



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF GIERMEK AND OTHERS v. POLAND

(Application no. 6669/03)

JUDGMENT

STRASBOURG

15 September 2009

FINAL

15/12/2009

This judgment may be subject to editorial revision.

In the case of Giermek and Others 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 25 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 6669/03) 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 four Polish nationals, Kazimiera Giermek (“the first applicant”), Karol Słomka (“the second applicant”), Jadwiga Gawlik (“the third applicant”) and Emil Żak (“the fourth applicant”), on 13 February 2003.

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

3. On 21 May 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 examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The first and second applicants were born in 1939, the third applicant was born in 1934 and the fourth applicant was born in 1938. They all live in Zator, Poland.

5. In 1985 T.P., the applicants’ neighbour started a company producing soft drinks, having received the relevant permits. The company was located at number 8 Żwirki and Wigury Street in Zator (at the end of a cul-de-sac).

In 1990 and 1992 respectively T.P. extended his activities to include a wholesale and retail food business. In 1991 he was granted a permit to construct an additional warehouse on his property. The applicants live in houses located on the same street and in the direct vicinity of T.P.'s company.

6. On an unspecified date the applicants and other inhabitants of Żwirki and Wigury Street complained to the Mayor of Zator about the heavy traffic and nuisance caused by the wholesale business of T.P. They submitted that according to the local development plan the area in question was intended to be used for housing to the exclusion of obtrusive businesses.

7. On 23 September 1993 the Mayor of Zator issued a decision banning T.P. from using certain buildings of his company for a wholesale food business on the ground that he had failed to obtain the relevant permits. The second applicant was a party to those proceedings. On 23 November 1993 the Bielsko-Biała Governor dismissed an appeal by T.P. against that decision. T.P. appealed to the Supreme Administrative Court. On 12 January 1994 the Supreme Administrative Court quashed both decisions.

8. On 6 June 1994 the Mayor of Zator required T.P. to obtain various permits. T.P. unsuccessfully appealed against that decision. On 20 June 1996 the Mayor of Zator issued a decision ordering T.P. to stop using the additional warehouse for his wholesale food business. On 21 February 1997 the Bielsko-Biała Governor quashed that decision and remitted the case to the Mayor.

9. On 14 May 1997, in response to the applicants' complaints, the Mayor of Zator issued a decision concerning the use of property by T.P. It ordered him to cease using the warehouse for a wholesale beer and food business. The Mayor established that T.P. had opened a wholesale business on his property in contravention of the Construction Act (section 71) and the local development plan. He also noted that heavy traffic was generated by T.P.'s company, causing significant nuisance to his neighbours, including the applicants. T.P. appealed.

10. On 15 July 1997 the Bielsko-Biała Governor upheld the Mayor's decision. T.P. appealed to the Supreme Administrative Court. On 6 October 1999 the Supreme Administrative Court dismissed his appeal. It found that by virtue of the relevant planning permission T.P. was entitled to use the building in question as an additional warehouse for his soft drinks company. However, he had changed the manner of use of the property by setting up a wholesale food business there without obtaining the relevant permissions. Thus, he had clearly breached the Construction Act and the administrative decisions complained of had been correct.

11. Meanwhile, on 7 September 1999 the applicants unsuccessfully complained to the Małopolski Regional Inspector of Construction Supervision about non-enforcement of the decision. Their further complaints to other authorities were equally unsuccessful.

12. In a letter of 29 October 1999 the Architecture Department of the Małopolski Regional Office informed the second applicant that his complaint was well-founded. The Regional Office observed that the final administrative decision of the Bielsko-Biała Governor of 15 July 1997 had not been enforced and that no administrative enforcement proceedings had been instituted. It further urged the Municipal Council to transmit the case-file to the Oświęcim District Inspector of Construction Supervision which was the authority competent to enforce the administrative decisions at issue.

13. On 28 January 2000 the first and the fourth applicants and the second applicant's wife filed with the Cracow Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) a complaint about the inactivity of the District Inspector of Construction Supervision. They alleged that the District Inspector had failed to enforce the Mayor of Zator's decision of 14 May 1997.

