



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

FOURTH SECTION

CASE OF JEDAMSKI AND JEDAMSKA v. POLAND

(Application no. 73547/01)

JUDGMENT

STRASBOURG

26 July 2005

FINAL

30/11/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jedamski and Jedamska v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 5 July 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 73547/01) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Polish nationals, Mr Grzegorz Jedamski and Mrs Teresa Jedamska ("the applicants"), on 14 August 2001.

2. The applicants were represented by Mrs Agnieszka Suhecka-Tarnacka, a lawyer practising in Warsaw, Poland. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently by Mr J. Wołosiewicz.

3. The applicants alleged that they had been deprived of their right of access to a court.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

Having consulted the parties, the President of the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of *Podbielski v. Poland* and of *Kniat v. Poland* (applications nos. 39199/98 and 71731/01) (Rule 42 § 2).

5. By a decision of 17 June 2003 the Court declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1). No party requested the Court to hold a hearing in the present case. The Chamber decided that no hearing on the merits was required (Rule 59 § 3 *in fine*).

On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants, Mr Grzegorz Jedamski and Mrs Teresa Jedamska, are a married couple. They are Polish nationals, who were born in 1954 and 1960, respectively. They live in Mikołajki Pomorskie, Poland.

A. Background

8. The proceedings summarised below have already been examined by the Court under Article 6 § 1 of the Convention from the angle of the “reasonable time” requirement. In its judgment of 26 July 2001 (*Jedamski v. Poland appl. no. 29691/96*) the Court (former Fourth Section) unanimously held that there had been a violation of Article 6 § 1.

9. On 22 December 1992 the Łódź Bank of Development (*Łódzki Bank Rozwoju*), submitting a bill of exchange payable to bearer which required the first applicant to pay on demand 19,777,167,300 old Polish zlotys (PLZ), asked the Łódź District Court (*Sąd Rejonowy*) to issue an order for payment against him.

10. On 14 January 1993 the court granted the plaintiff’s claim and ruled that the first applicant was to pay the sum in question within seven days from the date of service of the order or, alternatively, within the same time-limit, to lodge an appeal against the said order. The first applicant appealed.

11. On 11 February 1993, acting under a provisional writ of execution of 1 February 1993 and on a request by the creditor, i.e. the Łódź Bank of Development, the Bailiff of the Warsaw District Court (*Komornik Sądu Rejonowego*) made an order attaching the applicants’ shares in the Bank of Development of Export (*Bank Rozwoju Eksportu*) and an unknown sum of cash deposited in the Central Brokerage Bureau of the Bank PeKaO S.A. (*Centralne Biuro Maklerskie Banku Polska Kasa Opieki S.A.*), by way of security for the creditor’s claim for payment of PLZ 19,777,167,300 pending in the Łódź Regional Court.

12. On 26 February 1993 the first applicant lodged an unsuccessful complaint against the actions taken by the bailiff (*skarga na czynności komornika*), relying on Article 767 of the Code of Civil Procedure and

arguing that the attached shares constituted the matrimonial property of the applicants, whereas the execution was against the applicant alone.

13. On 12 October 1993 the Łódź Bank of Development was taken over by the BIG Bank SA (*Bank Inicjatyw Gospodarczych SA*). The BIG Bank SA replaced the former bank as a plaintiff in the civil proceedings and as a creditor in the enforcement proceedings.

14. On 23 February 1999 the Łódź Regional Court quashed the order for payment and awarded the plaintiff bank 1,954,097.49 new Polish zlotys (PLN) [approx. EUR 442,000] together with interests and costs of the proceedings. The plaintiff bank and the first applicant appealed against that judgment.

15. On 9 April 1999 the Łódź Regional Court secured the plaintiff's already-awarded claim by attaching the applicants' shares in the Bank of Development of Export (*Bank Rozwoju Eksportu*), an amount of PLN 984,674.50 in cash deposited in the Central Brokerage Bureau of the Bank PeKaO S.A. (*Centralne Biuro Maklerskie Banku Polska Kasa Opieki S.A.*) and shares in the former Łódź Bank of Development (*Łódzki Bank Rozwoju*) (taken over by the BIG Bank SA) deposited in the Łódź District Court by the Bailiff of the Łódź District Court (*Komornik Sądu Rejonowego*).

16. On 6 October 1999 the Łódź Court of Appeal (*Sąd Apelacyjny*) dismissed the appeal lodged by the first applicant against the decision of 9 April 1999.

