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

FOURTH SECTION

DECISION

Application no. 8951/11
Piotr Kazimierz GAJEWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 22 November 2016 as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 2 February 2011;

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by the European Centre for Justice and Human Rights and by the Alliance Defending Freedom,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Piotr Kazimierz Gajewski, is a Polish national, who was born in 1965 and lives in Ostróda.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. In 1989 the applicant married A. They have three children, born in 1990, 1995 and 1996.

5. In 2008 the applicant began a relationship with J.Z., his supervisor at work. In November 2008 the applicant moved out of the flat he had lived in with his family. At the request of his children he attempted to reconcile with A. and later moved back in for a week. However, he subsequently decided to continue his relationship with J.Z.

6. Since November 2008 he has been living with J.Z., her three children and her grandson.

7. On 23 April 2009 A. applied for child maintenance.

8. On 10 July 2009 the Ostróda District Court ordered the applicant to pay 750 Polish zlotys (PLN) per month for his three children (approximately 187 euros (EUR)).

9. On 24 August 2008 the applicant filed a petition for divorce. He asked the court to declare that both parties were at fault for the breakdown of the marriage.

10. On 23 March 2010 the Elbląg Regional Court refused to grant the divorce. It found that A. was a very good mother and wife and was not at fault for the breakdown of the marriage. She still loved her husband and was ready to forgive him for his affair. The court stressed that the applicant was the only person responsible and at fault for the breakdown of his marriage, and referred to the fact that his wife had not agreed to a divorce. It was decided that a divorce was not legally permitted in their case. Lastly, the court referred to the fact that the applicant's two children were still minors and held that a divorce would not be in their best interests.

11. The applicant appealed.

12. On 7 September 2010 the Gdańsk Court of Appeal upheld the first-instance judgment, holding that the applicant's wife was not at fault for the breakdown of the marriage. The judgment subsequently became final. A cassation appeal in the Supreme Court was not available.

13. On 27 July 2011 A. initiated a new set of proceedings. She applied to the Elbląg Regional Court for a formal separation from the applicant. She also sought the payment of child maintenance.

14. In a written reply of 25 September 2011 the applicant did not agree to a separation and asked the court to declare the parties divorced.

15. During a hearing of 12 October 2011 A. agreed to a divorce at the applicant's exclusive fault. The applicant declared that he was at fault and agreed to the arrangements for child maintenance proposed by A.

16. Consequently, by a judgment of 12 October 2011 the marriage was dissolved. Neither party appealed. The judgment was final.

COMPLAINTS

17. The applicant complained under Articles 8 and 12 of the Convention that the State had interfered with his private life in that he had been refused a divorce and was thereby prevented from remarrying and starting a new family.

THE LAW

18. The applicant complained that he had been refused a divorce. He relied on Articles 8 and 12 of the Convention, the relevant parts of which read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 12

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

19. The Government were of the view that the application should be considered inadmissible because the applicant had abused his right of petition. He had failed to inform the Court that on 12 October 2011 he had eventually been granted a divorce. His complaint before the Court lacked substance since it had been resolved within the national system, in compliance with the rule of subsidiarity. They argued that the application should be rejected pursuant to the Article 35 §§ 3(a) and 4 of the Convention.

20. The applicant disagreed in general terms with the Government.

21. According to the Court's well-established case law, an application deliberately grounded on a description of facts omitting events, such as where the applicant fails to inform the Court at the outset of a factor essential to the examination of the case, may constitute an abuse of the right of petition (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 89, 20 June 2002).

22. Likewise, if new and important developments occur during the proceedings before the Court and if – despite the express obligation on him or her under the Rules – the applicant fails to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of

the facts, his or her application may be rejected as being an abuse of application (see *Predescu v. Romania*, no. 21447/03, §§ 25-27, 2 December 2008). Importantly, failure to inform the Court of relevant factual circumstances may amount to abuse of the right of individual petition, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *Buzinger v. Slovakia* (dec.), no. 32133/10, §§ 16-25, 16 June 2015).

23. In the present case, the application was lodged with the Court on 2 February 2011. Subsequently, the applicant's marriage was dissolved by decree on 12 October 2011. The case was communicated to the respondent Government on 3 June 2014. At no point did the applicant inform the Court that his marriage had been legally dissolved by a divorce decree prior to the communication of the case. No plausible explanation has been furnished for his failure to inform the Court about that judgment.

24. Having regard to the importance of the information relevant to the proper determination of the present case, the Court finds that the applicant's conduct was contrary to the purpose of the right of individual petition, as provided for in Article 34 of the Convention.

25. In view of the above, it is appropriate to reject the application as a whole as an abuse of the right of application, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 December 2016.

Andrea Tamietti
Deputy Registrar

András Sajó
President