



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

FOURTH SECTION

**CASE OF GOSPODARCZYK v. POLAND**

*(Application no. 6134/03)*

JUDGMENT

STRASBOURG

17 February 2009

**FINAL**

***17/05/2009***

*This judgment may be subject to editorial revision.*



**In the case of** Gospodarczyk 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,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 January 2009,

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

## PROCEDURE

1. The case originated in an application (no. 6134/03) 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, Mirosław Gospodarczyk (“the applicant”), on 12 February 2003.

2. The applicant, who had been granted legal aid, was represented by Mr S. Kwietniowski, a lawyer practising in Zielona Góra. 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 he had been deprived of his right of access to a court, contrary to Article 6 of the Convention.

4. On 7 July 2006 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948 and lives in Zielona Góra, Poland.

6. On 26 October 1998 the applicant purchased a house and a plot of land located in Niedoradz in the Otyń municipality, for which he paid 28,684 Polish zlotys (PLN).

7. In December 1999 the applicant discovered that the plot in question was 36 sq. m smaller than the size specified in the contract.

8. On an unspecified date in 2002 the applicant lodged a claim against the municipality with the Zielona Góra Regional Court, seeking PLN 412,666 in compensation for the alleged difference between the actual size of the property and the one declared in the notarial deed. He claimed that due to the fact that the plot was in fact smaller he could not construct a special sanitary tank there and consequently could not open a bakery, which he had originally planned to do. He also sought exemption from the entire amount of court fees which were set at PLN 22,233.30. The applicant claimed that his monthly income was only an invalidity pension of PLN 449.51. He submitted that after paying rent for his cooperative flat, his net income amounted to PLN 200.

9. The Regional Court requested the applicant to supplement his declaration of means. Subsequently, the applicant submitted that he owned a house in Niedoradz which according to him had a value of PLN 120,000, and that he had a cooperative flat in Zielona Góra, a plot of land (570 sq. m), a small retail outlet and a van (valued at PLN 10,000) used for temporary work. He claimed that he had purchased the Niedoradz property using his savings and family loans, and that he intended to use it to create employment for him and his family. He also informed the court that he had invested PLN 92,000 of his own money in the house.

10. On 22 July 2002 the Regional Court refused his application for exemption from court fees. It held, in so far as relevant:

“Pursuant to Article 113 § 1 of the Code of Civil Procedure exemption from court fees may be sought by a party who is unable to bear them without entailing a substantial reduction in his or her standard of living. The plaintiff does not satisfy this requirement. It is evident to the court that the plaintiff has a substantially higher income than the declared pension which he knowingly does not disclose, in that his retail outlet and his van must generate profits. These profits must be substantial because otherwise he could not have a cooperative flat and three other properties and could not invest nearly PLN 100,000 in other business projects and maintain them. The plaintiff continuously conceals his real profits and they are substantial, because nobody could believe that he lives on PLN 200 per month.

Exemption from court fees is a privilege serving to legally protect the indigent, and the plaintiff is a very affluent person in Polish terms”.

11. The applicant appealed against that decision and pleaded that he was in an exceptional situation. He submitted that he had acquired the Niedoradz property, which was the subject of his dispute with the municipality, and had invested PLN 92,000 in it with a view to conducting business activity there. However, he could not execute his business plans since the property did not conform to certain unspecified requirements and as a result his financial situation had worsened. He further submitted that he had to pay back a loan of PLN 40,000 obtained from his brother for renovation of the

house. He produced a statement signed by his brother which attested that the applicant had received the loan and had not paid it back as of 1 August 2002.

12. The applicant further submitted that he had a cooperative flat, but that he was in arrears of rent in the amount of PLN 3,532.35. In addition, he maintained that his and his wife's retail outlet was making losses. He produced their joint tax return which attested that in the 2001 tax year he had sustained a loss of PLN 14,628.23. Furthermore, the applicant claimed that he was financially supported by his family, in particular his mother who provided him with PLN 600 each month. He produced a statement from his mother to that effect.

13. On 14 August 2002 the Poznań Court of Appeal upheld the contested decision. It held, in so far as relevant:

"The appeal should be considered unfounded. In particular, the first-instance court was right when holding that the applicant's declaration of means was unreliable. In that declaration of means the applicant did not state, *inter alia*, that he was conducting a business activity, and he explained that circumstance only in the appeal proceedings. It is also not difficult to notice the differences between the applicant's declared income and the value of his assets. It is a well-established principle in the case-law that being an owner of a[n immovable] property excludes the possibility of granting exemption from court fees (judgments of the Supreme Court of 23 October 1934, no. C II 1441/34 and of 1 February 1937, no. C II 2379/36).

