



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

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FIRST SECTION

Application no. 131/15
Rafał GROCHULSKI
against Poland
lodged on 12 December 2014

STATEMENT OF FACTS

1. The applicant, Mr Rafał Grochulski, is a Polish national, who was born in 1974 and lives in Łódź.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant lives in a partnership with another man.

1. Insurance subscription

4. In May 2010 the applicant was presented with a commercial offer to subscribe to a family scheme of life insurance called “My Protection” (*Moja Ochrona*) with BRE Insurance (“the insurer”), a private joint stock company. The company is owned by Poland’s fourth largest universal banking group.

5. The family scheme of the insurance in question was available to persons living in a civil partnership (*konkubinaty*). It appears that under that scheme the partners were mutually designated as the beneficiaries (*uposażony*) of each other’s insurance scheme.

6. Having been reassured by one of the insurer's representatives that a same-sex partnership was eligible for the family insurance in question, the applicant filed his application.

7. The applicant's subscription to the insurance scheme did not go through, however, because the insurer did not ultimately accept that, as instructed by the applicant, his same-sex partner be designated as the insurance scheme's beneficiary.

8. In response to the applicant's complaints (letters of 15 June and 13 July 2010), the insurer made the following explanations. Firstly, a civil partnership was understood as two people of the opposite sex living together. Secondly, the product was based on the calculation of risk for heterosexual couples which was lower than that for homosexual ones. The insurer refused to elaborate on the latter issue or reveal the details of the above-mentioned calculation.

9. Following the applicant's interventions with the Consumers' Ombudsman and with an association against homophobia, in October 2010 the insurer agreed to conclude the insurance contract with the applicant under the family scheme for couples living in civil partnerships.

2. Civil proceedings against the insurer

10. On 12 April 2011 the applicant filed a civil action seeking 5,000 Polish zlotys (PLN, approximately 1,250 euros, EUR) of compensation for the alleged breach of his and his partner's dignity and privacy by the insurer on account of the discriminatory denial of subscription to the family scheme of "My Protection" life insurance and the applicant's treatment in letters of June and July 2010. In particular, the applicant submitted that he had felt discriminated against because the insurer had claimed that homosexual couples could not create a union worthy of being classified as a civil partnership for the purpose of the insurance contract. The applicant was also uncomfortable with the insurer's differentiated calculation of risk for hetero and homosexual couples.

11. On 21 December 2011 the Warsaw District Court (*Sąd Rejonowy*) dismissed the applicant's action.

12. On 3 September 2012 the Warsaw Regional Court (*Sąd Okręgowy*) quashed that judgment and remitted the case. The applicant raised his compensation claim to PLN 10,000 (EUR 2,500).

13. On 30 August 2013 the Warsaw Regional Court, acting as the first-instance court, dismissed the applicant's action.

14. On 26 June 2014 the Warsaw Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's appeal.

15. The appellate court held that the insurer had indeed discriminated against the applicant on the basis of the latter's sexual orientation. The applicant's action under Article 448 of the Civil Code was, however,

unjustified because the insurer’s conduct had not been culpable (*zawinione działanie*), whether intentionally or unintentionally.

16. The court elaborated that the legal definition of the term “civil partnership” had evolved, through the court practice, to mean a lasting partnership of two people irrespective of their sex. The insurer therefore could not legitimately rely on the original and now outdated understanding of the term. The insurer had indeed come to correct that error by ultimately making the insurance in question available to the applicant and his same-sex partner. The insurer’s inaccurate understanding of the impugned term had nevertheless been justified because the interpretive change described above had been underway at the same time as the events under scrutiny. The insurer could not therefore be considered as acting in bad faith or with the intention of causing harm to the applicant or his partner.

17. A cassation appeal to the Supreme Court was not available to the applicant in view of the low amount of compensation sought.

18. The applicant submitted that the total costs of these proceedings amounted to PLN 4,001 (EUR 1,000).

B. Relevant domestic law and practice

1. Prohibition of discrimination

19. Article 32 of the Constitution of Poland provides:

“1. Everyone shall be equal before the law. Everyone is entitled to equal treatment by public authorities.

