



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

FOURTH SECTION

CASE OF GIZA v. POLAND

(Application no. 48242/06)

JUDGMENT

STRASBOURG

13 July 2010

FINAL

13/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Giza v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 48242/06) 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, Mr Józef Giza (“the applicant”), on 22 November 2006.

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

3. On 17 November 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Bystra Podhalańska.

5. In 1995 the applicant's neighbours, K.G. and J.G., constructed a sawmill on a plot of land adjacent to his property without the required building permit. The applicant informed the authorities about the illegal construction.

6. On 22 November 1995, the Nowy Targ District Office ordered the applicant's neighbours to demolish part of the building by 30 April 1996.

7. On a motion lodged by the applicant, on 29 September 1997 the Director of the Nowy Targ District Office ordered K.G. and J.G. to demolish the building by 30 January 1998 as it had been built without the appropriate permit. That decision was upheld on appeal by the Nowy Sącz Regional Office on 4 December 1997.

8. On 24 June 1998 the District Office fined K.G. and J.G. for failure to comply with the decision of 4 December 1997. Upon a further appeal, on 25 August 2000 the Supreme Administrative Court declared part of the decision of 4 December 1997 null and void in so far as it related to the time-limit for carrying out the demolition.

9. On 20 November 2002 part of the sawmill burned down. It appears that, subsequently, the applicant's neighbours reconstructed the destroyed part of the building without the required building permit.

10. On an unknown date in 2004 the applicant complained to the Małopolski Regional Inspector of Construction Supervision, alleging that the length of the enforcement proceedings had been excessive.

11. In its decision of 12 October 2004 the Regional Inspector considered that the applicant's complaint was well-founded and ordered the Nowy Targ District Office to take the necessary measures in order to enforce the decision of 29 September 1997 within one month. The Regional Inspector's decision was subsequently upheld on 4 December 1997.

12. On 27 January 2005 the applicant filed a complaint with the Supreme Administrative Court, alleging that the length of the enforcement proceedings had been excessive. He further stressed that the illegal construction and the operation of the sawmill constituted a significant nuisance. The complaint was referred to the Cracow Regional Administrative Court.

13. On 25 May 2006, in response, the Cracow Regional Administrative Court delivered a judgment. It ordered the Sucha Beskidzka District Inspector of Construction Supervision to take all the necessary measures with a view to enforcing the decision of 29 September 1997, as upheld by the decision of 4 December 1997, within one month of the date on which it received the case file.

14. On 7 June 2006 the Sucha Beskidzka District Prosecutor instituted an investigation into the non-enforcement of the decision of 29 September 1997.

15. On 4 October 2006 the Małopolski Regional Inspector of Environmental Protection informed the Mayor of Such Beskidzka that the sawmill operated by the applicant's neighbours created excessive noise during the daytime.

16. On 18 December 2006 the Mayor of Sucha Beskidzka gave a decision and established that the maximum noise level caused by the sawmill should not exceed 55dB during daytime and 45dB at night. It

further held that that decision was without prejudice to the legality of the construction of the building located on the plot in question.

17. On 28 April 2008 the Sucha Beskidzka District Prosecutor filed an act of indictment against the Sucha Beskidzka District Inspector of Construction accusing him of breach of duty concerning the non-enforcement of the administrative decision of 29 September 1997. The proceedings are pending.

18. It appears that the decision of 29 September 1997 has not been enforced yet.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

20. On 25 May 2009 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the administrative enforcement proceedings in which the applicant had been involved. In respect of non-pecuniary damage, the Government proposed to award the applicant 15,000 Polish zlotys (PLN) (the equivalent of approximately 3,750 euros (EUR)). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

21. The applicant in principle agreed with the Government's proposal but maintained that the Government should also undertake to enforce the administrative decision in question and set a time-limit within which the impugned building would be demolished.

22. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the

examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

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

24. On the facts and for the reasons set out above, in particular the amount of compensation proposed and the applicant's insistence on the enforcement of the final decision of 4 December 1997, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

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

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

26. The applicant complained of a breach of Article 8 of the Convention on account of the failure to enforce a final judgment and the length of the administrative proceedings. The Court considers that these complaints fall to be examined under Article 6 § 1, which, in so far as relevant, 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 ...”

A. The Government's preliminary objections

27. The Government submitted 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 and courts. They cited Article 417 of the Civil Code. In addition, the Government argued that from 1 January 2004, the date of entry into force of the Law of 30 August 2002 on procedure before the Administrative Courts, the applicant could have sought compensation for damage resulting from the administrative authority's failure to act in compliance with the judgment of an administrative court.

28. The applicant objected to the Government's submissions in general terms.

29. 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.

30. The Court further notes that the applicant lodged numerous complaints alleging inactivity on the part of the administrative authorities. He further filed complaints about the District Inspector's failure to enforce the decision in question (see paragraphs 10 and 12). However, these complaints were to no avail.

31. The Court reiterates that, although Article 35 § 1 requires that 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 himself of some of the possibilities available to him within the administrative procedure system, the applicant was not required to embark on another attempt to obtain redress by bringing civil proceedings or another form of administrative action for compensation.

32. 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. Merits

1. *The alleged failure to enforce a final decision*

33. The Government did not submit observations on the merits of the application.

34. The Court reiterates that a delay in the execution of a judgment or a final decision may be justified in certain 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).

35. The Court observes that the decision of the Nowy Sacz Regional Construction office of 4 December 1997 ordered K.G and J.G – the applicant's neighbours – to demolish the illegally constructed sawmill (see paragraph 7). On 25 May 2006 the Cracow Regional Administrative Court imposed on the District Inspector of Construction Supervision the duty to undertake all necessary measures with a view to enforcing its decision of 1997.

36. The Court further observes that the decision of 4 December 1997 has still not been enforced, more than twelve years after its delivery.

37. 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 decision of 4 December 1997.

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

2. *The length of the proceedings*

39. Having regard to its reasoning and conclusion on the earlier complaint, the Court does not find it necessary to rule separately on the length of proceedings complaint.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

40. The applicant further complained that the length of the proceedings complained of had infringed his right to the peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1.

41. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

42. Having regard to its finding under Article 6 § 1 (see paragraph 38 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 30,000 Polish Zlotys in respect of non-pecuniary damage.

45. The Government contested the claim.

46. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him the full sum claimed EUR 7,200 (seven thousand two hundred euros) under that head.

B. Costs and expenses

47. The applicant did not make any claims for costs and expenses.

C. Default interest

48. 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. *Rejects* the Government's request to strike the application out of its list;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the non-enforcement of the final decision in the applicant's favour;
4. *Holds* that there is no need to examine separately the complaint under Article 6 § 1 of the Convention (length of the administrative proceedings);

5. *Holds* that there is no need to examine separately the complaint under Article 1 of Protocol No. 1 to the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,200 (seven thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys 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.

Done in English, and notified in writing on 13 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President