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

FOURTH SECTION

**CASE OF KUCZERA v. POLAND**

*(Application no. 275/02)*

JUDGMENT

STRASBOURG

14 September 2010

**FINAL**

*14/12/2010*

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

**In the case of Kuczera 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 24 August 2010,

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

# PROCEDURE

1. The case originated in an application (no. 275/02) 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 Jerzy Kuczera ("the applicant"), on 14 July 2000.

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

3. The applicant alleged, in particular, that he had been deprived of his right of access to a court, contrary to Article 6 of the Convention.

4. On 9 February 2006 the President of the Fourth Section 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 of the Convention).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948 and lives in Pleśna.

6. The applicant and his brother, S.K., leased a substantial area of farming land. After the applicant had been hospitalised, he asked his brother to gather the crops. The applicant submits that his brother sold the crops and the agricultural machines which they co-owned and took all the profits.

7. On 6 October 1998 the applicant brought a claim against his brother in the Tarnów Regional Court, seeking 73,095 Polish zlotys (PLN) in compensation. He also sought an exemption from court fees (PLN 4,985.70).

8. On 21 October 1998 the Regional Court exempted the applicant from court fees. On 2 November 1998 it granted legal aid to the applicant.

9. On 16 November 1998 the applicant modified his claim by joining his brother's wife as a defendant. He also requested the court to issue an interim order to secure his claims by way of, *inter alia*, registering a charge over the defendants' property and attaching their bank accounts. On 2 December 1998 the applicant submitted some additional information requested by the court in relation to his request for an interim measure. On 6 April 1999 the Regional Court granted the interim order in part.

10. On 28 April 1999 the applicant increased his claim to PLN 123,035.

11. On 28 May 1999 the Regional Court revoked the applicant's exemption from court fees and the decision to grant him legal aid. The Regional Court considered that the information in the file indicated that the applicant was not an indigent person unable to pay court fees and other costs related to the litigation. It noted that the applicant owned two houses and that in 1998 he had had 16,000 United States dollars deposited in the bank. Thus, the Regional Court found that the applicant had not submitted accurate information about his financial status. Consequently, it imposed a fine on the applicant in the amount of PLN 100.

12. On 17 June 1999 the applicant appealed against that decision. He contested the court's findings. The applicant submitted that a charge had been registered over his property in Gromnik, while the other property, located in Pleśna, was a small house where he lived with his extended family. He further stated that all his savings had been invested in the farming of the leased land and that he had been deprived of any profits by his brother. He further submitted that his only income was a modest invalidity benefit.

13. On 6 July 1999 the Cracow Court of Appeal dismissed the applicant's appeal. It relied on the fact that the applicant had failed to disclose all the relevant information about his financial status in his original application for an exemption from court fees.

14. On 23 July 1999 the Tarnów Regional Court ordered the applicant to pay PLN 4,985.70 in court fees. On 28 July 1999 the applicant applied for leave to pay the relevant fees in instalments. He claimed that he had been receiving invalidity benefit and could not pay the amount in question all at once. He also submitted that he could not take up any offers of work because of his poor health.

15. On 10 September 1999 the Regional Court granted the applicant leave to pay the court fees in ten monthly instalments. Until March 2000 the applicant paid six instalments.

16. On 20 February 2000 the applicant increased his claim to PLN 470,400, following the submission of a number of documents by the defendant which indicated the amount of profit made from the jointly leased land.

17. On 23 March 2000 the Regional Court ordered the applicant to pay PLN 21,445.30 in court fees for the modification of his claim.

18. On 27 March 2000 the applicant requested the court to exempt him from those court fees and to cancel the four remaining monthly instalments he was supposed to pay. The applicant submitted that his only income was an invalidity benefit in the monthly amount of PLN 578.46 and that he was unfit for work. He stated that he had been hospitalised from 11 September until 4 October 1999 and that he had subsequently broken his spine and had again been hospitalised. He further submitted that he had transferred his property in Pleśna by way of a donation to his children. The other property, located in Gromnik, was a wooden house in need of renovation and lacking basic amenities. The applicant also supported two of his children aged 13 and 18. His wife worked at a school and her monthly salary was PLN 497. He did not have any savings and owned a four-year-old Polish car.

