



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

FOURTH SECTION

CASE OF KIJEWSKA v. POLAND

(Application no. 73002/01)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

06/12/2007

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 Kijewska 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 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 73002/01) 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, Mrs Bożena Kijewska (“the applicant”), on 13 June 2001.

2. 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 she had been deprived of her right of access to a court, contrary to Article 6 of the Convention.

4. On 13 January 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 1943 and lives in Legnica, Poland.

A. The first set of proceedings

6. On 29 November 1999 the applicant lodged a claim for rectification of an entry in a local land register with the Legnica Regional Court (*Sąd Okręgowy*). She sought to be considered as the sole owner of the real estate that she had inherited from her late father and which had been erroneously recorded as the joint property of the applicant and her husband. On an unknown date she made an application for an exemption from court fees required from her to take the proceedings (PLN 7,500). On 15 December 1999 the Regional Court dismissed her application.

7. The applicant lodged an interlocutory appeal against that decision.

8. On 30 December 1999 the Wrocław Court of Appeal (*Sąd Apelacyjny*) dismissed her appeal. As she had failed to pay the court fees her claim was returned to her on an unknown later date.

B. The second set of proceedings

9. The applicant subsequently lodged a second claim for rectification of the entry in the local land register. On 10 February 2000 the Legnica Regional Court ordered the applicant to pay, within seven days, a court fee of PLN 9,750.

10. On 15 February 2000 the applicant made an application to be exempted from court fees. The applicant maintained that she received a monthly disability pension of PLN 1,075. In addition, she had some extra income as she was a self-employed lawyer. However, she had a loan to pay off and a household to support since she was divorced. She further claimed that her income only allowed her to support herself and her daughter and that she had not been able to put money aside for court fees.

11. On 13 March 2000 the Legnica Regional Court dismissed her application. The court held that the applicant's financial situation was sound since she received a monthly disability pension of PLN 1,075. In addition, the income from her law firm in November amounted to PLN 19,563. The court further held that the applicant could not be considered indigent since she was a practising lawyer. Lastly, the applicant should have set aside money for the litigation.

12. On 24 March 2000 the applicant filed an interlocutory appeal against this decision. The applicant submitted that the PLN 19,563 mentioned in her tax return constituted her gross income for the period of eleven months. She further claimed that having to pay the full amount of court fees would entail a substantial reduction in her standard of living. Lastly, she argued that Article 113 of the Civil Procedure Code provided a possibility for an exemption from court fees for a person who could demonstrate that payment of such fees would entail a substantial reduction in his or her standard of living. This exemption was not only applicable to the less well-off.

13. On 26 May 2000 the Wrocław Court of Appeal dismissed the applicant's appeal. The court held that while the applicant's gross income from her law firm in November amounted to PLN 19,563 her net income in that month had been PLN 2,664. Considering the fact that she also received a monthly disability pension, she could have put aside money for the payment of court fees.

14. On 26 May 2000 the court ordered the applicant to pay court fees of PLN 9,750, failing which her claim would be rejected. The applicant again asked to be exempted from court fees, repeating her earlier arguments.

15. On 31 August 2000 the Legnica Regional Court dismissed her application. The court held that the applicant received a monthly disability pension of PLN 1,320 and also at least PLN 1,000 net income from her law firm. Further, in view of the applicant's profession she could not be considered indigent. In addition, the applicant should have set aside the money for the litigation. Lastly, the court stressed that:

“[the amount of] lawyers' incomes are widely known”.

The applicant appealed against this decision.

16. On 19 December 2000 the Legnica Regional Court returned the statement of claim to the applicant as she had failed to pay the required court fees. According to the applicant, the decision was served on her on 22 December 2000.

C. The third set of proceedings

17. On 21 April 2004 the applicant for the third time lodged a statement of claim with the Legnica Regional Court for the rectification of the entry in the local land register. On 12 May 2004 the court ordered her to pay PLN 5,490 [approx. EUR 1,370] in court fees failing which her statement of claim would be returned to her. The applicant did not ask to be exempted from the fees. On 21 May 2004 she paid the fees.

18. On 24 September 2004 the court gave judgment and dismissed the applicant's claim. On 28 October 2004 the applicant appealed. On an unspecified date the court ordered her to pay PLN 5,490 in court fees on pain of her appeal being rejected. The applicant again failed to ask for an exemption from the court fee. On 16 November 2004 the applicant paid the requested fee. On 12 January 2005 the Legnica Regional Court gave judgment and dismissed the applicant's claim. The judgment is final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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), §§ 29-9).

THE LAW

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

20. The applicant complained under Article 6 § 1 that the excessive court fees required from her for proceeding with her claim, had been in breach of her right of access to a court for the determination of her 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

1. The first set of proceedings.

22. The Court observes that the final decision in this set of proceedings had been delivered on an unknown date before 10 February 2000, thus more than six months before the date on which this complaint was submitted to the Court.

23. 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.

2. The second set of proceedings

24. The Government submitted that the final decision in the applicant's case had been made on 19 December 2000. The Court received the application form on 21 June 2001. In their opinion, the applicant had not complied with the six-month rule.

25. In accordance with the established practice of the Convention organs and Rule 47 § 5 of the Rules of Court, the date of the introduction of an application is the date of the first letter indicating an intention to lodge an application and setting out, even summarily, its object. (see *Chalkey v. the United Kingdom* (dec.), no. 63831/00, 26 September 2002).

