



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KORDOS v. POLAND

(Application no. 26397/02)

JUDGMENT

STRASBOURG

26 May 2009

FINAL

26/08/2009

This judgment may be subject to editorial revision.

In the case of Kordos 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 26397/02) 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 Romana Kordos (“the applicant”), on 1 July 2002.

2. The applicant was represented by Mr Z. Staszczyk, a lawyer practising in Śrem. 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 4 November 2005 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 1937 and lives in Śrem.

6. In 1995 the applicant’s husband died on a pedestrian crossing after being hit by a car. The car was being driven by a certain B.M.

7. On 20 July 1998 the applicant filed a claim against B.M. and the “Warta” Insurance Company with the Poznań Regional Court, seeking compensation in the amount of 50,000 Polish zlotys (PLN). At the same time the applicant requested the court to give her a full exemption from the costs of the proceedings. She submitted that she received only a small pension and that her health had significantly deteriorated.

8. On 21 June 1998 the Regional Court partly granted the applicant’s request. It exempted her from the court fee for processing her claim (*wpis od pozwu*).

9. On 25 November 1999 the Śrem District Court in the course of criminal proceedings convicted B.M. of having caused a traffic accident which resulted in a fatality and sentenced him, *inter alia*, to a suspended prison term.

10. In January 2001 the applicant filed her amended claim with the Regional Court. She sought an award of PLN 130,000 in compensation and PLN 500 as a supplementary monthly allowance.

11. On 28 December 2001 the Poznań Regional Court awarded the applicant PLN 20,000 to be paid jointly and severally by the defendants and dismissed her further claims. The applicant was ordered to pay the costs of the defendants in the amount of PLN 3,726.10.

12. On 18 January 2002 the applicant lodged an appeal against the first-instance judgment. On the same day the Regional Court ordered the applicant to pay PLN 7,100 in court fees for proceeding with her appeal.

13. On 29 January 2002 the applicant asked the Regional Court for an exemption from the relevant fees. She submitted that her income consisted only of a monthly pension in the amount of PLN 800 and that she did not have any property or valuable movables. She also claimed that her health had significantly deteriorated since her husband’s death.

14. On 5 February 2002 the Poznań Regional Court dismissed her request. It considered, in so far as relevant:

“(…) It should be underlined that the obligation to demonstrate the preconditions for an exemption from the costs rests with the claimant.

Examining the claimant’s request, the court considers that it cannot be granted. The claimant did not demonstrate that she was unable to bear the [relevant] costs without entailing a substantial reduction in her and her family’s standard of living.

A person requesting exemption from costs should submit a declaration of means that she is unable to pay the costs, including detailed information about her family status, her assets and her income, which have to be supported by relevant documents.

In a case where a person seeking exemption from costs has a representative who is an advocate, that representative has an obligation to inform his client about the requirements attached to a declaration of means and the necessary information which must be included therein. In that case, the court is not required to summon the

representative of a party seeking exemption from costs to submit an additional declaration.

For these reasons, considering that the claimant's request did not contain the required declaration of means, which implies that there is no information enabling [the court] to examine the merits of the request, the court, pursuant to Article 113 § 1 of the Code of Civil Procedure, held as in the operative part of the decision."

15. The applicant appealed. She relied on the same arguments as before the Regional Court.

16. On 23 April 2002 the Poznań Court of Appeal dismissed her interlocutory appeal. It found, in so far as relevant:

"...

The Court of Appeal considers that the grounds of appeal do not justify a departure from the findings of the first-instance court in respect of the appellant's ability to pay the [relevant] costs.

The Court of Appeal draws attention to the fact that the claimant received the whole amount of compensation awarded [by the first-instance court]. Thus, there were no grounds to hold that she was unable to bear the costs without a reduction in her own necessary support.

..."

17. As a result, the applicant was prevented from lodging an appeal against the judgment of the Poznań Regional Court of 28 December 2001.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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 ON ACCOUNT OF LACK OF ACCESS TO A COURT.

