



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

FOURTH SECTION

CASE OF POLEJOWSKI v. POLAND

(Application no. 38399/03)

JUDGMENT

STRASBOURG

4 March 2008

FINAL

04/06/2008

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 Polejowski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Stanislav Pavlovski,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 38399/03) 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 Józef Polejowski (“the applicant”), on 18 June 2003.

2. 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 1 September 2006 the President of the Fourth Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was 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 1939 and lives in Miechucino, Poland.

6. In 1992 the applicant donated his agricultural property to his son. In 1996 the public notary prepared an amendment to the contract concerning the transfer of certain items of property (agricultural equipment) to the applicant's son. On 24 June 1997 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) confirmed that the amendment was invalid.

7. On 5 July 2001 the applicant sued his son, J.P., before the Gdańsk Regional Court (*Sąd Okręgowy*) for restitution of the items of property in question. The applicant indicated that the value of the claim was almost 200,000 Polish zlotys (PLN). He also asked to be exempted from court fees.

8. On 18 September 2001 the Regional Court refused to exempt the applicant from court fees. The court gave the following reasons for its decision:

“The applicant submitted that his only income was a disability pension in the amount of PLN 552.21 [approx. EUR 138]. He further claimed that he did not own any real estate or any other assets, except for a car. However, he had been paying for it in instalments: PLN 159.50 [approx. EUR 40] monthly. The plaintiff estimated the amount of his monthly expenses for his flat at PLN 200 [EUR 50].

From the documents submitted by the applicant it appears that the sum he spends monthly on his flat, and the loan for the car customised for a disabled person, amounts to PLN 359.5. After he pays for the flat and the loan, the plaintiff has PLN 192.5 left [approx. EUR 48]. According to the court, it is not enough to cover his maintenance costs such as food, clothes and medication...

This leads the court to the conclusion that the plaintiff has other additional resources and he can afford to pay the court fees in question. Consequently, considering that the plaintiff failed to indicate all his assets, the court dismisses his application for an exemption from court fees.”

9. On 30 October 2001 the applicant filed an interlocutory appeal against this decision. He also filed a new motion for an exemption from court fees.

10. The Gdańsk Regional Court rejected the applicant's interlocutory appeal as it had been lodged outside the prescribed time-limit. On 19 April 2002 the Gdańsk Court of Appeal upheld this decision.

11. On 21 May 2002 the Regional Court ordered the applicant to supplement his motion for an exemption from court fees.

12. In reply the applicant stressed that his financial situation had not changed and was still very bad. His disability benefit had increased by PLN 2, as shown by a pay slip he had attached.

13. On 17 June 2002 the Gdańsk Regional Court rejected the applicant's second motion for exemption from court fees. The court held that it had already considered the applicant's financial situation and found that it had not justified an exemption.

14. The applicant filed an interlocutory appeal. He submitted that he was 63 years old and in poor health. He was not even able to buy the necessary medication as his monthly disability pension amounted to PLN 556. For these reasons he believed that he should be exempted from court fees.

15. On 16 October 2002 the Gdansk Court of Appeal dismissed the applicant's interlocutory appeal against this decision. The court repeated the reasons given by the Regional Court.

16. On 12 November 2002 the Regional Court ordered the applicant to pay PLN 11,305.5 [approx. EUR 2,826] for lodging his statement of claim on pain of having it returned.

17. As the applicant failed to do so, his statement of claim was returned to him on 3 February 2003.

II. RELEVANT DOMESTIC LAW

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).

THE LAW

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

19. 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. ...”

20. The Government contested that argument.

A. Admissibility

21. 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 on his behalf against the decision of the Court of Appeal. They also stated that it had been open to the applicant to lodge a constitutional complaint. Moreover, the Government submitted that the applicant had failed to lodge an appeal against the decision of 18 September 2001 in compliance with procedural requirements.

22. The applicant considered that he had not had any remedies to complain about the amount of court fees imposed on him.

23. The Court firstly observes that the domestic courts examined the applicant's motion for exemption from court fees on 18 September 2001.

They re-examined the issue when the applicant lodged a second application for exemption from court fees. The second application was dismissed on 17 June 2002 and an interlocutory appeal against that decision was lodged in compliance with formal requirements and dismissed by the Court of Appeal on 16 October 2002. Accordingly, it cannot be concluded that the applicant did not put before the domestic authorities his request to be exempted from court fees before submitting his complaints to the Court.