2. No one may be discriminated in political, social and/or economic life, regardless of its reason.”

2. Same-sex partnerships

20. Polish legal order does not contain a formal definition of “civil partnership” (*konkubinat*), although there are certain provisions which refer to relationships between people who live in “actual cohabitation” (*osoba pozostająca we wspólnym pożyciu*). Over the last decade, the existing legal provisions have been given a progressive meaning through the practice of the Supreme Court (*Sąd Najwyższy*) and lower courts.

21. In so far as relevant, Article 691 of the Civil Code (*Kodeks Cywilny*) provides:

“§ 1. In case of a tenant’s death, the tenant’s spouse who was not a co-tenant, the tenant’s and the spouse’s children, other persons towards whom the tenant had a maintenance obligation and any other person with whom the tenant was actually living in cohabitation, becomes a party to the tenancy.”

22. According to the jurisprudence of the Supreme Court (see, in particular, resolution of 21 May 2002, case no. III CZP 26/02, resolution of 28 November 2012, case no. III CZP 65/12), the introduction of Article 691

of the Civil Code implicitly reflects the lawmaker’s intention to recognise the existence of such forms of cohabitation, which include same-sex couples. The Supreme Court indicated that there were no legal obstacles for making such a finding.

23. In so far as relevant, Article 115 of the Criminal Code (*Kodeks Karny*) provides:

“§ 11. A next of kin is a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation, as well as his spouse, and also a person actually living in cohabitation.”

24. In the resolution adopted by seven judges of the Supreme Court on 25 February 2016 (case no. I KZP 20/15), it was held that under Article 115 § 11 of the Criminal Code, the term “a person actually living in co-habitation” applies to a person who remains in such a relationship with another person, which is based on emotional, physical and economic bonds. The Supreme Court ruled that the term may also apply if the existence of any of the aforementioned conditions has not been determined, but lack thereof was reasonably justified. Lastly, it determined that the term found its application to same-sex couples. A finding to the contrary would – in the view of the Supreme Court – violate the constitutional prohibition of discrimination.

25. Article 18 of the Constitution of Poland provides:

“Marriage, understood as a relationship of a man and a woman, family, maternity and parenthood enjoy the protection and care of the Republic of Poland.”

26. In its judgment of 8 January 2019, case no. IV SA/Wa 2618/18, the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) interpreted Article 18 of the Constitution as granting special protection to marriage of a man and a woman, which – at the same time – did not preclude the existence of same-sex partnerships, which would enjoy a lower standard of protection than provided therein.

3. *Action for personal rights’ infringement*

27. Article 23 of the Civil Code contains a non-exhaustive list of so-called “personal rights” (*prawa osobiste*). This provision states:

“The personal rights of an individual, such as, in particular, health, liberty, honour, freedom of conscience, ..., shall be protected by the civil law regardless of the protection laid down in other legal provisions.”

28. Article 24, paragraph 1, of the Civil Code provides:

“A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of infringement [the person concerned] may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement ... In compliance with the principles of this Code [the person concerned]

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may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest.”

29. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. That provision, in its relevant part, reads:

“The court may grant an adequate sum as pecuniary compensation for non-material damage (*krzywda*) suffered to anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of seeking any other relief that may be necessary for removing the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest ...”

COMPLAINT

The applicant complains of the temporary impossibility of subscribing together with his same-sex life partner to a private life insurance scheme for couples violated his rights guaranteed by Article 14 of the Convention in conjunction with Article 8 of the Convention.

QUESTIONS TO THE PARTIES

1. Is Article 14 in conjunction with Article 8 applicable to the applicant’s complaint about his temporary ineligibility for private insurance on the grounds that he had been in a homosexual partnership?

2. If so, was there a breach of the State’s positive obligation to protect the applicant’s rights under Article 14 of the Convention in conjunction with Article 8 of the Convention? In particular:

(i) Were all of the applicant’s main arguments answered by the domestic courts?

(ii) Have the domestic courts, when deciding on the applicant’s case, conducted a careful balancing exercise between the interests of the applicant and those of the insurance company?