17. On 19 October 1999 the Łódź Court of Appeal upheld the decision of 23 February 1999.

18. On 16 November 2000 the Bailiff of the Warsaw District Court discontinued the enforcement proceedings instituted under the writ of execution of 1 February 1993. Nevertheless, the attachment of the applicants' property made on 9 April 1999 remained in force.

19. On 26 January 2001 the Supreme Court dismissed the cassation appeal lodged by the first applicant.

20. On 10 May 2001 the Supreme Court rejected the first applicant's request to reopen the proceedings.

B. Claim for damages

21. On 28 December 2000 the applicants sued the Warsaw BIG Bank SA in the Warsaw Regional Court (*Sąd Okręgowy*). They sought damages of PLN 340,000,000 claiming that the attachment of their property, in particular the shares, made at the BIG Bank SA request on the basis of the quashed order for payment of 14 January 1993, deprived them of any future profit-making trade in shares at the Warsaw Stock Exchange.

22. On 23 January 2001 the applicants informed the court that, on 5 January 2001, as a result of the banks' merger, the BIG Bank SA (*Bank*

Inicjatyw Gospodarczych SA) had been taken over by the BIG Bank Gdański SA. From that date onwards, the BIG Bank Gdański SA replaced the former bank as a defendant in the proceedings. On an unknown date the court ordered the applicants to pay a court fee of PLN 100,000 for lodging the claim.

23. On 23 January 2001 the applicants asked the Warsaw Regional Court to exempt them from payment of that fee. They also submitted a declaration of means, pursuant to Article 113 § 1 of the Code of Civil Procedure. Their application read, in so far as relevant:

“... The plaintiffs ask for an exemption from the court fee on the ground that they cannot pay that sum as it will entail a substantial reduction in their standard of living.

The plaintiffs’ matrimonial property was seized by the Bailiff acting upon the decision of the Łódź Regional Court of 9 April 1999.

[in connection with that argument, the applicants produced a copy of that decision]

Their income from a farm, which is the second applicant’s personal property, does not suffice for the payment of PLN 3,957.50 the plaintiffs owe in tax arrears.

[in connection with this argument, the applicants produced a copy of a certificate issued by the Mikołajki Pomorskie Commune Office (*Urząd Gminy*) stating the anticipated income and tax arrears]

The plaintiffs declare that they are not deriving the anticipated income indicated in the presented certificate due to a shortage of funds for making investment outlays in the production.

The plaintiffs further state that, given that their other assets were attached, their only present income is that from the farm. In the circumstances, the plaintiffs are unable to pay the court fees.

Finally, the plaintiffs inform [the court] that in other civil proceedings, the Łódź Regional Court, in its decision of 9 June 1999, exempted the first applicant from paying the full amount of fees.

[in connection with that argument, the plaintiffs produced a copy of that decision]”

The declaration of means made by the first applicant read, in so far as relevant:

“The plaintiff asks for an exemption from court fees on the ground that he cannot pay the fee in question [as it will] entail a substantial reduction in his standard of living.

He has the following items of property:

1) no personal property; the average anticipated annual income from the agricultural farm is estimated at PLN 66,140.43;

2) 62,500 shares in the BRE Bank SA, 9,950 shares in the BIG Bank SA and PLN 984,674.50 in cash (matrimonial property attached by the Bailiff);

3) 11 shares in the BIG BG SA;

4) audio and television equipment; furniture.”

24. The declaration of means made by the second applicant read, in so far as relevant:

“The plaintiff asks for an exemption from court fees on the ground that she cannot pay the fee in question [as it will] entail a substantial reduction in her standard of living.

She has the following items of property:

1) agricultural farm, the average anticipated annual income from which is estimated at PLN 66,140.43;

2) car;

3) 62,500 shares in the BRE Bank SA, 9,950 shares in the BIG Bank SA and PLN 984,674.50 in cash (matrimonial property attached by the Bailiff);

4) 11 shares in the BIG BG SA;

5) audio and television equipment; furniture.”

25. On 30 January 2001 the court rejected the applicants’ application. The reasons for that decision read, in so far as relevant:

“... As it emerges from the plaintiffs’ declarations of means, the second applicant is a sole owner of the farm of 57.44 ha ... The annual anticipated income from the farm amounts to PLN 66,140.43 and constitutes the only source of the plaintiffs’ income. Moreover, the plaintiffs are the owners of PLN 984,674.50 in cash, 62,500 shares in the BRE Bank SA and 9,950 shares in the BIG Bank SA. It is true that their cash and shares have been attached by the decision of the Łódź Regional Court, but the plaintiffs’ real financial situation does not seem to be as bad as they present it. Taking into consideration their assets and income derived from the farm, the plaintiffs are able to pay the full amount of the court fees without any reduction in their family’s standard of living. When deciding to bring the present claim, the plaintiffs should have taken into account the fact that it would involve the necessity of paying court fees. They should therefore have secured financial means in anticipation of the litigation...”