24. The Court also notes, and it was not contested by the Government, that domestic law did not provide for a possibility to appeal against a decision to return a statement of claim or to lodge directly a cassation appeal against a decision given by the Court of Appeal. As to the possibility of asking the Ombudsman to file a cassation appeal against the decision of the Court of Appeal, the Court notes that the Ombudsman's decision as to whether to grant such request was dependent on his discretionary powers (see *Zawadka v. Poland* (dec.), no. 48542/99, 7 November 2002). With regard to the Government's contention that the applicant should have lodged a constitutional complaint, the Court notes that this argument has not been in any way substantiated or supported by examples of cases in which a constitutional complaint was shown to be an effective remedy in respect of a complaint such as the applicant's.

25. The Court thus considers that the applicant did not have to avail himself of any other domestic remedies (see *Kozłowski v. Poland*, no. 23779/02, § 24, 23 January 2007).

26. 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

27. The Government submitted that the right of access to a court was not absolute and the requirement to pay fees in connection with civil claims could not be regarded as incompatible *per se* with Article 6 of the Convention. They further maintained that the fee required from the applicant in the present case had been neither excessive nor arbitrary.

The Government considered that the applicant had failed to substantiate to the satisfaction of the domestic authorities his allegedly poor financial situation. In sum, the Government invited the Court to find that there had been no violation of Article 6 of the Convention.

28. The applicant generally contested the Government's submissions.

2. *The Court's assessment*

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

29. 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.

30. 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

31. 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.

32. 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 11,305.5.

33. The Court firstly notes that the case concerned the applicant's property rights and his request for some items of property to be returned to him. There is no evidence to suggest that the domestic courts considered the applicant's action to be devoid of prospects of success or of a vexatious nature.

Furthermore, the Court considers that restrictions on access to a court which are of a purely financial nature and which, as in the present case, are completely unrelated to the merits of the claim or its prospects of success, should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice (see *Teltronic-CATV v. Poland*, no. 48140/99, § 61, 10 January 2006). It is thus of significance for the Court that the refusal to grant exemption took place at the preliminary stage of the proceedings before the first-instance court and resulted in the applicant's claim never being examined on the merits.

34. The Court also observes that under Polish law an exemption from payment of court fees can at any time be revoked by the courts if the basis thereof has ceased to exist. Allowing the applicant to proceed with his claim at the initial phase of the proceedings would not therefore have prevented the Polish courts from collecting court fees if at some further stage his financial situation had improved (see *Kreuz*, cited above, § 65).

35. The Court further observes that the applicant was unemployed and received a monthly disability pension equivalent to EUR 138. It is apparent from the reasons for the Regional Court's decision of 18 September 2001 that the domestic authorities were aware of the applicant's financial standing and considered that the amount of money left to him after deduction of maintenance expenses was very low. Nevertheless, the authorities assumed that the applicant had additional resources to support himself and was thus able to pay court fees in the full amount. The Court notes that this assessment was not supported by any evidence and it does not find it persuasive, in particular when weighed against the importance of securing to the applicant an "effective" access to a court.

36. The Court finally observes that the domestic courts did not envisage a partial exemption from court fees and failed to take into consideration the fact that the fees required from the applicant represented twenty times his documented monthly income.

37. In those 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.

38. For the above reasons, the Court concludes that the refusal to exempt the applicant from fees for lodging his claim, or to reduce their amount, 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant, invoking Article 1 of Protocol No. 1 to the Convention, complained, in essence, that he had been deprived of his property due to the actions of the public notary and courts.

The Court, having examined this complaint, and regardless of other possible grounds of inadmissibility, finds nothing in the case file which might disclose any appearance of a violation of this Convention provision.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 259,110 Polish zlotys (PLN) in respect of pecuniary damage and PLN 60,000 for non-pecuniary damage.

43. The Government contested these claims and considered them irrelevant and excessive.

44. 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 awards the applicant 6,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant also claimed PLN 2,008 for the costs and expenses incurred before the domestic courts and the Court. That sum included EUR 130 for translation costs incurred in the proceedings before the Court.

46. The Government submitted that only claims actually and reasonably incurred should be reimbursed by the Court.

47. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 130 for the proceedings before the Court.

C. Default interest

48. 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 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 and EUR 130 (one hundred and thirty euros) for costs and expenses, 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 amounts 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 4 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President