



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

FOURTH SECTION

CASE OF KOZŁOWSKI v. POLAND

(Application no. 23779/02)

JUDGMENT

STRASBOURG

23 January 2007

FINAL

23/04/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kozłowski v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 4 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 23779/02) 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 Antoni Kozłowski (“the applicant”), on 15 May 2002.

2. The applicant was represented by Ms Adamek-Donhoffner, a lawyer practising in Szczecin. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry for 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 28 May 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Niechorze, Poland.

6. On 7 May 1999 the applicant, in connection with a property dispute, filed an action with the Szczecin Regional Court (*Sąd Okręgowy*) seeking to have a notarial deed declared null and void. On the same date he made an

application for an exemption from the court fees required from him to pursue the proceedings. He declared that the value of the estate in dispute was PLN 40,500 [approx. EUR 10,000].

7. On 7 July, 4 October, 13 December 1999, 25 January and 24 February 2000 the applicant made applications for his claim to be secured.

8. On 9 March 2000 the Regional Court asked the applicant to supplement his motion and to provide a detailed statement concerning his financial situation.

9. On 10 September 1999 the applicant informed the court that the value of the property in question was PLN 1,000,000. On 20 March 2000 the applicant submitted his declaration of means. He stressed that he received a monthly disability pension in the amount of PLN 324.43. In addition, during the summer season he let a shop and bed and breakfast rooms, which brought him yearly PLN 6,075 and PLN 7,000 respectively. His monthly expenditures amounted to PLN 1,300.

10. On 2 February 2001 the Regional Court asked the applicant to supplement his motion and to send the relevant documents confirmed by the local tax office.

11. On 2 April 2001 the applicant submitted his tax return to the Regional Court. He attested that in addition to his disability pension, his only income in 2000 had been PLN 8,000 (rent) and PLN 967.90 (other sources).

12. On 18 May 2001 the court decided to conduct an investigation in order to examine the applicant's financial situation.

13. On 27 July 2001 the Regional Court dismissed the applicant's motion for an exemption from court fees. It held that the applicant had failed to provide information concerning his wife's financial situation (they had been married under the system of separate ownership of property). The court examined the information given in the applicant's tax return for 2000, and in his wife's tax return. It further considered that the applicant had some extra income as he was letting the shop and the bed and breakfast rooms. Lastly, the court pointed to the fact that as the applicant had not indicated where he lived, he must be living with his wife with whom he maintained a common household.

14. On 23 August 2001 the applicant lodged an interlocutory appeal against that decision. He submitted that he had openly described his financial situation and he had not concealed any extra income. In addition to his monthly disability pension in the amount of PLN 324.43 he received PLN 6,075 and PLN 7,000 as rent from the shop and the rooms let to tourists. Furthermore, the Regional Court had based its decision on conjectures and suspicions as to the extra income received by him and his wife without any reference to the evidence actually collected in the case. Finally, the applicant claimed that his income only allowed him to support

himself and his son and that he had not been able to put money aside for the payment of future court fees.

15. On 24 October 2001 the Poznań Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal. The court reiterated that the applicant should have put aside money for the payment of court fees. In addition, despite the fact that the applicant had been married under the system of separate ownership of property, he should have provided a declaration of means in respect of his wife. In accordance with the relevant provisions of the Family and Custody Code, married persons were obliged to assist each other financially irrespective of whether they were married under a system of separate or joint ownership. In conclusion, the court found that the applicant's submissions that his monthly net income amounted to PLN 200 had not been credible. As a consequence, the court refused to exempt the applicant from the court fees due for proceeding with his civil claim.

16. On 19 November 2001 the Szczecin Regional Court ordered the applicant to pay court fees of PLN 51,600 for lodging his statement of claim.

17. As the applicant failed to pay the required court fees, his statement of claim was returned to him on 20 December 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. 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).