14. On 31 October 2000 the District Inspector ordered T.P. to pay PLN 5,000 for failure to stop using the auxiliary warehouse for his wholesale business. On 21 June 2002 the Regional Inspector upheld this decision. On 22 July 2002 T.P. appealed to the Supreme Administrative Court. This was dismissed by the court on 25 February 2003.

15. On 9 July 2004 the Cracow Regional Administrative Court held a hearing. The applicants submitted that T.P. had failed to comply with the obligations imposed on him by the administrative authorities. They emphasised that the continued non-enforcement of the administrative decision of 14 May 1997 had had adverse consequences for them. The District Inspector for his part submitted that the inspectorate had undertaken some measures with respect to T.P.

16. The Regional Administrative Court delivered its judgment on the same date and found for the applicants. It ordered the District Inspector of Construction Supervision to issue a decision or undertake other necessary measures with a view to enforcing the Supreme Administrative Court's judgment of 6 October 1999 within two months from the date on which it received the case-file.

17. In the meantime, on 20 January 2003 the second applicant complained to the Chief Inspector of Construction Supervision that the decision against T.P. had not been enforced. The complaint was transmitted to the Małopolski Regional Inspector of Construction Supervision, who dismissed the complaint on 10 March 2003. The Regional Inspector established that the Oświęcim District Inspector had formally required T.P. to comply with the decision. The inspectorate had instituted administrative enforcement proceedings against T.P. and had imposed a fine on him in order to make him comply with the decision. Lastly, it had requested the Oświęcim Tax Office to enforce the fine imposed on T.P. However, all those measures had been unsuccessful. On 7 March 2003 the District

Inspector had issued a substitute enforcement order (*wykonanie zastępcze*), i.e. an order requiring enforcement of a decision against T.P. by a third party at the former's expense.

18. On 3 March 2005 the first, second and fourth applicants complained in an application to the Cracow Administrative Court that the District Inspector had failed to enforce the judgment of 6 October 1999.

19. On 5 May 2005 the applicants complained to the Governor of the Małopolski Region about the continued inactivity of the Oświęcim District Inspector with regard to enforcement of the decision of 14 May 1997.

20. On 10 July 2005 the first and second applicants complained to the Cracow Regional Inspector of Construction Supervision about the inactivity of the District Inspector and the continued non-enforcement of the administrative decisions. They demanded that concrete measures be taken.

21. On 27 April 2006 the Regional Inspector instructed the applicants that they should lodge a complaint under Section 154 of the Law on Procedure before the Administrative Courts. On 20 and 23 May 2006 the second and fourth applicants asked the District Inspector to execute the decision of 14 May 1997, notifying him that if he did not do so the applicants would lodge a complaint with an administrative court.

22. On 24 June 2006 the second and fourth applicants again complained to the Governor of the Małopolski Region. They informed him of the fact that part of the escarpment located near the house of one of the applicants had collapsed as a result of the operation of T.P.'s company.

23. The applicants filed numerous complaints with the District Inspector urging him to enforce the administrative decision of 14 May 1997. They objected also to the heavy goods vehicle traffic generated by T.P.'s company in their neighbourhood.

24. It appears, however, that the decision has not yet been enforced.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. The relevant domestic law concerning inactivity on the part of administrative authorities is set out in the Court's judgments in the cases of *Kaniewski v. Poland*, no. 38049/02, §§22-28, 8 February 2006; *Koss v. Poland*, no. 52495/99, §§21-25, 28 March 2006; and *Grabiński v. Poland*, no. 43702/02, §§60-65, 17 October 2006).

THE LAW

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

26. The applicants complained of a breach of Article 6 § 1 of the Convention on account of the failure to enforce a final judgment and the length of administrative proceedings. In so far as relevant, Article 6 § 1 reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal...”

27. The Court considers that while both complaints concerned the same factual situation the Convention issues are largely different and require separate consideration.

A. The Government’s preliminary objections

28. The Government submitted that the third applicant had not exhausted domestic remedies with respect to her complaints, since she had not formally been a party to any of the national proceedings.

