



Kozak v. Poland

App. No. 13102/02, Eur. Ct. H.R. (2010).

Country: Poland

Region: Europe

Year: 2010

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to housing

Facts

A homosexual man claimed that his sexual orientation had been the single ground on which Polish courts had denied him the right to succeed to the tenancy of a flat in which he had lived with his partner. The applicant believed he had been refused the status of a person who had remained in actual marital cohabitation only because he and his partner had formed a same-sex couple. In contrast to heterosexual common-law partners, who could at the material time enjoy the right to succeed to a tenancy, homosexual relationships had been excluded on the basis of the well-established and categorical interpretation of the notion "de facto marital cohabitation," as covering only a different-sex relationship. For that reason, he claimed that the courts, having established the fact that he and his partner had remained in a homosexual relationship, had not given him a chance to prove his compliance with the remaining statutory conditions laid down in section 8(1) of the Lease of Dwellings and Housing Allowances Act of 2 July 1994. The applicant concluded that he had been clearly discriminated against on the ground of his sexual orientation and asked the Court to find a violation of Article 14 taken in conjunction with Article 8 of the European Convention of Human Rights.

Decision and Reasoning

The Polish authorities violated of Article 14 taken in conjunction with Article 8 of the Convention. However, the claim for costs and expenses is rejected in its entirety because the applicant failed to produce any documents showing that the sums claimed had been incurred.

Decision Excerpts

"91. In the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations. Not every difference in treatment will amount to a violation of this provision; thus, Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. For the purposes of Article 14, it must be established that there is no objective and reasonable justification for the impugned distinction, which means that it does not pursue a "legitimate aim" or that there is no "reasonable proportionality between the means employed and the aim sought to be realized."

"97. In the Court's opinion the Regional Court considered that the principal issue material for the ruling related to the applicant's sexual orientation. In contrast to what the Government argued, the relevant element was not the question of the applicant's residence in the flat or the emotional, economic or other quality of his relationship with T.B but the homosexual nature of that relationship, which per se excluded him from succession."

"99. Striking a balance between the protection of the traditional family and the Convention rights of sexual minorities is, by the nature of things, a difficult and delicate exercise, which may require the State to reconcile conflicting views and interests perceived by the parties concerned as being in fundamental opposition. Nevertheless, having regard to the State's narrow margin of appreciation in adopting measures that result in a difference based on sexual orientation, a blanket exclusion of persons living in a homosexual relationship from succession to a tenancy cannot be accepted by the Court as necessary for the protection of the family viewed in its traditional sense...."