The applicant can pay the court fees for his action since he has considerable assets and given that he has recently, as he claims, invested PLN 124,000 in one of his properties. What is more, the fact at the origin of the dispute, namely that the property acquired by the applicant from the municipality is in fact smaller than declared in a notarial deed, has been known to the applicant since 1999. Thus, he could have made savings with a view to funding his litigation."

14. Consequently, the applicant was summoned to pay the court fees for proceeding with his claim against the municipality. On 21 October 2002 the Zielona Góra Regional Court returned the applicant's statement of claim since he had not paid the fees in question. The applicant appealed against that decision. However, he was informed that his appeal would not be considered until he had paid PLN 4,446.70 in court fees.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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

16. The applicant complained under Article 6 § 1 that the excessive court fees required from him in order to proceed with his claim had been in breach of his right of access to a court for the determination of his civil rights. The relevant part of Article 6 § 1 provides:

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

17. The Government contested that argument.

#### A. Admissibility

18. 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 applicant**

19. The applicant maintained that the sum required from him for proceeding with his claim had been unusually high and disproportionate to his means. He submitted that the first-instance court had considered his declaration in an arbitrary way since it had not requested him to provide additional explanations.

20. The applicant stressed that the sole fact that he had had assets could not have deprived him of his right to be exempted from court fees.

He further could not have been asked to sell his property as it would have been detrimental to the maintenance of his family.

21. The applicant concluded that his right of access to a court had been breached.

###### **(b) The Government**

22. The Government firstly recapitulated the general rules concerning exemption from court fees.

23. They secondly noted that the court fee was justified and calculated with reference to the value of the claim. The applicant should have realised that the value of his claim would have influenced the court fee required from him.

24. They further stressed that the applicant's claim had been of a speculative nature, since it had been much higher than the original value of the property. Furthermore, the applicant had not provided the court with any evidence that he had indeed invested PLN 92,000 in the house.

25. They also noted that the value of the applicant's assets had been high and totally disproportionate to the declared income. The domestic courts confirmed that his declarations had been unreliable since they had not included information about the applicant's conduct of a business activity.

26. It was true that the Poznań Court of Appeal had relied on an old legal doctrine which had been developed in the context of different socio-economic conditions. However, this principle had not been decisive in this case, as the main reason for the Court of Appeal's decision was the difference between the applicant's declared income and the value of his assets.

27. 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**

28. The Court observes 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 could be regarded as a restriction on the right of access to a court.

29. 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 had been imposed, were factors which were material in determining whether or not a person had enjoyed his right of access and had "a ... hearing by [a] tribunal".

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

30. The Court will now determine whether, in the particular circumstances of the present case, the fee actually requested constituted a restriction that impaired the very essence of the applicant's right of access to a court.

31. The Court firstly notes that the case concerned the applicant's claim for compensation against the Otyń municipality. The fee in the case was

determined as a fraction of the value of the claim, namely the amount of compensation sought.

32. The Court observes that the applicant was ordered to pay PLN 22,233.30.

33. The Court further notes that 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. In this respect it observes that the judicial authorities refused to accept the applicant's argument that he was unable to pay the court fees, given the difference between the value of his various assets and the declared income. They further stressed that the applicant could not be considered indigent given the fact that he owned a house, a cooperative flat, a plot of land, a retail outlet and a van (see paragraphs 9 and 10). They were of the opinion that his declaration of means had been unreliable and that he had not disclosed all his income. On that basis, they concluded that the applicant had sufficient funds to pay the court fee in question.

34. The Court agrees with the Government's position that the applicant himself was responsible for the fact that he had been ordered to pay the sum in question in court fees, as he had claimed an amount very significantly higher than the original value of his property.

35. The Court further observes that even conceding that the applicant's income was small, he had assets (see paragraphs 9 and 10).

36. Consequently, in accordance with the principle of subsidiarity, the Court is of the opinion that it does not appear that in the present case the domestic courts' approach when assessing the applicant's financial situation and his ability to pay the fees was arbitrary or discriminatory.

37. For the above reasons, the Court concludes that the refusal to exempt the applicant from the fee for lodging his claim was not a disproportionate restriction on his right of access to a court.

38. It accordingly finds that there has been no violation of Article 6 § 1 of the Convention.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 17 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President