



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

FOURTH SECTION

CASE OF CIBICKI v. POLAND

(Application no. 20482/03)

JUDGMENT

STRASBOURG

3 March 2009

FINAL

03/06/2009

This judgment may be subject to editorial revision.

In the case of Cibicki 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 10 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 20482/03) 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 Lesław Cibicki (“the applicant”), on 13 June 2003.

2. The applicant was represented by Ms J. Okonek, a lawyer practising in Wrocław. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry for Foreign Affairs.

3. The applicant alleged that he had been deprived of his right of access to a court, contrary to Article 6 § 1 of the Convention.

4. On 10 October 2007 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 President also gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1931 and lives in Wrocław.

6. In 1997 the applicant instituted civil proceedings in which he asked for the division of his late parents' marital property. The applicant's mother died in the 1960s and he was her heir. The applicant's father died in 1992 and his second wife inherited after him according to his last will. The applicant claimed that his parents' marital property included a collection of 300 valuable paintings worth approximately 460,000 Polish zlotys (PLN). The applicant's father's second wife contested the fact that the paintings belonged to the estate in question and submitted that they were her own assets.

7. On 23 December 1997 the applicant was exempted from court fees.

8. In 2001 the other party to the proceedings, the second wife of the applicant's late father, died and her daughter joined the proceedings as her heir.

9. On 17 July 2003 the Wrocław District Court (*Sąd Rejonowy*) decided of its own motion to order the preparation of an expert opinion regarding the value and origin of the paintings allegedly acquired during the applicant's parents' marriage. The court found that the applicant described many of the paintings, some of which had been in the possession of the other party and whose existence and ownership had been contested, as belonging to his parents. The assessment of his submissions required special knowledge concerning the authors of the paintings, their description and authenticity. It had thus been impossible to assess those issues without the assistance of an expert. The court considered that since the applicant had initiated the proceedings he should bear the costs of the opinion and ordered him to pay PLN 5,000 (approximately 1,200 euros (EUR)) as an advance on the costs of the expert opinion.

10. On 21 August 2003 the applicant applied for an exemption from court fees. He submitted that he was a pensioner and was receiving an old-age pension of PLN 550. His unemployed wife and her mentally handicapped brother, the latter receiving PLN 400 in invalidity benefit, were both in his sole charge. The applicant explained that although he had been represented by a lawyer of his choice, the latter had not received any payment but had agreed to accept a certain percentage of the award received at the end of the proceedings.

11. On 12 January 2004 the Wrocław District Court dismissed his application. The court acknowledged the applicant's difficult financial situation. However, it considered that since the beginning of the proceedings in 1997 he should have saved money for the purpose of paying the future

court fees. The court calculated that by putting aside between ten and twenty percent of his income the applicant could have saved up PLN 5,000 since 1997.

12. The applicant's lawyer appealed against this decision, explaining at length the difficult financial situation of the applicant's family. He submitted that 75% of the family's monthly income went on rent for their flat, monthly charges and the costs of medicines for the applicant and his wife's brother. The remaining sum of money did not allow for any savings; in fact, it was not sufficient for the applicant to support himself and his family; they had been surviving with the financial help of their friends and relatives.

13. On 15 April 2004 the Wrocław Regional Court (*Sąd Okręgowy*) dismissed the appeal. The court underlined the fact that the applicant had already benefited from an exemption from the court fees for lodging his civil claim, thus it had not been justified to expect the State Treasury to cover further costs for the applicant.

14. On 18 November 2004 the Wrocław District Court gave a decision in the applicant's case in which it divided the property in question. The court found that the estate in question consisted only of a wardrobe and a grandfather clock. The applicant was awarded the latter and ordered to pay the other party PLN 2,225 and to reimburse them PLN 14,400 for the costs of the proceedings. With regard to the issue of the expert opinion concerning the paintings that had been described by the applicant as having been acquired during his father's first marriage, the court found:

"The consequence [of the applicant's failure to pay the court fees for the expert opinion] was to omit this evidence as the court had established that this evidence was not necessary to reach a decision in the instant case – it was not the only piece of evidence on which it could base its finding. Producing this evidence was in the applicant's own interest, as he had borne the burden of providing evidence of the elements of the estate that belonged to his parents and was his mother's inheritance. The assessment of other evidence collected in the case leads to unequivocal conclusion that the marital property in question did not include any of the known and existing paintings of the disputed collection."

15. The applicant's lawyer appealed against the decision in particular as regards the court's assessment that the paintings had not belonged to his parents' estate.

16. The court ordered the applicant to pay court fees for his appeal in the amount of PLN 4,649. The applicant appealed against this decision and applied to be exempted from court fees.

17. On 22 April 2005 the Wrocław District Court, composed of the same judge who had given the decision on the merits in the applicant's case, dismissed his application. The court found that the applicant's financial standing had not changed since 2004 when his application for exemption from the court fees for the expert opinion had been dismissed. Moreover, he had not incurred any expenses afterwards as he had failed to pay for the

expert opinion. Thus, in the court's opinion the applicant should have saved enough money to pay the future costs of the proceedings.

18. The applicant's lawyer appealed against the decision.

19. On 7 July 2005 the Wrocław District Court partly allowed the appeal and exempted the applicant from fees exceeding PLN 600 (approximately EUR 150). The court considered that a total refusal to exempt the applicant from court fees for pursuing his appeal would deprive him of the possibility to pursue his claim before the second-instance court. It found however that the applicant would be able to pay the sum of PLN 600 without harming his own well-being or that of his family. It based its finding on the fact that the applicant's monthly income was PLN 700 and the family's income had also included his wife's brother's monthly benefit of PLN 450.