19. Article 27 of the Family and Custody Code (*kodeks rodzinny i opiekuńczy*) provides in so far as relevant:

“Both spouses, each according to his or her earning capacity, are obliged to contribute to satisfy the family's needs”

THE LAW

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

20. The applicant complained under Article 6 § 1 that, on account of the excessive court fees required from him for proceeding with his claim, he had been deprived of access to a court for the determination of his civil rights.

Article 6 § 1 of the Convention, in so far as relevant, provides:

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

21. The Government contested that argument.

A. Admissibility

22. The Government submitted that the applicant had not exhausted the available domestic remedies as he had not asked the Ombudsman to file a cassation appeal in his name against the decision of the Court of Appeal.

23. The applicant replied that he had exhausted the available domestic remedies. He could not have asked the Ombudsman to file a cassation appeal against the decision of the Court of Appeal, as the domestic law had not provided for a possibility to appeal against a decision to return a statement of claim. He further considered that he had not had any other remedies to complain about the amount of court fees imposed.

24. The Court accepts the applicant's arguments and considers that he did not have to avail himself of any other domestic remedies.

25. The Court notes that the application 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 Government

26. The Government recalled the general rules concerning exemption from court fees.

27. The Government maintained that according to the Family and Custody Code spouses were obliged to assist each other financially, irrespective of whether they had joint ownership of property or not. For these reasons the courts had a right to demand from the applicant information concerning his wife's income, even though they had been married under the system of separate ownership of property.

28. The Government stressed that the amount of the fee required from the applicant had been determined as a fraction of the value of the claim. The applicant estimated the value of the property in question at PLN 1,000,000. Hence, the court fee had been calculated in a higher amount. In addition, the applicant had failed to submit a certified tax declaration from his local tax office. The documents that he had submitted had not been stamped by the local tax office.

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

(b) The applicant

30. The applicant stressed that Article 27 of the Family and Custody Code obliging spouses to help each other, and more precisely to “contribute to satisfying the family’s needs”, applied only to families which were running a common household. However, the applicant and his wife had not been a family for many years, they lived separately and they supported themselves independently. Therefore, the applicant had not been under an obligation to provide information about his wife’s financial situation.

31. The applicant further argued that he had provided all the necessary documents to substantiate his request for an exemption from court fees. He had submitted copies of his tax declarations to the courts. It is true that they had not been stamped by the tax office. However, in accordance with its practice the tax office did not have to stamp the declarations. Furthermore, had the courts had any doubts as to the truth of the facts he had stated in his declarations, they could have had conducted an investigation.

32. The applicant concluded that the sum required from him had been unusually high and disproportionate to his means. Setting the court fee at more than PLN 50,000, a sum equal to double the average annual salary in Poland at that time, had deprived him of his right to bring his civil claim before a court. He asked the Court to find that his right of access to a court had been breached.

2. The Court’s assessment

(a) Principles deriving from the Court’s case law

33. The Court recalls 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 can be regarded as a restriction on the right of access to a court.

34. 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 has been imposed, are factors which are material in determining whether or not a person enjoyed his right of access and had “a ... hearing by [a] tribunal”.

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

35. 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.

36. In the instant case the applicant had to desist from pursuing his case before the civil courts because he had been unable to pay the court fee of PLN 51,600 [approx. EUR 13,000].

37. The Court firstly notes that the case concerned the applicant's property rights and his request for a declaration that a notarial deed was null and void. The fee in this case was determined as a fraction of the value of the claim, namely the value of the real estate in question.

38. The Court further observes that the applicant received on average PLN 1,400 per month and his monthly expenditures amounted to PLN 1,300 (see paragraph 9 above). Nevertheless, this sum was apparently his only asset and it does not seem reasonable to demand that he spend it on the payment of court fees rather than on his basic living needs. Furthermore, the sum required from the applicant was equal to double the average annual salary in Poland at that time (see paragraph 32 above). That amount if seen from the perspective of an ordinary litigant was undoubtedly substantial. In addition, the courts did not envisage a partial exemption from the court fees.