19. The applicant complained under Article 6 § 1 that the excessive court fees required from her for proceeding with her appeal 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. ...”

20. The Government contested that argument.

A. Admissibility

21. 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 applicant

22. The applicant firstly maintained that her motion of 29 January 2002 contained all the necessary information including the declaration of means to demonstrate her financial situation. She stressed that Article 113 of the Code of Civil Procedure did not specify any particular form for such a declaration.

23. She further claimed that the District Court had before it all documents necessary to assess her difficult financial situation.

24. 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

25. The Government firstly reiterated the general rules concerning exemption from court fees.

26. They further stressed that the applicant's request for exemption from court fees in the first-instance proceedings had been very well reasoned and therefore she had been granted the request. However, the application for exemption in the appeal proceedings had not been supported by the relevant documents. In particular, the applicant had not provided documents concerning her financial situation and had limited herself to a statement that she was not able to bear the court fees. In addition, she had failed to demonstrate that she was not able to incur the costs without detriment to her personal situation.

27. Had she acted with due diligence, she would have been exempted from the court fees, especially as she had been already granted such leave by the first-instance court.

28. 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

29. The Court reiterates 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 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. The Court firstly notes that the fee for lodging an appeal in this case was determined as a fraction of the value of the claim, namely, the amount of compensation sought.

33. 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 the first-instance court, the State would in principle be allowed to put even strict limitations on access to a court of appeal. However, restrictions which are of a purely financial nature should be subject to particularly rigorous scrutiny from the point of view of the interests of justice (see *Cibicki v. Poland*, no. 20482/03, § 30, 3 March 2009).

34. The Court would further underline, that there was much at stake for the applicant in the proceedings as they concerned her claim for compensation for her husband's tragic accident (see *Kania v. Poland*, no. 59444/00, § 36, 10 May 2007).

35. The Court observes that the Regional Court refused to accept the applicant's argument that she was unable to pay the court fees, on formal grounds, referring to the fact that her request had not contained a declaration

of means (see paragraph 14 above). On the other hand the Court of Appeal examined the merits of the applicant's request and dismissed it on substantive grounds namely that she could pay the relevant fee as she had already received the compensation awarded by the first-instance court. The Court shall therefore concentrate on the arguments given by the Court of Appeal.

36. In this respect the Court notes that the applicant had received a monthly pension in the amount of PLN 800 and that she did not have any property or valuable movables. It is true that she was awarded PLN 20,000 on 28 December 2001. Nevertheless, she was also ordered to pay the costs of the proceedings in the amount of PLN 3,726.10. Furthermore, the sum awarded was apparently her only asset and it does not seem reasonable to demand that she spend it on the payment of the court fees rather than on securing her basic living needs.

37. In addition, the Court observes that the domestic courts could have and should have considered at least the possibility of partially exempting the applicant from the court fees due in the proceedings.

38. Under the circumstances, having regard to the importance of the right to a court in a democratic society and in particular what was at stake for the applicant in the proceedings, 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.

39. For the above reasons, the Court concludes that the refusal to reduce the fee for lodging the applicant's appeal 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ABOUT THE LACK OF IMPARTIALITY.

40. The applicant complained under Article 6 § 1 about the lack of impartiality of the Poznan Regional Court. She claimed that the same judge who had ruled on her compensation claim subsequently refused her request for exemption from court fees for proceeding with her appeal. She relied on Article 6 § 1 of the Convention.

41. The Court considers that there are no indications to doubt the court's subjective or objective impartiality. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed PLN 50,000 Polish zlotys in respect of non-pecuniary damage.

45. The Government submitted that this sum was excessive.

46. The Court finds that the applicant suffered non-pecuniary damage, which would not be adequately compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant did not request the reimbursement of any costs and expenses in connection with 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 lack of 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 3,000 (three thousand euros), plus any tax that may be chargeable in respect of non-pecuniary damage,

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 26 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President