26. On 13 February 2001 the applicants lodged an interlocutory appeal (*zażalenie*) against that decision. They alleged a breach of Article 113 § 1 of the Code of Civil Procedure and Article 6 § 1 of the Convention. The applicants maintained that it had clearly emerged from the documents produced by them, in particular the Łódź Regional Court’s decision to secure the plaintiff’s claim for payment by attaching the applicants’ shares and the declaration setting out the average anticipated annual income from

the farm, that they were unable to pay the court fee of PLN 100,000 imposed on them.

27. On 9 March 2001 the Warsaw Court of Appeal (*Sąd Apelacyjny*) dismissed the appeal. The relevant part of that decision read:

“... The plaintiffs’ assets are of a considerable value and they several times exceed the average level of means. This conclusion cannot be changed by the fact that part of their property is attached in other civil proceedings. The plaintiffs still remain the owners of their property and, consequently, should be able to take necessary measures to gather sufficient means to pay the court fees. The plaintiffs are involved in a number of proceedings concerning pecuniary and non-pecuniary rights to their shares in commercial companies and, in the past, they made a large number of transactions on the stock exchange market. These facts indicate that the plaintiffs ... cannot be regarded as indigent and that the court fees for lodging their claim should not be borne by the State.

Their declaration of means is dubious because it is not complete. The plaintiffs did not indicate precisely whether they had title to their apartment. They did not reveal the real income derived from the farm. Nor did they produce any information concerning the type of activities in which they are engaged on their farm. Moreover, [the first applicant] failed to indicate his place of employment; his being his wife’s dependant seems doubtful... Lastly, the plaintiffs did not supply any information concerning their house or the farm equipment. That information would have enabled the court to ascertain their real standard of living.

Assessing all the circumstances, the following conclusion can be drawn: the plaintiffs, who have failed to show their current financial situation and to reveal their income, cannot successfully challenge the first-instance decision which rejected their application for an exemption from court fees. They cannot therefore complain that they are deprived of access to a court.

In addition, it should be pointed out that the amount of the court fee is based on the value of the claim in question and that [that value] depended on the plaintiffs....”

28. On 30 April 2001 the Warsaw Regional Court ordered the applicants to pay PLN 100,000 for lodging their claim. The applicants did not pay that sum. As a consequence, on an unknown date, the Warsaw Regional Court ordered that the applicants’ statement of claim be returned to them (*zarządził zwrot pozwu*), which meant that their claim was of no legal effect and that the relevant proceedings were, for all legal and practical purposes, regarded as having never been brought before the court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. Under Polish law every plaintiff is obliged to pay a court fee at the time of lodging a statement of claim with a court. As the case proceeds, either party is obliged to pay further court fees at the time of lodging any appeal or constitutional complaint, unless granted an exemption from such fees.

Court fees are based on a percentage (if a fee is due for lodging a claim or an appeal) or a fraction (if a fee is due for lodging an interlocutory appeal) of the value of the claim in question.

The court fees incurred by either party can, depending on the outcome of the litigation, be finally repaid by the losing party (who, in principle, is ordered to pay all the costs of litigation in a final judgment).

30. There are, however, categories of litigants who are exempted from court fees by virtue of statutory provisions. Some of those categories are listed in Article 111 § 1 of the Code of Civil Procedure. That provision, in the version applicable at the relevant time, exempted from court fees a party lodging a paternity action, a party seeking maintenance, a prosecutor, a court-appointed guardian and “any party exempted from court fees by the competent court” (that is to say, a party who had been granted an exemption under Article 113 of the Code, cited below).

31. The other categories of these exempted litigants are listed in, *inter alia*, sections 8 and 9 of the Law of 13 June 1967 on Court Fees in Civil Cases (*Ustawa o kosztach sądowych w sprawach cywilnych*).

Under section 8 of the Law, the State Treasury, municipalities and other public organs or institutions are not obliged to pay court fees, provided that the claim in question does not relate to their business activity. Section 9 authorises the Minister of Justice to exempt non-governmental organisations from court fees.

32. In case of a successful outcome of litigation initiated by a person exempted from court fees, the fees which would normally have been collected from that person for lodging and proceeding with his claim are awarded to the State Treasury against his opponent.

33. The Law of 13 June 1967 on Court Fees in Civil Cases (as amended) sets out general principles with respect to the collection of fees by courts.

