



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

FOURTH SECTION

CASE OF PALEWSKI v. POLAND

(Application no. 32971/03)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Palewski 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 32971/03) 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 Mr Mirosław Palewski (“the applicant”).

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that he had been deprived of his right of access to a court.

4. On 5 September 2006 the President of the Fourth Section decided to give notice of 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, Mr Mirosław Palewski, was born in 1957 and lives in Koszalin, Poland.

6. On 1 August 2000 and 13 February 2002 there was a fire at Morska Street in Koszalin, where the applicant’s business was located.

7. On 15 November 2002 he sued the insurance company Warta S.A. before the Koszalin Regional Court (*Sąd Okręgowy*) for compensation of 545,918.65 zlotys (PLN) (approx. 136,500 euros (EUR)). At the same time, he also asked to be exempted from court fees.

8. On 9 December 2002 the court ordered the applicant to pay PLN 28,896 (approx. EUR 7,228) in court fees.

9. On 22 January 2003 the Koszalin Regional Court refused to exempt the applicant from court fees. The court's reasons for this decision read, in so far as relevant, as follows:

“...

Despite the court's request, the applicant has failed to provide information concerning his business activities. The documents submitted concern the SEDNO Manufacturing and Servicing Company (*Zakład produkcyjno-usługowy*) located at Morska Street in Koszalin. However, from the insurance policies submitted, it appears that the applicant insured two companies, both located at Morska Street in Koszalin: SEDNO Manufacturing and Servicing Company and the Private Car Transport Company (*Przedsiębiorstwo Prywatnej Komunikacji Samochodowej*).

...

It is therefore not clear what type of business activities the applicant is involved in at Morska Street in Koszalin (...).

The documents submitted by the applicant show that he has already received PLN 360,572.68 [approx. EUR 90,142] as partial compensation from Warta S.A. According to the applicant, this amount did not compensate him for the damage actually incurred. However, there are no reasons to believe that the applicant's business collapsed because he received only partial compensation.

It further appears from the submitted tax return forms concerning SEDNO's business for January to October 2002 that the applicant made an eight-digit gross profit and a seven-digit net profit in that period. This leads the court to the conclusion that the applicant can afford to pay the court fees because he has sufficient funds. However, lack of information concerning all his assets prevents the court from making an objective assessment of his financial situation.”

10. On 3 February 2003 the applicant filed an interlocutory appeal (*zażalenie*) against this decision. He claimed that his net profit for the period of ten months in 2002 had been PLN 15,288 (approx. EUR 3,820), which, contrary to the court's findings, was a five-digit sum and that he also had a mortgage to pay. He also stressed that he owned only one company, SEDNO Manufacturing and Servicing Company (*Zakład produkcyjno-usługowy*). The insurance policy issued for Private Car Transport Company concerned the same business as this was its old name. Finally, he submitted that he was in debt, and that enforcement proceedings against the company were pending.

11. On 29 April 2003 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal. The court referred to the fact that the applicant had already received PLN 360,572.68 from the insurer as partial compensation. The court further considered that this in itself justified the refusal to exempt him from court fees as he could have put money aside for that purpose.

12. It appears that subsequently the applicant's statement of claim was returned to him.

13. On 14 October 2003 the applicant again sued the insurance company Warta S.A. before the Koszalin Regional Court for compensation of PLN 545,918.65 and asked to be exempted from court fees.

14. The applicant submitted that the business's assets had been attached in enforcement proceedings against him, that his bank accounts had been frozen and that he had substantial debts. His wife did not work and their children were students.

15. On 19 November 2003 the Koszalin Regional Court dismissed his application for an exemption from court fees. This decision contained exactly the same wording as the decision of 22 January 2003.

16. On 26 November 2003 the applicant filed an interlocutory appeal against the above decision. He claimed that the court had misread the documents that he had submitted when his application for an exemption from court fees had been examined for the first time in 2002. He again clarified his financial situation.