20. Since the applicant failed to pay the court fees for proceeding with his appeal, on 19 September 2005 the Wrocław District Court rejected the appeal.

II. RELEVANT DOMESTIC LAW

21. 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

22. The applicant complained that, on account of the excessive court fees required from him for proceeding with his appeal against the District Court's judgment, he had been deprived of his right of access to a court for the determination of his civil rights. The applicant further complained under Article 6 § 1 of the Convention that his trial had been unfair in that he had been prevented from ascertaining by means of an expert opinion the exact value of the inheritance in question. He submitted that the expert opinion requested by the court had not been prepared because he had not been able to pay the costs involved. 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

23. 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*

24. 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 not been excessive and had taken into consideration his difficult financial situation of which the domestic authorities had been aware.

In addition the Government argued that the applicant's right to fair hearing had been respected and that the applicant while bringing a civil action should have been aware that the proceedings might be costly. Moreover, they submitted that the applicant could have applied for a partial exemption from the costs entailed by the preparation of the expert opinion.

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

25. The applicant generally contested the Government's submissions. He maintained that he was very poor. He had thus expected to be exempted from court fees in order to proceed with his civil claim and costs of the expert opinion.

2. *The Court's assessment*

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

26. 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.

27. 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

28. The Court will first determine whether, in the particular circumstances of the present case, the fee actually required from the applicant for pursuing his appeal constituted a restriction that impaired the very essence of his right of access to a court.

29. In the instant case the applicant had to desist from pursuing his appeal against the first-instance court's decision because he had been unable to pay court fees of PLN 600.

30. It is true that no right to appeal in civil cases can be inferred from the Convention and that, given the nature of appeal proceedings and the fact that a person has already had his case heard before a first-instance court, the State is in principle allowed to impose even strict limitations on access to a court of appeal. However, restrictions which are of a purely financial nature and which, as in the present case, are completely unrelated to the merits of an appeal or its prospects of success, should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice (*Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65, 26 July 2005 and *Teltronic-CATV v. Poland*, no. 48140/99, § 61, 10 January 2006).

31. The Court notes that the applicant's case was heard at first instance and that the fee for his appeal was significantly lowered following his appeal against a decision ordering him to pay PLN 4,649 for pursuing his appeal. The case concerned the applicant's request for the division of his late parents' marital property. 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. Thus the money which the applicant was obliged to pay did not constitute a financial barrier designed to protect the system of justice against an unmeritorious appeal. Indeed, the principal aim seems to have been the State's interest in deriving income from court fees in civil cases (see *Podbielski, cited above*, § 66).

32. The Court further observes that the applicant was an elderly person living of his old-age pension of PLN 700. His household included his unemployed wife and her handicapped brother who received PLN 450 in invalidity benefit. It is apparent from the domestic courts' decisions that the authorities were aware of the applicant's particularly difficult situation. Nevertheless, the courts assumed that the applicant should have saved money since the beginning of the proceedings in 1997 and that he should have envisaged that he would be required to pay court fees when bringing a civil action. The Court notes, however, that at the beginning of the proceedings the applicant was exempted from court fees in full. Since his financial situation did not improve thereafter he could reasonably expect that he would not be ordered to pay court fees at later stages of the proceedings. Moreover, the Court considers that the domestic court's assessment of the applicant's financial situation was based on a rather theoretical calculation of his ability to save money from a very modest

income which had to be divided among three persons. It was established during the proceedings that the applicant's family's income had not been enough to cover their maintenance, medication, and other basic needs. There is nothing to suggest that the domestic authorities believed that the applicant had other sources of income or assets. While it is true that the applicant was partially exempted from court fees, nevertheless the remaining sum of PLN 600 could not be considered negligible for the applicant given that it was almost equivalent to his monthly income.

33. The Court further notes that the applicant also complained that the proceedings had been unfair in that the preparation of an expert opinion, crucial for a proper assessment of his case, had depended on his paying an advance on its costs in the amount of PLN 5,000. The Court considers accordingly that in the course of the proceedings the applicant was asked to pay a sum, clearly outside his financial means, for proceeding with the preparation of the expert opinion which was ordered by the Wrocław District Court of its own motion (see paragraph 9 above). Moreover, he was ordered to pay an additional PLN 150 for pursuing his appeal in which he had contested the fact that the expert opinion had not been prepared. Since his appeal was rejected because the applicant had not been able to pay court fees, the manner in which the District Court handled the evidence in his case could not have been brought to the attention of the second-instance court.

34. The Court considers that the issue under the fair trial principle is inextricably linked to the applicant's inability to pursue his appeal against the District Court's judgment. 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 appeal.

For the above reasons, the Court concludes that ordering the applicant to bear the costs of the expert opinion, which had been considered by the domestic court of its own motion as a necessary piece of evidence, and the refusal to exempt him from court fees for pursuing his appeal constituted a breach of his right to a fair trial and a disproportionate restriction on his right of access to a court.

35. It accordingly finds that there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed EUR 500,000 in respect of non-pecuniary damage.

38. The Government considered this claim excessive.

39. 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 EUR 4,000 under this head.

B. Costs and expenses

40. The applicant did not claim reimbursement of any costs and expenses.

C. Default interest

41. 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 on account of the unfairness of the proceedings and the lack of access to a court;
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, plus any tax that may be chargeable,

to be converted into Polish zlotys at the rate applicable at the date of settlement;

(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 3 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President