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

FIRST SECTION

DECISION

Application no. 11560/19
Antoni MESZKES
against Poland

The European Court of Human Rights (First Section), sitting on 6 March 2025 as a Committee composed of:

Erik Wennerström*, President*,
Raffaele Sabato,
Artūrs Kučs*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 11560/19) 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") on 26 February 2019 by a Polish national, Mr Antoni Meszkes ("the applicant"), who was born in 1952, lives in Tuchomie and was represented by Ms A. Bzdyń, a lawyer practising in Warszawa;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs;

the parties' observations;

the comments submitted by the Council of Europe Commissioner for Human Rights, who exercised her right to intervene in the proceedings (Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court);

the comments submitted by the following organisations, all of which had been granted leave to intervene by the President of the Section:

- the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) on behalf of the Fédération Internationale pour les Droits Humains (FIDH), European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), Network of European LGBTIQ* Families Associations (NELFA) and the European Commission on Sexual Orientation Law (ECSOL);

- the Institute of Psychology, Polish Academy of Sciences;
- the Ordo Iuris Institute for Legal Culture;
- the Polish Society of Anti-Discrimination Law (on behalf of "Campaign Against Homophobia and Love Does not Exclude" Association);

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant complained under Article 8 of the Convention that Polish law does not provide for any form of legal recognition and protection for the same-sex relationship he had been in and did not exempt him from the inheritance tax after his partner's death.

2. The applicant submitted that he had lived in a stable relationship with another man, D, for 38 years. The couple built a house, financed by the applicant's salary as D had not been working. D had signed before a notary public a last will attesting that the applicant was his sole heir.

3. On 9 May 2013 D died and the applicant inherited half of the house where they had both lived.

4. In September 2014 the Bytów Tax Office established that the applicant was liable to pay inheritance tax in the amount of 48,275 Polish zlotys (approximately 12,000 euros). The inheritance tax was calculated on the basis of the 20% rate applicable to situations where testator and heir had been unrelated. In the proceedings the applicant argued that the house had been built with his money, situation considered as unproven by the tax office. The applicant's appeal was dismissed on 13 February 2015 by the Gdańsk Tax Office. No cassation appeal was lodged.

5. In April 2015 the applicant requested the Tax Office to waive his tax liability on significant grounds (*umorzenie podatku*). He explained that he had funded the construction of the house and the liability imposed on him exceeded his financial means.

6. The Bytów Tax Office refused his request, underlining that, on the basis of section 67a of the Tax Law, a tax liability may be waived for important personal reasons or in the public interest. The power to waive liability is discretionary, meaning that there is no right to the waiver.

7. In his appeal the applicant raised that he had been with D in a committed and stable relationship for 38 years, but that Polish law discriminated against homosexual couples by not providing for any civil partnership framework. He requested the tax authority to remedy this injustice by waiving his tax liability.

8. The Gdańsk Tax Office dismissed the appeal. It examined again the applicant's financial standing and considered that the conditions for waiving his tax liability had not been met. According to the law, a waiver may be justified if exceptional circumstances have affected the taxpayer's ability to

pay the liability without serious damage to his property or health. The applicant appealed again.

9. On 28 January 2016 the authorities divided the applicant's tax liability into eighteen monthly instalments (the default interest had been waived previously).

10. On 16 March 2016 the Gdańsk Regional Administrative Court dismissed the applicant's appeal against the decision of the Gdańsk Tax Office. The court underlined the discretionary character of the waiver and considered that the tax offices had given relevant grounds for their decisions and that they had not been arbitrary.

11. The applicant lodged a cassation appeal. He complained that the authorities had failed to appreciate the discriminatory aspect of the case in that the applicant and D, forming a same-sex couple, had not been given the possibility to formalise their relationship, which would have resulted in automatic exemption from the inheritance tax.

12. On 5 September 2018 the Supreme Administrative Court dismissed the applicant's cassation appeal. The court noted that the institution of tax waiver may not be used to challenge the statutory scope of taxation.

13. The applicant complained under Article 8 of the Convention, and under Article 14 taken together with Article 8, that he had had no possibility to formalise his same-sex relationship with D and that Poland had failed to offer them the required recognition and protection. In consequence, after D's death, he had been forced to pay 20% inheritance tax, the highest rate applicable to non-family heirs.

THE COURT'S ASSESSMENT

14. The Government raised a number of objections including failure to comply with the six-month time-limit since the applicant's partner had died in 2013. They also noted that there had been no evidence that the applicant and D had been interested in formalising their relationship as they had made no such attempt. A refusal of a waiver from the inheritance tax did not bring into play any rights protected by Article 8 nor amounted to discrimination.

15. The applicant submitted that he had been in a relationship with another man for almost forty years, ending with his partner's passing in 2013. They did not attempt to formalise their relationship as the law had not provided them with such a possibility. His main complaint before the Court was that Poland provided no recognition and protection to their same-sex union.

16. Indeed, the Court notes that Polish law provides for only one form of family union – an opposite-sex marriage – and does not allow for any form of legal recognition for same-sex couples (see *Przybyszewska and Others v. Poland*, nos. 11454/17 and 9 others, § 105, 12 December 2023). In that case the Court found that Poland had failed to comply with its positive obligation to ensure that the applicants had a specific legal framework

providing for the recognition and protection of their same-sex unions, in breach of Article 8 of the Convention (ibid., § 124).

17. However, in the case at hand the applicant's partner had died in 2013 while the applicant lodged his application with the Court in 2019. The Court thus considers that the complaint that Poland did not offer the applicant a way to formalise his relationship with D should have been lodged while the applicant and D were living together or within six months[1] from the latter's death in 2013. The complaint that Poland offered them no legal framework for recognition and protection, and that it had amounted to discrimination, is time-barred and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

18. As regards the applicant's obligation to pay inheritance tax, the Court notes that the tax liability was imposed and calculated according to the domestic law as the testator and heir had not been covered by any exemption from tax on inheritance. The final decision on the tax liability was taken by the Gdańsk Tax Office on 13 February 2015, as no cassation appeal was lodged (see paragraph 4 above), which was more than six months before the applicant lodged his application with the Court. Consequently, this complaint has also been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

19. In the most recent proceedings, which ended on 5 September 2018, the applicant sought an exceptional waiver of his tax liability. However, as explained by the administrative courts such waiver may be granted for important personal reasons or in the public interest but was not meant to challenge the statutory scope of taxation. Thus, the domestic authorities and courts had no competence to examine the applicant's request from the angle of a lack of legal recognition of same-sex couples. Still, they did consider his request for a waiver in so far as it was within their competence but found that the conditions had not been met under domestic law. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

[1] Protocol No. 15 to the Convention has shortened to four months from the final domestic decision the time-limit provided for by Article 35 § 1 of the Convention. However, in the present case the six-month period still applies, given that the passing of D occurred prior to 1 February 2022, date of entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 March 2025.

Liv Tigerstedt Deputy Registrar	Erik Wennerström President