17. On 3 December 2003 the Koszalin District Court (*Sąd Rejonowy*) declared the applicant's company insolvent.

18. On 15 January 2004 the Gdańsk Court of Appeal rejected the applicant's interlocutory appeal of 26 November 2003 on the basis that the presiding judge had not signed the decision of 19 November 2003. Accordingly, this decision had not been duly delivered and the applicant's appeal against a non-existent decision had to be rejected.

19. On 20 February 2004 the Koszalin Regional Court gave a further decision dismissing his application for an exemption from court fees. This decision again read exactly as the decision of 22 January 2003.

20. On 12 March 2004 the applicant filed an interlocutory appeal. He stressed that he owned only one company, SEDNO Manufacturing and Servicing Company, which had been declared insolvent. Finally, he submitted that he was in debt and had no money to support his family.

21. On 14 May 2004 the Gdańsk Court of Appeal gave a decision exempting the applicant from any fees exceeding PLN 10,000 (approx. EUR 2,500). The court considered that the court fee of PLN 28,896 had to be reduced. It noted that:

"... It is impossible to find fault with the applicant that he spent in 2000 the amounts received from the defendant as well as the amount of PLN 44,104.68 spent in 2002 for dealing with the effects of the damage and pursuing his professional activities, instead of securing in advance sufficient funds for the payment of court fees. Taking into

account the lapse of time and the fact that the applicant has been declared insolvent, the previous decisions concerning the exemption from court fees, based on the different facts, are irrelevant for the present finding.”

The court further found that, while it was true that the applicant was in debt and that his tax return for the period from January to October 2003 had shown a loss in the amount of PLN 68,538.74 (approx. EUR 7,134) and that his business was insolvent, his temporary financial problems did not, however, justify a full exemption from court fees.

22. On 16 June 2004 the Koszalin Regional Court ordered the applicant to pay a court fee of PLN 10,000 for lodging his statement of claim on pain of having it returned.

23. On 27 August 2004 the Koszalin Regional Court returned the statement of claim to the applicant since he had failed to pay the required court fee.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. 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* (appl. no. 28249/95, ECHR 2001-VI); see also: *Podbielski and PPU Polpure v. Poland*, no. 39199/98, §§ 46-47, 26 July 2005 and *Jedamski and Jedamska v. Poland*, no. 73547/01, §§ 29-39.

THE LAW

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

25. The applicant complained under Article 6 § 1 of the Convention that, on account of the excessive amount of court fees required from him for filing 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, reads:

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

26. The Government contested that argument.

A. Admissibility

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

28. They submitted that that remedy, even if it seemed weaker than the cassation appeal filed directly by the applicant was, nevertheless, available and could be successful. In that respect the Government referred to the Supreme Court's judgment of 2 June 2003 which concerned the issue of freedom of expression, and more specifically the alleged violation of Article 10 of the Convention. In that case the Supreme Court ruled that the omission by a court of appeal to consider a complaint about an alleged violation of Article 10 of the Convention, which had been raised in an appeal against the judgment of a lower court, constituted a basis for the quashing of that judgment and the remittal of the case. The cassation appeal in the case referred to by the Government had been lodged by the Ombudsman for the benefit of a journalist.

29. In the Government's opinion, a cassation appeal lodged by the Ombudsman in the applicant's case was likely to be successful in view of the fact that at the material time the Polish authorities had taken legal measures to change the law on court fees in civil cases. Those measures resulted in adoption of the Law of 28 July 2005 on Court Fees in Civil Cases (*Ustawa o kosztach sądowych w sprawach cywilnych*).

30. The applicant generally contested the Government's arguments.

31. The Court refers to its established case-law to the effect that a request to the Ombudsman for leave to file a cassation appeal cannot be regarded as an effective remedy for the purposes of Article 35 § 1 of the Convention, since the Ombudsman's decision to appeal or not is of a discretionary character and an individual has no right to require him to lodge an appeal (see, among many other authorities, *Hajnrich v. Poland*, (dec.) no. 44181/98, 31 May 2001; *Pachla v. Poland* (dec.), no. 8812/02, 8 November 2005; *Zawadka v. Poland*, (dec.), no. 48542/99, 7 November 2002, *Kozłowski v. Poland*, no. 23779/02, 23 January 2007).

32. Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies.

33. 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 Government

34. The Government submitted that the right of access to a court is not absolute and the requirement to pay fees in connection with civil claims cannot be regarded as *per se* incompatible with Article 6 of the Convention. They noted that fulfilment of the Article 6 obligation to secure an effective right of access to a court did not mean merely the absence of interference but might require the State to take various forms of positive action. However, neither an unqualified right to obtain free legal aid from the State in a civil dispute nor a right to cost-free proceedings in civil cases could be inferred from that provision.

35. Referring to the particular circumstances of the case, the Government underlined in the first place that, taking into account the considerable value of his claim, the fee required from the applicant in the present case was neither excessive nor arbitrary.

36. The Government pointed out that the applicant had failed to substantiate to the domestic authorities his allegedly disastrous financial situation. In their opinion, he did not satisfy the conditions for an exemption, as set out in Article 113 § 1 of the Code of Civil Procedure. The content of his financial declarations was unclear. The applicant had not shown the diligence normally expected from a plaintiff in civil proceedings. Further, they considered that the burden of proof was on the applicant and that he had failed to submit crucial documents confirming his poor financial standing.

37. The Government further argued that the domestic courts, when assessing the applicant's application for an exemption from court fees, had exercised their power of appreciation in a proper manner. The courts had thoroughly studied his application and had given him enough time to submit information on his financial and family situation. They further stressed that certain objective obstacles – principally, the uncooperative attitude of the applicant – had characterised the case and that there had been no procedural limitations hindering the applicant's "access to a court".

38. The Government further emphasised that the Gdańsk Court of Appeal had exempted the applicant from the greater part of the fee for lodging his claim. Since the applicant had claimed PLN 545,918.65, the final fee of PLN 10,000 constituted only 1.8 % of the value of the claim. They also pointed out that, given that the applicant had received PLN 360,572.68 in partial compensation from the insurance company, he should have been able to raise the final fee of PLN 10,000. In the

Government's view, a fair balance between the applicant's interests and the interests of the State had been struck.

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

(b) The applicant

40. The applicant contested the Government's submissions, arguing that the Polish courts had acted arbitrarily and had based their decisions on a speculative assessment of his financial situation. He maintained that he had submitted all relevant documents allowing for an appropriate assessment of his financial situation by the domestic courts.

41. The applicant further argued that the domestic courts, when refusing him an exemption, had misread his arguments and had in consequence made wrong findings of fact. For instance, the Regional Court had wrongly assessed his assets and income, as it had found a seven-digit net profit instead of a five-digit one. He further argued that the Court of Appeal had not read his application for an exemption from court fees correctly, as its decision contained identical errors to that of the Regional Court.

42. The applicant submitted that errors by the domestic courts had resulted in his insolvency. He maintained that the Regional Court, when dismissing his second application for an exemption from court fees, had repeated the wording of previous decisions. Due to the domestic courts' negligence all his claims against the insurance company had been time-barred and in consequence he had become a bankrupt.

43. He also stressed that contrary to the Government's opinion, he could not afford to pay a court fee of PLN 10,000, as in the meantime he had become insolvent, was in substantial debt and a trustee (*syndyk*) in the insolvency proceedings had refused the payment of PLN 10,000 to the applicant.

2. The Court's assessment

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

44. The Court observes that in its judgments in *Kreuz v. Poland* (cited above, § 60) and in *Podbielski and PPU Polpure v. Poland* (cited above, § 64) 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.

45. 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

46. 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 10,000 (approx. EUR 2,500). In that connection the Court notes that even though the sum ultimately required from the applicant was largely reduced in comparison with that previously imposed, the amount, if seen from the perspective of the applicant, who had been declared insolvent, was still substantial.

