



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

FOURTH SECTION

CASE OF KANIA v. POLAND

(Application no. 59444/00)

JUDGMENT

STRASBOURG

10 May 2007

FINAL

10/08/2007

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 Kania v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 12 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 59444/00) 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 Dariusz Kania (“the applicant”), on 15 November 1999.

2. The applicant, who had been granted legal aid, was represented by Mr W. Osipacz, a lawyer practising in Wrocław. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that due to the excessive amount of the court fees imposed on him, his right of access to a court as provided by Article 6 § 1 of the Convention had been violated.

4. On 13 September 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning access to a court 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 1962 and lives in Wrocław, Poland.

A. Claim for payment and subsequent proceedings

6. In October 1970 the applicant, at that time a schoolboy, was a victim of an accident at his primary school as a result of which he lost the sight in his right eye. In 1983 a court granted him compensation and a monthly pension in the amount of 2,000 old Polish zlotys.

7. On 12 August 1994 the applicant lodged with the Wrocław Regional Court (*Sąd Wojewódzki*) a civil action in which he sought an increase in the amount of the invalidity pension. The applicant submitted that the amount of the monthly pension had not been changed since 1984. After the change in the denomination of the national currency which took place on 1 January 1995 the amount of the applicant's monthly pension was 0.2 Polish zlotys (PLN). He further sought compensation in connection with the further deterioration of his health in the amount of PLN 10,000,000.

8. Subsequently, the applicant was exempted from court fees and granted legal aid.

9. The trial court held several hearings and on 17 December 1998 it gave judgment. The Regional Court partly allowed the action and awarded the applicant a monthly pension in the amount of PLN 1,220. It ordered the defendant to make back payments of the pension as adjusted to the date of the lodging of the claim. The back payment amounted to PLN 43,000 and the interest to PLN 100,000. The court dismissed the applicant's claim for non-pecuniary damage (*zadośćuczynienie*) as time-barred as well as the remainder of his compensation claims, in particular the claim for pecuniary damage incurred in connection with a new eye operation.

10. The applicant lodged an appeal against this judgment with the Wrocław Court of Appeal (*Sąd Apelacyjny*).

11. On 18 May 1999 the Court of Appeal partly allowed the appeal in that it quashed the part of the judgment which dismissed the remainder of the applicant's claims and remitted this part of the case. The appeal court found, *inter alia*, that the first-instance court had breached the law in deciding, *ex officio*, not to examine the merits of the applicant's claim for non-pecuniary damage on the ground that the claim was time-barred, despite the fact that the issue of prescription had not been raised by the defendant.

12. On 21 December 1999 the Wrocław Regional Court (*Sąd Okręgowy*), after reconsideration of the case, gave a judgment. It partly allowed the applicant's action and awarded him PLN 8,000 for pecuniary damage. As regards the claim for non-pecuniary damage, the defendant raised the objection that the limitation period had elapsed. The court dismissed the applicant's claim for that reason.

13. The applicant appealed submitting *inter alia* that the limitation period had not elapsed as his compensation claim related to a further deterioration of his health.

14. On 11 April 2000 the Wrocław Court of Appeal dismissed the appeal. With regard to the claim for non-pecuniary damage, the court reiterated that an objection that an action was time-barred could be dismissed only if the application of the limitation period would violate “the principles of co-existence with others” contained in Article 5 of the Civil Code. According to the judicial practice such an exception had only been granted in exceptional circumstances, which were not present in the instant case. The court also dismissed his appeal in so far as it challenged the amount of pecuniary damage awarded by the Regional Court. The court further withdrew the applicant's exemption from court fees and the grant of legal aid and ordered the applicant to pay PLN 5,000 for court fees in the appellate proceedings and PLN 4,000 for the legal-aid lawyer's fee. It considered that the applicant was able to pay those fees as he had received compensation in a total amount of PLN 140,000.

B. Application for an exemption from court fees for proceeding with his cassation appeal

15. On 13 July 2000 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*). In the cassation appeal the applicant complained about the dismissal of his claim for compensation for non-pecuniary damage and about the withdrawal of the exemption from court fees and the grant of legal aid. The applicant lowered the amount of the compensation sought to PLN 500,000.

16. On 26 July 2000 the Wrocław Court of Appeal ordered the applicant to pay PLN 26,600 in court fees for the cassation proceedings.

17. On the same date the applicant lodged an application for exemption from court fees. He argued that he could not bear such costs as his only income was the monthly pension ordered by the Regional Court in the amount of PLN 1,220. He further submitted that the compensation ordered by the same court in 1998 had been spent on buying an apartment in which he and his family were living. The applicant, handicapped as a result of the accident, was married and had three children. His wife was unemployed. In consequence, the applicant submitted that he could not pay the court fees without serious harm being caused to the well-being of his family.

18. On 8 August 2000 the Wrocław Court of Appeal dismissed the application for exemption from court fees for the cassation proceedings. The court gave no reasons for the decision.

19. The applicant lodged an appeal. However, it appears that the domestic law did not provide any remedy against such a decision and that the appeal was never examined.

20. On 20 September 2000 the Wrocław Court of Appeal rejected the applicant's cassation appeal on the grounds that the applicant had failed to pay court fees.

21. The applicant lodged an appeal against this decision.

22. Subsequently, the Court of Appeal ordered the applicant to pay PLN 5,320 in court fees for lodging an appeal.

23. On 17 October 2000 the applicant applied for exemption from court fees, reiterating his argument about his personal situation and arguing that he was unable to bear the costs.

