been established that the noise levels complained of in the present case were so serious as to reach the high threshold established in cases dealing with environmental issues. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicants claimed a lump sum of 50,000 euros (EUR) in respect of non-pecuniary damage.

107. The Government found the amount to be excessive and based on entirely unsubstantiated speculations.

108. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them jointly EUR 6,600 under that head for the breach found of Article 6 § 1 of the Convention.

B. Costs and expenses

109. The applicants also claimed EUR 10,000 for costs and expenses incurred before the Court.

110. The Government contested the claim.

111. 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. The Court notes the applicants were paid EUR 425 in legal aid by the Council of Europe. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable not to award the applicants any additional sum under that head.

C. Default interest

112. 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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,600 (six thousand six hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President