



NEWS REPORT

Date: 14 July 2010
Expert: Łukasz Bojarski
Title: ECtHR judgment - *Kozak v. Poland*
Country: Poland

Context

Issue at stake: Does “*de facto* marital relationships” (konkubinat) relates only to partners of different sex or also to partners of same sex? Does denial of the right to succeed to a tenancy after the death of same sex partner constitutes discrimination on the ground of sexual orientation?

Ground of discrimination: Sexual orientation

Source: ECtHR (application no. 13102/02)

Field: Housing

Legislative provisions: Act of 2 July 1994 on the Lease of Dwellings and Housing Allowances; section 8(1) (*ustawa o najmie lokali mieszkalnych i dodatkach mieszkaniowych*)

Content

Case: The applicant Piotr Kozak alleged, in particular, a breach of Article 14 taken in conjunction with Article 8 of the European Convention of Human Rights, submitting that he had been discriminated against on the ground of his homosexual orientation in that he had been denied the right to succeed to a tenancy after the death of his partner.

The applicant had lived together with his partner for several years in a same-sex relationship in the municipality flat rented by his partner. After his partner died in April 1998, the applicant applied to the municipality to succeed to the tenancy. The municipality denied his application, claiming that the applicant had not lived in the flat before his partner’s death. In 2000 the applicant brought a claim against the municipality relying on the Lease of Dwellings and Housing Allowances Act and seeking to have his



succession to the tenancy acknowledged. Applicant argued that he had a right to succession, as he has lived in a “common household” and in “*de facto* marital cohabitation” with his life-partner (*konkubent*).

Under section 8(1) of the 1994 Act a person can take over a tenancy if he or she has fulfilled jointly the four following conditions: (1) was in a close relationship with the late tenant by blood relations, adoption or *de facto* marital cohabitation; (2) resided permanently with the tenant until his or her death; (3) had not relinquished this right to the landlord and (4) upon the death of the tenant had no title to another flat (para. 34 of the ECtHR judgment)

The District Court dismissed the claim holding that Polish law recognised “*de facto* marital relationships” between partners of different sex only (decision of February 22nd, 2001). The regional court upheld the judgment (decision of June 1st, 2001). The Regional Court also denied the applicant’s motion to refer the matter to the Supreme Court (in a procedure of “legal question” – to ask whether the clause of “*de facto* marital cohabitation” concern persons living in a same sex relationship) and alternatively a motion to refer the matter to the Constitutional Court (in a procedure of question to the Constitutional Court to ask whether the relevant provision interpreted in a way limiting its scope to different sex partners is compatible with the Constitution – Article 32.2 - regarding prohibition of discrimination and the European Convention on Human Rights Article 14 -).

Decision of the Court: The ECtHR ruled that the Polish authority’s decision to reject the applicant’s claim on the basis of his sexual orientation was not proportionate to the aims sought (namely the protection of the family founded on a “union of man and women” as enshrined in Article 18 of the Polish Constitution) and therefore violated Article 14 taken in conjunction with Article 8 of the Convention.

The ECtHR did not accept the government’s argument that the rulings of Polish courts had been based on Mr Kozak failing to meet the statutory requirements of section 8(1) (see above). The ECtHR asserted that the domestic courts focused mainly on the applicant’s same-sex relationship. The Court dismissed claims for damages, non-pecuniary damages and costs. The judgment was announced on March 2nd 2010 and became final on June 2nd 2010 (none of the parties applied to Grand Chamber of the ECtHR).

Internet link source and additional information: Kozak case in ECtHR HUDOC database at:



[http://cmiskp.echr.coe.int/tkp197/view.asp?
item=1&portal=hbkm&action=html&highlight=Kozak&sessionid=56465000
&skin=hudoc-en](http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Kozak&sessionid=56465000&skin=hudoc-en)