29. The applicants did not address this issue.

30. The Court notes that the third applicant did not participate in any proceedings relating to the enforcement of the decision of 15 July 1997. In these circumstances, the Court considers that the application, in so far as it concerns the third applicant, must be rejected for failure to exhaust domestic remedies, pursuant to Article 35 § 4 of the Convention.

31. The Government maintained that the applicants 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 and courts. They cited Article 417 of the Civil Code. They further alleged that the applicants should have filed an application with the Regional Administrative Court under section 154 of the Law on Procedure before the Administrative Courts. They argued that under these provisions the applicants could have claimed compensation for damage sustained as a result of the non-enforcement of the judgment of 9 July 2004. In addition, the Government argued that from 17 September 2004, the date of entry into force of the 2004 Act, the applicants could have sought compensation for the damage resulting from the excessive length of proceedings before Polish courts, under sections 16 and 18 of the 2004 Act read in conjunction with Article 417 of the Civil Code. Lastly, they claimed that the applicants had failed to appeal against some of the decisions given in their cases.

32. The applicants objected.

33. The Court firstly 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 has been 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 a judicial practice which was sufficiently established to make a claim for compensation based on Article 417¹ § 3 of the Civil Code an effective remedy and that the Government have thus failed to substantiate their contention (see *Grabiński v. Poland*, no. 43702/02, § 74, 17 October 2006). It follows that this part of the Government's objection must be rejected.

34. The Court further notes that the applicants lodged numerous complaints alleging inactivity on the part of the administrative authorities (see paragraphs 13, 19 and 20). They further filed several complaints about the District Inspector's failure to enforce the decision in question (see paragraphs 11, 17, 18 and 23). They also filed a complaint with the District Inspector asking him to execute the decision and putting him on notice of their intention of filing a complaint with the administrative court, if he failed to do so, under Article 154 of the Law on Procedure before the Administrative Courts (see paragraph 23). However, these complaints were to no avail.

35. The Court reiterates that, although Article 35 § 1 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, *Kaniewski*, cited above, § 37). The Court considers therefore that, having availed themselves of some of 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 civil proceedings or another form of administrative action for compensation.

36. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed. The Court further notes that this part of the application 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. The alleged failure to enforce a final judgment

37. The Court reiterates that a delay in the execution of a judgment may be justified in particular circumstances. But the delay may not be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov v. Russia*, no. 59498/00, § 35, ECHR 2002-III).

38. The Government refrained from submitting observations on the merits of the application. They nevertheless stressed, that the domestic authorities undertook numerous measures in order to enforce the decision of the Zator Mayor of 14 May 1997.

39. The Court observes that the Cracow Regional Administrative Court's judgment of 9 July 2004 imposed on the District Inspector of Construction Supervision the duty to issue a decision or undertake other necessary measures with a view to enforcing the Supreme Administrative Court's judgment of 6 October 1999 within two months.

40. The Court further observes that the judgment of 9 July 2004 has not been enforced nearly five years after its delivery.

41. Having regard to the above, the Court considers that the facts of the case do not demonstrate any justification for the failure to enforce the judgment of 9 July 2004.

42. There has therefore been a violation of Article 6 § 1 of the Convention in that respect.

C. The length of the proceedings

43. The applicants complained that the length of the administrative 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..."

44. The Government refrained from submitting observations on the merits of the application.

45. The period to be taken into consideration began on 6 October 1999 and has not yet ended. It has thus already lasted nearly 10 years.

46. 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).

47. 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).

48. 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.

49. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicants claimed 16,000 Polish zlotys each in respect of non-pecuniary damage.

53. The Government contested these claims.

54. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards EUR 3,900 each to the first, second and fourth applicants.

B. Costs and expenses

55. The applicants did not make any claim for costs and expenses.

C. Default interest

56. 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 first, second and fourth applicants' complaints admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-enforcement of a final judgment;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the administrative proceedings;
4. *Holds*
 - (a) that the respondent State is to pay the first, second and fourth applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,900 (three thousand nine hundred euros) each 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.

Done in English, and notified in writing on 15 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President