



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

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FIRST SECTION

Application no. 58828/12
Katarzyna FORMELA and Sylwia FORMELA against Poland
and 3 other applications
(see list appended)

STATEMENT OF FACTS

The applicants are Polish nationals. They live in Gdańsk and are represented before the Court by various lawyers (see the attached table).

The facts of the cases, as submitted by the applicants, may be summarised as follows.

A. Background

The applicants are two females living in a stable relationship. They have been cohabiting since at least 2009.

On 16 August 2010 they entered into a civil union in Edinburgh, United Kingdom. They formalised their relationship abroad because in Poland there is no right to marry or enter into any other form of civil union for same-sex couples.

B. Proceedings for donation

On 21 June 2009 the second applicant received a donation from the first applicant worth 5,000 Polish zlotys (PLN). The second applicant notified the Tax Office of the donation and indicated that she had received it from her “spouse”. This was the first, the nearest group of affiliation, allowed to receive donations which, in principle, were tax free.

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On 1 September 2009 the tax office established that the second applicant was due to pay tax on the donation for the amount of PLN 14. The tax office established that the donation was received from a person falling within the third group – no affiliation. The applicant appealed.

On 18 November 2009 the Head of the Gdańsk Tax Office upheld the decision. The second applicant appealed further. On 27 April 2010 the Regional Administrative Court dismissed her appeal. The applicant appealed further.

On 20 March 2012 the Supreme Administrative Court dismissed her cassation appeal.

C. Tax return proceedings in respect of the first applicant

In April 2009 the applicants submitted a joined tax return as spouses.

The tax authorities requested the first applicant to submit an individual tax return. The applicant refused.

On 10 September 2009 the Head of the Gdańsk Tax Office imposed on the first applicant the obligation to pay PLN 4,000 as income tax due for 2008. The tax authority recalculated her tax obligations in view of the fact that she had not been allowed by law to submit a joined tax return with the second applicant. The right to submit a joined tax return was only given to married couples.

On 10 May 2010 the Gdańsk Regional Administrative Court dismissed the first applicant's appeal.

On 20 March 2012 the Supreme Administrative Court dismissed the first applicant's cassation appeal.

D. Tax return proceedings in respect of the second applicant

The second applicant was also asked by the tax authorities to submit an individual tax return for 2008. Given her refusal, the authorities recalculated her income tax to the amount of PLN 2,000.

The proceedings followed an identical path as described under point C above. The proceedings ended on 20 March 2012 with the Supreme Administrative Court's judgment dismissing the second applicant's cassation appeal.

E. Proceedings concerning social benefit

Between 24 July and 6 August 2009 the second applicant was on leave for the purpose of caring for her sick partner, the first applicant. On 6 September 2009 the second applicant applied to the Social Security Board (ZUS) for a benefit to care for a sick spouse.

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On 21 October 2009 the ZUS refused the request since the domestic law had indicated that only married spouses or close family members had been eligible to receive the benefit.

On 19 February 2010 the Gdańsk District Court dismissed the second applicant's appeal.

On 3 September 2010 the Gdańsk Regional Court dismissed the appeal.

The applicant lodged a constitutional complaint complaining of discrimination because her long-standing partner had not been considered as a family member.

On 12 October 2011 the Constitutional Court refused to examine the constitutional complaint. The court considered that the case concerned a lack of regulation rather than incompatibility of a regulation with the Constitution. For the applicants to be covered by the social benefits regulations the legislator should have had first allowed for a possibility of a civil union for persons of the same sex. The court concluded that it had no mandate to adjudicate on the matter of a failure to enact a law.

The applicant's appeal against the decision was dismissed on 1 March 2012.

F. Health insurance proceedings

On 24 September 2012 the second applicant lodged a request with the Gdańsk Social Security Board to extend her health insurance to cover her partner, the first applicant.

On 7 November 2012 the ZUS refused. On 17 December 2012 the Gdańsk Regional Court decided that the applicant's request should be dealt with by the National Health Fund (NFZ).

On 26 March and 1 October 2013 and on 26 March 2014 the Pomorskie Region NFZ decided that the first applicant may not be insured as the first applicant's family member because it had not been allowed by law.

On 25 November 2014 the Warsaw Regional Administrative Court dismissed the applicant's appeal. The court reiterated that the domestic law allowed extending health insurance to a limited group of descendants, ascendants, and to the married spouse. The first applicant did not belong to any of those groups.

On 25 October 2016 the Supreme Administrative Court dismissed the applicant's cassation appeal. This judgment was served on the applicant's lawyer on 2 December 2016.

G. Marriage register proceedings

On 16 January 2015 the applicants got married in the United Kingdom.

On 18 June 2015 the applicants requested the Gdańsk Civil Status Office register their marriage contracted before the British authorities.

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On 7 July 2015 the Head of the Gdańsk Civil Status Office dismissed both applications finding that registering their marriage would be contrary to Polish legal order. The applicants appealed.

On 3 September 2015 the Pomorskie Governor upheld the decision.

On 14 January 2016 the Gdańsk Regional Administrative Court dismissed the applicants' appeals against the administrative decisions.

On 28 February 2018 the Supreme Administrative Court dismissed the applicants' cassation appeals. The applicant's lawyer was notified of the judgment on 15 May 2018.

COMPLAINTS

The applicants complain under Article 8 of the Convention that the Polish legal system does not allow them to marry or otherwise recognise their relationship. In consequence, they were discriminated against in several sets of proceedings on the grounds of their sexual orientation.

The applicants further complain that the marriage contracted abroad had not been recognised by the Polish authorities.

QUESTIONS TO THE PARTIES

1. Was the interference with the applicants' right to respect for their private and family life, namely the refusal to register their marriage contracted abroad, in accordance with the law and necessary in terms of Article 8 § 2?

2. Has there been a violation of the applicants' right to respect for their private and family life, contrary to Article 8 of the Convention, in particular in so far as they had no other possibility to have their relationship recognised by law?

3. In what specific ways are the applicants disadvantaged by the lack of any legal recognition of their relationship?

4. Have the applicants suffered discrimination in the enjoyment of their Convention rights on the ground of their sexual orientation, contrary to Article 14 of the Convention in conjunction with Article 8 of the Convention in respect of their inability to:

- (i) register their marriage contracted abroad;

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- (ii) enter into any other type of civil union recognising their relationship in Poland;
- (iii) lodge a joined income tax return;
- (iv) benefit from tax exemption on the ground of family affiliation;
- (v) extend health insurance to a family member;
- (vi) access social benefits available to family members?

Reference is made to the cases of *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, 14 December 2017, and *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, 21 July 2015?

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APPENDIX

No.	Application no.	Lodged on	Applicant's name year of birth place of residence	Represented by	Facts
1.	58828/12	31/08/2012	Katarzyna FORMELA 1966 Gdańsk Sylwia FORMELA 1974 Gdańsk	Dorota PUDZIANOWSKA	Proceedings described under points B,C,D and E above.
2.	40795/17	31/05/2017	Sylwia FORMELA 1974 Gdańsk	Artur PIETRYKA	Proceedings described under point F above.
3.	55306/18	15/11/2018	Katarzyna FORMELA 1966 Gdańsk	Marcin GÓRSKI	Proceedings described under point G above.
4.	55321/18	15/11/2018	Sylwia FORMELA 1974 Gdańsk	Marcin GÓRSKI	Proceedings described under point G above.