



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF NOWIŃSKI v. POLAND

(Application no. 25924/06)

JUDGMENT

STRASBOURG

20 October 2009

FINAL

20/01/2010

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 Nowiński 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 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 25924/06) 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 Jan Nowiński (“the applicant”), on 2 May 2006.

2. The applicant was represented by Mr A. Bodnar from the Helsinki Foundation for Human Rights. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that his right of access to a court had been violated as a result of the court's refusal to accept his statement of claim.

4. On 17 November 2008 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 1961 and lives in Trzebnica.

6. The applicant is a police officer. In 2002 he divorced his wife and moved out from their apartment.

7. On 18 June 2004 the applicant filed a claim for damages with the Wrocław Regional Court against the State Treasury – Wrocław Court of Appeal. At the same time he asked to be exempted from the court fees due in the proceedings.

8. On 29 June 2004 the Regional Court ordered the applicant to specify the amount of damages sought. The applicant complied with the order. He also submitted information about his personal income tax for 2002 and 2003, in which he indicated as his places of residence Wrocław, Drucki – Lubecki street and Wrocław Muzealna street respectively.

9. The Regional Court subsequently transferred the case to the Wrocław Krzyki District Court, which had in the meantime become competent to examine it.

10. On 23 November 2004 the District Court dismissed the applicant's request for an exemption from court fees. That decision was upheld by the Regional Court on 28 January 2005.

11. The applicant subsequently modified the claim and specified that he sought 3,000 zlotys (PLN) in damages.

12. On 11 April 2005 the District Court ordered the applicant to indicate his place of residence (*miejsce zamieszkania*).

13. On 27 April 2005 the applicant informed the court that following his divorce he had had to move out from the apartment he had previously occupied at Gajowa Street in Wrocław. On 25 October 2002 his name had been removed from the register of residents. Since then, he had been living with friends at different addresses. He gave a post-office box address for any correspondence and stressed that he could be reached every day at his work address, at the police station in Wrocław, Stare Miasto.

14. On 16 May 2005 the District Court ordered that the statement of claim be returned to the applicant. The court held that the applicant had failed to indicate his place of residence. It noted that a post-office box or a work address could not be considered as a place of residence within the meaning of Article 126 § 2 of the Code of Civil Procedure.

15. The applicant filed an interlocutory appeal against that decision. He argued that he did not have a permanent place of residence. He lived at different addresses, his last place of residence having been the apartment at Gajowa Street in Wrocław. He submitted that the refusal to admit his claim constituted a restriction on his right of access to a court.

16. On 11 July 2005 the applicant was ordered to pay a court fee of PLN 240 for lodging the interlocutory appeal. On the same date the applicant made an application for an exemption from court fees in the interlocutory appeal proceedings. On 12 August 2005 the District Court dismissed his application. That decision was upheld on appeal on 9 December 2005. Consequently, the applicant paid the required court fee for lodging his interlocutory appeal.

17. On 14 April 2006 the Wrocław Regional Court upheld the District Court's decision of 16 May 2005. The court held that the applicant had failed to indicate his place of residence. Since he had stayed at different addresses he should have indicated a place where he spent most of his time and where his daily activities were located.

18. Consequently, the Regional Court ordered the return of the applicant's statement of claim and the payment of the court fee of PLN 240.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Article 25 of the Civil Code of 23 April 1964 provides:

“The place of residence of a natural person shall be the town where that person stays with the intention of remaining permanently.”

Article 126 of the Code of Civil Procedure specifies what information should be contained in a pleading. Paragraph 2 provides in particular, that the first pleading submitted to a court should indicate the parties' place of residence.

THE LAW

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

20. The applicant complained under Article 6 § 1 of a breach of his right 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

21. The Government contested that complaint.

A. Admissibility

22. 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 applicant's submissions

23. The applicant submitted that the limitations imposed on him had been disproportionate and did not correspond to the aim and function of the obligation contained in Article 126 § 2 of the Code of Civil Procedure.