19. On 30 March 2000 the Tarnów Regional Court refused the applicant's request for exemption from the court fees. It held, referring to the case-law of the Supreme Court from 1935 and 1937, that the donation of the applicant's property to his children should be treated as a fraudulent disposal of the property with a view to fulfilling the eligibility requirements for exemption from court fees. Additionally, the Regional Court considered that the applicant had adult children who had an obligation to support him financially if necessary. That obligation extended, in the court's view, to helping the applicant in funding the court proceedings.

20. Furthermore, the Regional Court considered that the applicant could have sold some of his property or mortgaged it. That way, in the court's view, the applicant would have been able to secure sufficient means for funding the litigation. The Regional Court underlined that the applicant's case was not one in which it had been necessary to file a claim immediately. The court observed that a party intending to institute court proceedings had to take into account the costs involved and secure them in advance from the income received over a longer period of time. Only in exceptional cases, when the immediate institution of proceedings was necessary (on account of the limitation of actions), could a party rely exclusively on his or her current income.

21. The Regional Court considered that the applicant, when increasing his claim to PLN 470,400, had to take into account the obligation to pay the relevant fees, even more so given that it had not been necessary to modify his claim at that particular time.

22. The applicant appealed against the Regional Court's decision. He submitted that he had not disposed of any of his property in order to obtain an exemption from court fees since he still owned the property in Gromnik. However, that latter property did not generate any profit. The applicant disagreed with the Regional Court regarding the motives behind his donation. He stated that he had simply wanted to provide for his children's future. The applicant emphasised that he had no possibility of securing the required amount of court

fees and that the impugned decision had been based on speculation about his financial status. Replying to the Regional Court's argument about the possibility of securing the necessary funds over a period of time, the applicant submitted that given his current level of income and his incapacity for work, he would never be able to secure the necessary funds.

23. On 9 May 2000 the Cracow Court of Appeal upheld the decision of the Regional Court. It further concurred with the Regional Court's finding that disposing of the applicant's property in Pleśna by way of donation could not justify another exemption from court fees.

24. It appears that on a later unknown date the applicant paid the remaining four instalments and the court proceeded with the examination of the merits of the case.

25. Following a request of 21 June 2002, the Tarnów Regional Court exempted the defendants S.K and H.K. from the court fees at a session held *in camera* on 9 July 2002.

26. On 11 January 2003 the applicant once again increased his claim to PLN 672,729.50 (instead of the initial PLN 73,095). The court fee was set at PLN 31,581 and the applicant asked for an exemption. The request was dismissed by the Tarnów Regional Court on 19 March 2003. The court held that while it was true that the applicant and his wife supported themselves from small invalidity pensions, the applicant owned a house in Pleśna. The court stressed that since the applicant had donated his property to his children, they should have helped him with the court fees. Lastly, the court held that the applicant did not justify the increased claim by any new facts or evidence but merely asked for a higher sum. On 15 May 2003 the Kraków Court of Appeal upheld this decision repeating the same reasons.

27. At a hearing held on 6 April 2004 the applicant again decided to modify his claim and increased it, this time to PLN 123,035 (instead of the PLN 73,095). On 7 April 2004 the Tarnów Regional Court dismissed his request to exempt him from court fees. The court referred to the reasons previously given.

28. On 8 November 2004 the Tarnów Regional Court gave judgment and dismissed the applicant's claim. The judgment became final on 22 December 2004.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

29. The legal provisions applicable at the material time and questions of practice are set out in paragraphs 23-33 of the judgment delivered by the Court on 19 June 2001 in the case of *Kreuz v. Poland* (no. 28249/95, ECHR 2001-VI; see also *Jedamski and Jedamska v. Poland*, no. 73547/01, §§ 29-39).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF LACK OF ACCESS TO A COURT

30. The applicant complained under Article 6 § 1 that the excessive court fees required from him for proceeding with his claim had been in breach of his right of access to a court for the determination of his civil rights. The relevant parts of Article 6 § 1 provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal established by law. ..."

31. The Government contested that argument.

### A. Admissibility

32. 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

#### *1. The parties' submissions*

##### (a) The applicant

33. The applicant maintained that the sum required from him for proceeding with his claim had been unusually high and disproportionate to his means. It had been much higher than his yearly income. He had not had any savings since he had invested them in a farming venture. The courts had further failed to take into consideration his state of health and his actual earning capacity. In addition, they had required him to mortgage his property in order to obtain means for paying the court fees.