47. It is true that the applicant was a businessman. However, the relevant courts, when setting the court fee, relied to a considerable degree on the assumption that engaging in a business activity could in itself imply the necessity of litigation. On that basis, they came to the conclusion that the applicant should have taken into account the need to secure in advance sufficient funds for the payment of court fees (see paragraph 11 above).

48. The Court observes that the findings which the domestic courts made in respect of the applicant’s financial situation appear to have been based on the fact that he had received PLN 360,572.68 in compensation from the defendant for the fire in his business premises (see paragraphs 9, 11, 15 and 19 above). There might be situations where it is not unreasonable for a domestic court to require of a claimant that he put aside some money for legal proceedings, regard being had in the instant case to the applicant’s attempts to institute civil proceedings for payment against the same defendant and under the same cause of action. Nevertheless, the Court agrees with the reasoning of the Court of Appeal decision of 14 May 2002 that the compensation already awarded to the applicant constituted his only asset and he could not be blamed for using it to offset the damage that he had suffered and in endeavouring to continue his business, rather than spending part of it on court fees (see paragraph 21 above).

49. Furthermore, it emerges from the courts’ decisions that the judicial authorities relied on the applicant’s hypothetical earning capacity rather than on the facts he had supplied. The Court notes that the applicant was granted considerable, although partial, exemption from court fees (see paragraph 21 above). However the amount was still far too high for him. He had been in substantial debt, had been declared insolvent, had constantly incurred losses and had had his assets attached (see paragraphs 14, 17, 20 and 21 above).

50. It is true that the taking and assessment of evidence are primarily matters for the domestic courts and that the Court’s role is to ascertain whether those courts, when exercising their power of appreciation in that sphere, acted in accordance with Article 6 § 1.

However, in the present case the Court notes that the judicial authorities refused to accept the applicant's argument that he was unable to pay the court fees, without obtaining or considering any evidence contradicting the facts he had set out in his declaration of means.

In addition, the Court of Appeal made certain assumptions as to the applicant's means that were not fully supported by the material submitted (see paragraph 21 above).

51. In respect of the Government's submission that the relevant court fee could not be considered disproportionate in the light of the overall value of the claim, the Court observes that it has not been suggested that the claim at issue was unmeritorious or frivolous. The Court notes that the judicial authorities did not refuse the exemption on the ground that the claim was manifestly ill-founded.

52. The Court also observes that under Polish law an exemption from payment of court fees can be revoked at any time by the courts if the basis thereof has ceased to exist. Allowing the applicant to submit his claim for judicial examination would not therefore have prevented the Polish courts from collecting court fees if at a later stage his financial situation had improved.

53. Assessing the facts of the case as a whole 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 interests of the State in collecting court fees for dealing with claims and, on the other hand, the interests of the applicant in vindicating his claim through the courts.

The fee required from the applicant for proceeding with his action resulted in his having to desist from pursuing his claim and in his case never being heard by a court. That, in the Court's opinion, impaired the very essence of his right of access.

54. For the above reasons, the Court concludes that the imposition of the court fees on the applicant 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

55. 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

56. The applicant claimed over 4,545,018.64 zlotys (PLN) in respect of pecuniary damage. That amount consisted of the principal claim for compensation against the insurance company (PLN 545,018.65), the statutory interest accrued on that claim from 15 November 2002, lost assets (PLN 2,500,000) and lost profits (PLN 1,000,000).

57. The applicant also sought an award of PLN 1,300,000 for distress and deterioration of his health. Lastly, he claimed a pension of 1,500 euros (EUR) per month.

58. The Government did not make any comment.

59. The Court finds no link between the violation complained of and the pecuniary damage alleged. It cannot speculate about the outcome of the proceedings had the applicant's claim been examined. The Court therefore rejects the claim in its entirety.

60. However, the Court accepts that the violation found cannot be compensated by the mere finding of a violation. Therefore, the Court finds that the applicant has suffered non-pecuniary damage. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 4,000 under this head.

B. Costs and expenses

61. The applicant did not claim reimbursement of the costs and expenses incurred before the domestic courts and the Court.

C. Default interest

62. 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 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 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the 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 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President