26. The Court notes that the final decision in the applicant's case was given on 19 December 2000 and served on the applicant on

22 December 2000. On 13 June 2001 the applicant dispatched her completed application form to the Court. The Court therefore considers the latter date as the date of the introduction of the application. The application was accordingly introduced within six months of the date of the final decision.

27. The Government further claimed that the applicant had not exhausted the available domestic remedies as she had not asked for a partial exemption from court fees. She should have lodged an additional motion for a partial exemption from court fees. The applicant replied that she had exhausted the available domestic remedies, as she had applied for an exemption from court fees. It had been for the courts to decide whether her financial situation justified complete or only partial exemption. She did not have to file a separate motion in this respect.

28. The Court accepts the applicant's arguments and considers that it was for the domestic courts to take into account all relevant factors and make a thorough and careful assessment of the applicant's financial situation including whether she was entitled to a partial exemption from the court fees demanded.

29. It follows that this complaint is not inadmissible for non-exhaustion of domestic remedies. The Court further notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

3. The third set of proceedings

30. The Court observes that the applicant paid the fees due in the first and second instance proceedings. The claim was further examined on the merits by two judicial instances and the final decision was given on it (see paragraphs 17 and 18 above). The applicant therefore obtained a determination of her claim at the domestic level and the fact that the applicant was required to pay court fees did not give rise to an unjustified restriction on her access to court.

31. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. The parties' submissions

(a) The applicant

32. The applicant firstly stressed that she had submitted all the necessary documents to demonstrate her actual financial situation.

33. She further claimed that the courts had assessed her financial situation solely on the ground that she was a lawyer by profession. In addition the courts had made wrong findings of fact as they had treated her yearly income as her monthly income. The courts had further failed to take into consideration her state of health and her actual earning capacity.

34. The applicant concluded that the sum required from her had been unusually high and disproportionate to her means. She asked the Court to find that her right of access to a court had been breached.

(b) The Government

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

36. They further stressed that the amount of the fee required from the applicant had been determined as a fraction of the value of the claim. If she had claimed a lower amount, the fee would have been less. In any event as the fee had concerned rectification of an entry in a local land register she had not had to indicate the exact value of the claim.

37. 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

38. 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.

39. 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

40. 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.

41. The Court firstly notes that the case concerned the applicant's property rights and rectification of an entry in a local land register. 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.

42. The Court observes that the judicial authorities refused to accept the applicant's argument that she was unable to pay the court fees and they assessed her financial situation solely on the ground that she was a lawyer, and for that reason could not be considered poor (see paragraphs 11 and 15 above). In addition, they appeared to equate the applicant's monthly income with her yearly income (see paragraphs 11-13 above). On that basis, they concluded that the applicant had had sufficient funds to pay the court fee in question.

43. In this respect the Court notes that the applicant received on average PLN 2,500 per month (see paragraph 15 above). Nevertheless, this sum was apparently her only asset and it does not seem reasonable to demand that she spend it on the payment of court fees rather than on her basic living needs.

44. The Court further observes that the domestic courts could have and should have considered the possibility of partially exempting the applicant from payment of the court fees due in the proceedings.

45. It is true that the applicant on the third occasion paid court fees of PLN 5,490 for lodging her claim and the same sum for pursuing her appeal (see paragraphs 17 and 18 above). However, this was almost four years after her previous unsuccessful attempt to be exempted from payment of court fees and cannot be seen as proof that, as regards the second set of proceedings, the courts had made a correct and fair assessment of her situation at that time. The applicant's ability to pay court fees should have been assessed at the material time on the basis of the particular situation in which the applicant had found herself (see, *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 68, 26 July 2005).

46. Under the circumstances and having regard to the importance of the right to a court in a democratic society, the Court considers that the judicial authorities failed to secure a proper balance between the interest of the State in collecting court fees on the one hand, and the interest of the applicant in pursuing her civil claim on the other.

47. 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 her 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

48. 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

49. The applicant claimed PLN 40,000 in respect of pecuniary and non-pecuniary damage.

50. The Government submitted that this sum was excessive.

51. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to the applicant's claim in respect of non-pecuniary damage, the Court recalls that the applicant eventually obtained a determination of the merits of her claim in the third set of proceedings (see paragraphs 17 and 18 above). The case differs in this respect from earlier cases in which similar issues were raised (see, for example the *Kreuz* judgment, cited above), where the size of the court fees imposed deprived the applicant of any opportunity of obtaining a final decision on the merits of his or her claim. However, the Court observes that, at the time of lodging her application with the Court, her statement of claim in the second set of proceedings had been returned to her on the grounds that she had failed to pay the required court fees and that in order to obtain a determination of her claim she was obliged to commence fresh proceedings which were not finally concluded until January 2005, some four years after the second set proceedings had ended. In these circumstances the Court considers that, even though the applicant may eventually have had effective access to court to determine her claim, she must have suffered frustration and a feeling of injustice as a consequence of the domestic courts' refusal to exempt her from court fees in the second set of proceedings. It therefore finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 under this head.

B. Costs and expenses

52. The applicant did not request the reimbursement of any costs and expenses in connection with the proceedings before the Court.

C. Default interest

53. 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 complaint concerning access to a court in respect of the second set of proceedings admissible and the remainder of the application inadmissible;
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 the rate applicable at the date of the settlement, plus any tax that may be chargeable on the above amount;
 - (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 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President