34. The applicant concluded that his right of access to a court had been breached.

##### (b) The Government

35. The Government firstly recapitulated the general rules concerning exemption from court fees.

36. Secondly they noted that although the applicant had initially been exempted from court fees by the Regional Court, the court had later verified the applicant's financial situation and revoked the exemption. They maintained that

the applicant had failed to satisfy the conditions for an exemption from court fees as set out in Article 113 § 3 of the Code of Civil Procedure.

37. The Government maintained that the courts had acceded to the applicant's request and allowed him to pay the court fees in monthly instalments despite the fact that he had submitted fraudulent information about his financial status.

38. Lastly, they stressed that the domestic authorities had displayed particular diligence in handling the applicant's case. All decisions had been reasoned carefully and in a detailed manner.

39. In sum, the Government invited the Court to find that there had been no violation of Article 6 of the Convention.

### 2. *The Court's assessment*

#### (a) Principles deriving from the Court's case-law

40. The Court observes that in its judgment in *Kreuz v. Poland* (cited above, § 60) it dealt with the question whether the requirement to pay substantial fees to civil courts in connection with claims could be regarded as a restriction on the right of access to a court.

41. In this connection the Court held that the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction had been impose, were factors which were material in determining whether or not a person had enjoyed his right of access and had “a ... hearing by [a] tribunal”.

#### (b) Application of the above principles to the present case

42. The Court will now determine whether, in the particular circumstances of the present case, the fee actually required constituted a restriction that impaired the very essence of the applicant's right of access to a court.

43. The Court firstly notes that the case concerned the applicant's claim for compensation against his brother for alleged deception. The fee in the case was determined as a fraction of the value of the claim, namely the amount of compensation sought.

44. The Court observes that while the authorities initially exempted the applicant from the fees due in his case, they subsequently revoked the exemption in particular because he had failed to disclose all the relevant information about his financial status (see paragraphs 8 and 11-13 above). They further refused to accept the applicant's arguments that he was unable to pay the court fees and that he was unfit for work. They assessed his financial situation on the ground that he owned property which, in their opinion, he could have sold or mortgaged. In addition, they stressed that the applicant had adult children to whom he donated his house, who should have helped him to finance the court proceedings. On that basis, they concluded that the applicant could have procured sufficient funds to pay the court fees in question (see paragraphs 12, 20 and 21).

45. The Court further observes that the applicant on four occasions significantly increased the value of his claim. Eventually he sought an amount considerably higher than the first claim (see paragraphs 7, 10, 16, 26 an 27 above). In this respect it must be stressed that applicants who deliberately inflate the value of their claims for compensation cannot be expected to be exempted entirely from the payment of court fees or from the requirement to contribute in a reasonable amount to the costs of taking the action (see *Kupiec v. Poland* no. 16828/02, § 49, 3 February 2009).

46. The Court further notes that despite the exaggerated amount of compensation claimed by the applicant, on two occasions the domestic authorities exempted him from the court fees due. In addition, they allowed him to pay the fees in monthly instalments (see paragraphs 8, 15 and 24 above). Lastly, the Court observes that the Tarnów Regional Court eventually examined the merits of the applicant's original claim (see paragraph 28 above).

47. In the circumstances, the Court considers that the amount of fees required from the applicant in the present case cannot be considered a disproportionate restriction on his right of access to a court.

48. The Court concludes that there has been no violation of Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE PROCEEDINGS

49. The applicant complained that the length of the proceedings relating to his application for an interim measure had been excessive. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

50. The Court observes that the alleged violation occurred in the course of the interlocutory proceedings relating to the application of an interim measure (see paragraph 9 above). Even assuming that Article 6 § 1 of the Convention is applicable to the proceedings at issue (see *Micallef v. Malta* [GC], no. 17056/06, § 83-86, ECHR 2009-...), the Court notes that in any event they ended on 6 April 1999, thus more than six months before the date on which this complaint was submitted.

51. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

52. The applicant further complained that he had not had an effective remedy in respect of the length of the interlocutory proceedings. He relied on Article 13 of the Convention.

53. The Court reiterates that, according to its case-law, Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). In view of its conclusions above (see paragraph 46), the Court considers that the applicant has no arguable claim of a violation of his rights under other provisions of the Convention which would have required a remedy within the meaning of Article 13.

54. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning lack of access to a court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of lack of access to a court.

Done in English, and notified in writing on 14 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President