



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

FIFTH SECTION

DECISION

Application no. 23462/03
by Janusz Bogdan KOZLOWSKI
against Germany

The European Court of Human Rights (Fifth Section), sitting on 15 May 2007 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Janusz Bogdan Kozlowski, is a German and Polish national who was born in 1962 and lives in Wloclawek (Poland).

The respondent Government are represented by their agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

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

In 1992 the applicant married a Polish national in Berlin and lived together with her in Germany. They have three children together, two daughters and a son. After the son's birth in 1999 the family went back to Poland. In August 2000 the applicant and his wife separated permanently and she and the three children returned to Germany. On 1 September 2000 the applicant's wife filed for divorce and requested the sole custody of the children before the Pankow/Weißensee District Court.

On 6 September 2001 the applicant requested the Berlin Pankow/Weißensee District Court to determine his access rights by interim measure.

On 28 December 2002 the applicant complained about the inactivity of the District Court to the Court of Appeal. On 24 March 2003 the Court of Appeal rejected the applicant's complaint stating that the case was of a difficult nature and that there was no indication of an arbitrary delay caused by the District Court.

On 25 November 2003 the Federal Constitutional Court quashed the Court of Appeal's decision stating that the District Court's inactivity violated the applicant's right to effective protection of his legal interests (*Recht auf Gewährung effektiven Rechtsschutzes*) under Article 2 § 1 in conjunction with Article 20 § 3 of the German Basic Law.

In spring and summer 2004 the applicant complained to the President of the District Court and the Court of Appeal about the District Court's continuing inactivity.

On 20 September 2004 the Court of Appeal ordered the District Court to expedite the proceedings.

On 8 October 2004 the District Court held that the applicant was entitled to supervised access to his son every other Saturday for two hours, but suspended the applicant's right of access to his daughters for two years.

On 21 February 2005 the Court of Appeal confirmed the District Court's decision insofar it concerned the access to his son but quashed the exclusion of access to his daughters. It allowed the applicant supervised access to them every third Sunday for four hours.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the inactivity of the Pankow/Weißensee District Court and the resulting length of the proceedings relating to his request for determination of his access rights.

THE LAW

On 11 April 2007 the Court received the following declaration from the applicant, signed on 2 April 2007:

“I, Mr Janusz Bogdan Kozlowski, note that the Government of Germany are prepared to pay me *ex gratia* the sum of 5,000 euros with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

I accept the proposal and waive any further claims against Germany in respect of the facts giving rise to this application. I declare that this constitutes a final resolution of the case.”

On 13 April 2007 the Court received the following declaration from the Government signed on 11 April 2007:

“I, Mr Hans-Jörg Behrens, Deputy Agent of the Government, declare that the Government of Germany offer to pay *ex gratia* 5,000 euros to Mr Janusz Bogdan Kozlowski with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.”

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention). Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President