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SECRETARIAT OF THE COMMITTEE OF MINISTERS
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Meeting: 1201 meeting (3-5 June 2014) (DH)

Item reference: Action plan (30/04/2014)

Communication from Poland concerning the case of Giermek against Poland (Application No. 6669/03)

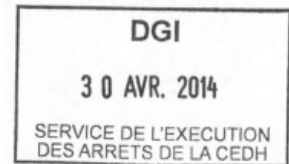
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Réunion : 1201 réunion (3-5 juin 2014) (DH)

Référence du point : Plan d'action

Communication de la Pologne concernant l'affaire Giermek contre Pologne (requête n° 6669/03)
(**anglais uniquement**).



ACTION PLAN¹

Information about the measures to comply with the judgment in the case of *Giermek against Poland*

Case description

Giermek, application no. 6669/03, judgment of 15/09/2009, final on 15/12/2009.

The case concerns non-enforcement of the decision issued by domestic authority i.e. the Mayor of Zator on 14/05/1997 and the subsequent judgment issued by the Cracow Regional Administrative Court on 09/07/2004 which caused violation of Article 6 § 1 of the Convention. The Court found also violation of Article 6 § 1 of the Convention because of the length of administrative proceedings.

In 1985 the applicants' neighbour T.P. started a company producing soft drinks, having received the relevant permits. The company was located on the same street and in the direct vicinity of the applicants' houses. 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.

On an unspecified date the applicants and other inhabitants of the same street complained to the Mayor of Zator about the heavy traffic and nuisance caused by the wholesale business of T.P.

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.

On 09/07/2004 the Cracow Regional Administrative Court held a hearing. At that 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.

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.

In the meantime, on 20 January 2003 the second applicant complained also to the Chief Inspector of Construction Supervision that the decision against T.P. had not been enforced. Also the other applicants on 3 March 2005 complained in an application to the Cracow Administrative Court and 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.

¹ Information submitted by the Polish authorities on 30 April 2013

However, all those measures had been unsuccessful and the decision had not been enforced at the date of the Court's judgment.

The Court reiterated that a delay in the execution of a judgment could be justified in particular circumstances. But the delay could not be such as to impair the essence of the right protected under Article 6 § 1 of the Convention.

Moreover, the Court observed that although 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 the judgment of 9 July 2004 had not been enforced nearly five years after its delivery.

Taking into account the above the Court considered that the facts of the case did not demonstrate any justification for the failure to enforce the judgment of 9 July 2004. Therefore it found a violation of Article 6 § 1 of the Convention in that respect.

I. Payment of just satisfaction and individual measures

1. Just satisfaction

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
-	3,900 EUR	-	3,900 EUR
Paid on 25/02/2010			

2. Individual measures

As it transpires from the information sent by the Oświęcim District Inspector of Construction Supervision (hereinafter the Inspector) on 29 April 2014 the decision of the Mayor of Zator of 14/05/1997 has not been executed yet. In addition the Inspector informed that the content of the above decision is ambiguous and raises serious questions of interpretation which of course has an impact on effectiveness of execution. Moreover the Inspector undertook to establish current factual situation and to conduct proper control activities.

In these circumstances, no other individual measure appears necessary.

II. General measures

1. Dissemination and information activities

The Government would like to inform that a number of measures to avoid the lack of proper activity of the public administration authorities as well as concerning elimination of the excessive length of administrative proceedings have been taken in the context of execution of the Court's judgments of the *Fuchs v. Poland* group.

Moreover, in the Government's opinion in order to prevent similar infringements in the future training and information activities, which would mainly consist of distributing the judgment among the relevant domestic entities, have a large significance.

Consequently in order to avoid further violations similar to that one found in the *Giermek v. Poland* case dissemination the Court's judgment as well as trainings for administration officials seem to be sufficient measures.

The Court's judgment was sent to the Oświęcim District Inspector of Construction Supervision together with the judgment issued in similar case, i.e. the case of *Giza v. Poland* which was translated into Polish.

2. Trainings for public and local administration officials

In the context of the execution of the Court's judgments concerning conduct of public and local administration authorities it is worth to mention the Government Agent's initiative on organizing trainings for administration officials.

The first set of such trainings was held by representatives of the Government Agent in cooperation with the Ministry of Administration and Digitalization in December 2013. There were trainings on dissemination of the Convention and the Court's case-law among local administration officials.

Moreover information on the trainings together with incentive for proposals addressed to the administration organs are available at the Ministry of Foreign Affairs' website: http://www.msz.gov.pl/pl/polityka_zagraniczna/europejski_trybunal_praw_czlowieka/aktualnosci/szkolenie_nt_standardow_praw_czlowieka_dla_pracownikow_urzedow_wojewodzkich

In these circumstances, no other general measure appears necessary.

III. Conclusions of the respondent state

The Government undertake to inform on the results of the activities concerning individual measures undertook by the Inspector and consider that the general measures adopted will be sufficient to conclude that Poland has complied with its obligations under Article 46, paragraph 1 of the Convention.