



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

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## FIRST SECTION

Application no. 11560/19  
Antoni MESZKES  
against Poland  
lodged on 26 February 2019

### STATEMENT OF FACTS

The applicant, Mr Antoni Meszkes, is a Polish national who was born in 1952 and lives in Tuchomie.

#### **The circumstances of the case**

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

The applicant 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.

On 9 May 2013 D died. Before his death, D had signed before a notary public a last will attesting that the applicant was his sole heir.

On his partner's death the applicant inherited D's half of the house in which they had both lived.

On 8 September 2014 the Bytów Tax Office established that the applicant was liable to pay inheritance tax in the amount of 48,275 Polish zlotys (PLN, approximately 12,000 euros). The inheritance tax was calculated on the basis of the 20% rate.

On 7 April 2014 the applicant requested the tax office to waive his tax liability on significant grounds. He explained that, had the law allowed

same-sex couples a right to marry or to enter any other type of civil union, he would not have been liable to pay tax. The liability imposed on him exceeded his financial means.

On 14 July 2015 the Bytów Tax Office refused his request. The authority underlined 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 of authority to waive liability is discretionary, meaning that there is no right to the waiver. The applicant appealed against the decision. The decision was upheld by the Gdańsk Tax Office on 26 October 2015. Both authorities examined the applicant's financial standing and considered that the conditions for waiving his tax liability had not been met. On 26 October 2015 the tax office divided his liability into eighteen monthly payments. The applicant again appealed.

On 16 March 2016 the Gdańsk Regional Administrative Court dismissed the applicant's appeal. The court stated that, given the tax authority's discretionary power to waive liability, judicial control of such a decision was limited. Nevertheless, in the instant case the tax authority had given relevant grounds for its decision not to exempt the applicant from paying the tax, and the decision had not been arbitrary.

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 had a possibility to formalise their relationship, which would have resulted in automatic exemption from the inheritance tax.

On 5 September 2018 the Supreme Administrative Court dismissed his cassation appeal.

## COMPLAINTS

The applicant complains under Article 8 of the Convention that he and his partner had no possibility to formalise their relationship. In consequence, after D's death, the applicant had to pay 20% inheritance tax, the highest rate, applicable for inheritance outside a family. The applicant further complains that the facts of the case show that he was discriminated against on the basis of his sexual orientation.

## QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicant's right to respect for his private and family life, contrary to Article 8 of the Convention? In

MESZKES v. POLAND – STATEMENT OF FACTS AND QUESTIONS

particular, should he be afforded a possibility to have his relationship recognised by law and benefit from inheritance tax exemption (see *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, 21 July 2015)?

2. Has the applicant suffered discrimination in the enjoyment of his Convention rights on the ground of his sexual orientation, contrary to Article 14 of the Convention in conjunction with Article 8 of the Convention, in respect of his inability (i) to enter into any type of civil union recognising his relationship in Poland; (ii) to benefit from inheritance tax exemption on the ground of family affiliation?