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

FOURTH SECTION

DECISION

Application no. 16009/12
Krzysztof GRUSZKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 8 November 2016 as a Committee composed of:

Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 March 2012,

Having regard to the declaration submitted by the respondent Government on 13 July 2016 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS, PROCEDURE AND LAW

1. The applicant, Mr Krzysztof Gruszka, is a Polish national, who was born in 1970 and lives in Myszkow. He was represented before the Court by Mr P. Pojnar, a lawyer practising in Częstochowa.

2. The applicant complained under Articles 2 and 3 of the Convention about a police operation during which he had been shot in the spine as a result of which he became paralysed. He complained about excessive use of force by the police and ineffectiveness of the investigation into the incident.

3. The application had been communicated to the Polish Government ("the Government"), who were represented by their Agent, Ms Justyna Chrzanowska, of the Ministry of Foreign Affairs.

4. After the failure of attempts to reach a friendly settlement, by a letter of 13 July 2016, the Government submitted the following unilateral declaration with a view to resolving the issues raised by the application:

> "The Government hereby wish to express – by way of the unilateral declaration – their acknowledgement of violation of Articles 2 and 3 of the Convention in the applicant's case.
>
> Simultaneously the Government declare that they are ready to pay the applicant the sum of PLN 44,000 which they consider to be reasonable in the light of the Court's case-law in similar cases... The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal rate of the European Central Bank during the default period plus three percentage points.
>
> The Government respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention ..."

5. The applicant did not agree with the terms of the Government's unilateral declaration and asked the Court to rule on the merits of the case.

6. The Court reiterates that Article 37 § 1 (c) of the Convention enables it to strike a case out of its list if "for any other reason established by the Court, it is no longer justified to continue the examination of the application". In particular, the Court may strike out an application under this provision on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

7. Having regard to its case-law on the matter (see, notably, *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007), to the nature of the admissions contained in the Government's declaration and to the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application and that respect for human rights as defined in the Convention and the Protocols thereto does not require it to do so (Article 37 § 1 *in fine*).

8. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

9. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Articles 2 and 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 1 December 2016.

Andrea Tamietti
Deputy Registrar

Nona Tsotsoria
President