39. The Court notes that the judicial authorities refused to accept the applicant's argument that he was unable to pay the court fees and they assessed his financial situation solely on the ground that he must have lived with his wife and shared a household with her. The domestic courts referred to the fact that the applicant's submissions that his monthly net income amounted to PLN 200 had not been credible. On that basis, they concluded that the applicant had had sufficient funds to pay the court fee in question. However, the Court does not find those grounds persuasive, in particular when weighed against the importance of securing to the applicant "effective" access to a court. The authorities assumed that as the applicant had not indicated where he lived he must have been living with his wife. In addition, they stressed that married persons were obliged to assist each other financially irrespective of whether they were married under a system of separate or joint ownership. However, by doing so, they disregarded the applicant's objections that he and his wife had not been a family for many years, they had lived separately and they had supported themselves independently.

40. In the circumstances and having regard to the prominent place held by the right to a court in a democratic society, the Court considers that the judicial authorities failed to secure a proper balance between, on the one hand, the interest of the State in collecting court fees for dealing with claims and, on the other hand, the interest of the applicant in pursuing his civil claim.

41. For the above reasons, the Court concludes that the refusal to reduce the fee for lodging the applicant's claim constituted a disproportionate

restriction on his right of access to a court. It accordingly finds that there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed PLN 150,000 in respect of pecuniary and non-pecuniary damage.

44. The Government submitted that the sum was excessive.

45. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 under this head.

B. Costs and expenses

46. The applicant, who was represented by a lawyer in the proceedings before the Court, did not seek reimbursement of any costs and expenses.

C. Default interest

47. 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

1. *Declares* unanimously the application admissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* by six votes to one

(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 6,000 (six thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of the 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;

4. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Garlicki is annexed to this judgment.

N.B.
T.L.E.

DISSENTING OPINION OF JUDGE GARLICKI

It is with regret that I am unable to follow the majority's position in this case. From a general perspective, I should like to refer to two arguments raised in the dissenting opinion of Judges Baka, Popovic and myself in the case of *Teltronic-CATV v. Poland* (no. 48140/99, judgment of 10 January 2006):

- the legal regime governing how court fees are calculated in Poland is based on the rule that, in principle, the fees should represent 5% of the value of the claim. This general rule has never been called into question by the Court. Hence, it may simply be the manner in which this rule is applied in particular cases which prompts the Court to find that the Convention has been violated;

- each and every time that the Court embarks on an assessment of particular applications of domestic legislation, it ventures into an area where it must abide by the principle of subsidiarity. This means that the Court must respect decisions and assessments taken by the domestic jurisdictions unless those decisions and assessments appear to be clearly arbitrary and/or discriminatory. In such situations, however, the burden of proof lies with the Court.

In the present case the domestic courts asked the applicant to submit full information concerning his wife's financial situation (the couple had chosen separate ownership of property). Both the Regional Court and, later, the Appellate Court, when refusing the applicant's motion for exemption from the court fees, found that he had failed to provide that information (see paragraphs 13 and 15 of the judgment). In my opinion, the parties have an obligation to cooperate faithfully with the courts and should accept the consequences to provide such cooperation. Had the applicant submitted all the requested documents and had the domestic courts, on assessing those documents, refused exemption from the fees, the compatibility of such a refusal with the Convention standards could have been challenged before our Court. Only then could an argument alleging arbitrariness in the domestic courts' disregard of the legal relations governing his marriage have been raised in a valid manner. Given the manner in which events developed in this case, it is the applicant who should be blamed for its outcome.

Finally, I am not convinced by the Court's approach to calculating the just satisfaction award. I have the impression that, as in other Polish cases concerning court fees, the calculation was done in a schematic manner. In particular, the Court did not establish whether the return of the applicant's statement of claim resulted in an irrevocable loss of the opportunity to have his case heard. Only in such a situation would the relatively high level of the just satisfaction award appear justified.