24. On 17 November 2000 the Wrocław Court of Appeal rejected the applicant's appeal against the decision rejecting his cassation appeal on the grounds of his failure to pay court fees pertaining to that appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. 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, §§ 23-33, 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

26. The applicant complained that, on account of the excessive court fees required from him for proceeding with his cassation appeal against the Court of Appeal's judgment, he had been deprived of access to a court for the determination of his civil rights. He relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

27. 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

28. The applicant claimed that his case required special diligence on the part of the authorities as it concerned the revalorisation of his disability benefit which, at the time of lodging his action, was equal to the price of one box of matches. His civil case was thus well-founded and his cassation appeal had been directed against the judgment which, after very lengthy proceedings, had dismissed most of his compensation claims.

29. The applicant stressed that his very difficult financial situation was precisely the reason why he had lodged the civil action and was well known to the domestic courts. The amount of PLN 148,000 which had been granted by the domestic courts constituted an adjustment of his pension with interest and had been spent on buying a flat in which the applicant, his wife and three children were living. As his claims for compensation had been dismissed he had not been able to pay court fees for the cassation proceedings.

30. The Government stressed that under Polish law there was a general obligation on the parties to civil proceedings to pay court fees for lodging any claim or appeal. The courts would not take any action if the required fees had not been paid.

31. The Government maintained that the applicant's claim for non-pecuniary damage had been dealt with at two instances by four courts which had established that the claim was time-barred. They further submitted that a cassation appeal was an extraordinary measure and therefore access to the Supreme Court could be more restricted than access to the first and the second-instance courts.

They further underlined that the applicant's financial situation had changed as the Regional Court in 1998 had granted him PLN 148,000. Thus, the Court of Appeal's withdrawal of the exemption from court fees had been justified. 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

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

The Court has held that the amount of court 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 or her right of access to a court or whether, on account of the amount of fees payable, the very essence of the right of access to a court had been impaired (see *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, pp. 80-81, §§ 63 et seq., and *Kreuz*, cited above, § 60).

33. The Court reiterates that Article 6 § 1 does not compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a Contracting State which sets up an appeal system is required to ensure that persons within its jurisdiction enjoy before appellate courts the fundamental guarantees in Article 6, regard being had to the fact that the manner of application of that provision to such courts depends on the special features of the proceedings involved and that account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see, for instance, *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 33, and *Tolstoy-Miloslavsky*, cited above, pp. 80-81, §§ 61 et seq.).

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

34. With those factors in mind, the Court will now determine whether, in the particular circumstances of the present case, the fee ordered from the applicant for pursuing his cassation appeal constituted a restriction that impaired the very essence of his right of access to a court.

35. The Court firstly observes that the decision of 8 August 2000 whereby the Wroclaw Court of Appeal dismissed the applicant's request for exemption from court fees of PLN 26,600 (approximately EUR 6,500) contained no reasons. The applicant submitted that his appeal against it had not been examined as no such appeal was provided by law. In view of the absence of any explanation by the Government, the Court has no alternative but to conclude that no reasons for the decision of 8 August 2000 had been prepared and that no appeal lay against that decision. The Court thus cannot review the assessment of evidence made by the domestic courts in coming

to their conclusion that the applicant's request to be exempted from court fees should be dismissed.

36. Secondly, the Court considers that there was much at stake for the applicant in the domestic proceedings as he sought an increase in his invalidity pension and further compensation for pecuniary and non-pecuniary damage. The case had been dealt with at two instances and his claims were partly granted as regards the claim for an increase in the pension and for pecuniary damage. However, the applicant's claim for non-pecuniary damage was finally found by the Court of Appeal to be time-barred and the claim was therefore dismissed. It was open to the applicant to lodge a cassation appeal with the Supreme Court against this judgment and the Government have not contended that a cassation appeal was unmeritorious or inadmissible in law.

37. Thirdly, the Court notes that the court fees in the amount of approximately EUR 6,500 for pursuing the cassation appeal and further fees of PLN 5,320 (approximately EUR 1,300) for taking a further appeal against the decision rejecting the cassation appeal were substantial and that the applicant's difficult financial situation at the earlier stages of the proceedings had been regarded as justifying his exemption from the payment of court fees and the grant of legal aid. The Government contend that the applicant's financial situation had changed since the earlier stages of the proceedings since the Regional Court had awarded him the sum of PLN 148,000 and that he could accordingly afford the court fees. However, the Court notes that, in his application to the Wrocław Court of Appeal for exemption from payment of the fees, the applicant pointed out that the compensation awarded to him had been spent on buying an apartment in which he and his family were living and that he could not pay the court fees without serious harm being caused to the well-being of his family. The Court further notes that, in its decision refusing exemption, the Court of Appeal did not question the applicant's account or suggest that his receipt of the compensation made it possible for him to pay the court fees charged.

38. Assessing the facts of the case as a whole, and having regard in particular to the substantial amount of court fees, what was at stake for the applicant in the proceedings and to the total lack of reasoning in the domestic court's decision refusing an exemption from court fees which resulted in the rejection of the applicant's cassation appeal on formal grounds, 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 appeals and, on the other hand, the interest of the applicant in pursuing his cassation appeal against the Court of Appeal's judgment. The very essence of the applicant's right of access to a court was therefore impaired.

39. The Court finds accordingly that there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 450,000 US dollars in respect of pecuniary and non-pecuniary damage.

42. The Government contested the claim.

43. As regards pecuniary damage, the Court finds that the applicant has failed to demonstrate that the pecuniary damage claimed was actually caused by his being deprived of access to a court. Consequently, there is no justification for making any award to him under that head (see, *mutatis mutandis*, *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-XI).

44. On the other hand, the Court 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 6,000 euros (EUR) under this head.

B. Costs and expenses

45. The applicant, who was represented by a lawyer and was granted legal aid from the Council of Europe, did not claim reimbursement of any costs and expenses.

C. Default interest

46. 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. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at a rate applicable at the date of settlement, plus any tax that may be chargeable;

(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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President