24. The applicant further noted that in legal theory “the place of residence” was a particular town and in the context of civil proceedings it meant an address of a party to the case with a view to ensuring proper communication between the court and that party. Having this in mind, he had indicated a post-office box as his address for correspondence. He had further given his work address – the police station in Wrocław – as the place where he could be reached every day.

25. The applicant argued that the court's decision not to treat the post-office box and the work address as a place of residence within the meaning of Article 126 § 2 of the Code of Civil Procedure had resulted in a breach of his right of access to a court, preventing him from exercising his right to claim compensation for damage allegedly caused by public authorities.

26. He stressed that the decision imposed on him was a disproportionate sanction for allegedly failing to fulfil the formal requirements of civil procedure. The domestic authorities had not taken into account the fact that the means of communication he proposed was effective and guaranteed the proper conduct of proceedings in his case.

27. Lastly, the applicant stressed that his case was a dangerous example of a restrictive interpretation of procedural norms that could result in the legal and social exclusion of a population group comprising all those people who had no permanent place of residence. Although he himself was not homeless, but merely temporarily unable to indicate a permanent place of residence, he had been prevented from pursuing his claim before the courts.

28. He concluded that there had been a violation of Article 6 § 1 of the Convention.

2. The Government's submissions

29. The Government noted that although the applicant had not had a permanent place of residence since 2002, he had indicated at least two addresses on the tax return forms presented to the court. During the proceedings he had also submitted a car insurance policy issued on 8 July 2005, where Gajowa street in Wrocław was indicated as his home address. They further maintained that it was open to the applicant to file the statement of claim again, stating his place of residence correctly.

30. Nevertheless, having regard to the Court's case-law concerning the right of access to a court, the Government refrained from taking a position in respect of the merits of the applicant's complaint.

3. *The Court's assessment*

31. The Court reiterates that the right of access to a court secured by Article 6 § 1 is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which may vary in time and in place according to the needs and resources of the community and of individuals. In laying down such regulation, the Contracting States enjoy a certain margin of appreciation, but the final decision as to observance of the Convention's requirements rests with the Court. Limitations on the right to a court are compatible with Article 6 only if they do not restrict or reduce the access left to the litigant in such a way or to such an extent that the very essence of the right is impaired. Moreover, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93).

32. Furthermore, it is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, § 33, *Reports of Judgments and Decisions* 1998-I). This applies in particular to the interpretation by courts of rules of a procedural nature (see, among other authorities, *Bělès and Others v. the Czech Republic*, no. 47273/99, §§ 51, 60, ECHR 2002-IX, and *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, § 43, *Reports* 1998-VIII).

33. Turning to the circumstances of the present case, the Court observes that the applicant attempted to institute civil proceedings for compensation against the Wrocław Court of Appeal for damage allegedly caused by that court. He provided the Regional Court with his work address and a post-office box address. However, the court considered that in spite of that information he had not indicated his "place of residence" within the meaning of Article 126 § 2 of the Code of Civil Procedure. Consequently, the statement of claim was returned to him solely because he was unable to indicate a place of residence (see paragraphs 17-18 above).

34. The Court can accept that a requirement to indicate a place of residence served a legitimate aim, namely the proper administration of justice. However, it considers that the strict application of that requirement in the applicant's case constituted a disproportionate restriction on his right of access to court. The applicant at the time had no permanent place of residence, and for that reason was obliged to indicate stable addresses where he could be contacted. The Court further observes that the applicant, who was the plaintiff in the case, was in permanent contact with the domestic courts and it was in his best interest to ensure the proper course of the proceedings. The Government have not contended that the addresses provided by the applicant would not have sufficed to ensure proper service of court correspondence or would in any other way have disrupted the proper administration of justice.

35. Having regard to the fact that the Government failed to submit any arguments making it possible to assess the need for the limitations imposed on the applicant, the Court cannot but conclude that the requirements of Article 6 § 1 were not complied with.

36. Consequently, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

39. The Government claimed that the amount was excessive.

40. The Court awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant did not make any claim for costs and expenses.

C. Default interest

42. 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 1,000 (one 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 on the above amount;
 - (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 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President