Section 5(1) of the Law, in the version applicable at the material time, stipulated:

“Unless otherwise provided by the law, a party who has submitted to a court a pleading which is subject to court fees, shall pay such fees.”

34. The relevant part of section 16 of the Law, in the version applicable at the material time, provided as follows:

“1. The court shall not take any action if the court fee due for lodging a given pleading is not paid. In such a case the president of the court shall order the party concerned to pay the fee due within a period not exceeding seven days, on pain of having the pleading returned. If the party does not comply with the time-limit, the pleading shall be returned to this party.

...

3. Any appeal, cassation appeal, interlocutory appeal or objection to a judgment by default ... shall be rejected if the court fee due is not paid within the [above] time-limit.”

35. Section 18 provided:

“A pleading which has been returned to a party as a result of the fact that the court fee had not been paid, shall be of no legal effect.”

36. The relevant part of paragraph 1 of the Ordinance of the Minister of Justice of 17 December 1996 on Determining Court Fees in Civil Cases (*Rozporządzenie Ministra Sprawiedliwości w sprawie określania wysokości wpisów w sprawach cywilnych*) (as amended), in the version applicable at the material time, stated:

“(4) Where the value of the claim exceeds PLN 100,000 the court fee shall amount to PLN 6,600 for the first PLN 100,000 and 5% of the remaining value of the claim. In any case the court fee due shall not exceed the sum of PLN 100,000.”

37. Exemption from payment of court fees was (and still is) a matter for the discretion of the court competent to deal with the case.

Article 113 § 1 of the Code of Civil Procedure, in the version applicable at the material time, stipulated:

“An individual may ask the court competent to deal with the case to grant him an exemption from court fees provided that he submits a declaration to the effect that the fees required would entail a substantial reduction in his and his family’s standard of living. Such a declaration shall contain details concerning his family, assets and income. It falls within the court’s discretion to assess whether or not the declaration satisfies the requirements for granting the exemption requested.”

The grounds for exempting legal persons, companies and business enterprises from court fees were, however, formulated in a different way from the grounds applying to natural persons. Paragraph 2 of Article 113 of the Code of Civil Procedure in the version applicable at the relevant time read:

“A legal person, or an entity not possessing legal personality, which has demonstrated that it does not have sufficient financial means for court fees, may be granted an exemption from those fees.”

Article 116 § 1 of the Code of Civil Procedure provides:

“In case of doubt ... as to the real financial situation of the party requesting exemption from court fees, the court may order a verification of his declaration.”

The relevant part of Article 120 § 1 of the Code, in the version applicable at the material time, stated:

“The court shall revoke an exemption from court fees or legal assistance granted if the basis therefor did not exist or has ceased to exist. In either instance the party concerned shall pay all court and/or legal fees due in his case...”

38. Fees collected by courts do not constitute, nor are they equivalent to, security for costs. The court fees are transferred by financial departments of the courts to the State Treasury and are deemed to be part of its income.

39. On 11 January 1995 the Supreme Court (*Sąd Najwyższy*) gave a decision in which it referred for the first time to the “right to a court” guaranteed under Article 6 § 1 in the context of the requirement to pay court fees for lodging a claim or appeal (decision no. III ARN 75/95, published in *OSN Zb. U.* 1995, no. 9).

That ruling concerned an extraordinary appeal lodged by the First President of the Supreme Court with the Supreme Court. The appeal was directed against a decision of the Supreme Administrative Court, refusing to exempt a claimant in administrative proceedings from payment of court fees. The Supreme Court held as follows:

“1. From the date on which Poland became a member of the Council of Europe, the case-law of the European Court of Human Rights in Strasbourg may and should be taken into account in interpreting Polish law.

2. If the subject matter of a case is the party’s application for substantial financial assistance from the public authorities, particular diligence should be displayed in considering [that party’s] parallel application for an exemption from court fees. [Any decision] rejecting such an application should give relevant and particularly cogent reasons so as not to amount to an actual denial of the right to a court (as secured by Article 6 of the European Convention of Human Rights) ...”

Although the relevant decision related to court fees for lodging an appeal with the Supreme Administrative Court by a person who had requested financial assistance from the public authorities, it has been applied *mutatis mutandis* to civil cases.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

40. The applicants complained under Article 6 § 1 of the Convention that they had been deprived of access to a court for the determination of their civil rights as the amount of court fees required from them by the Polish courts had prevented them from pursuing their claim. Article 6 § 1 of the Convention, in so far as relevant, reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing ...by [a] ... tribunal established by law. ...”

A. The parties' submissions

1. *The applicants*

41. The applicants argued that the Polish courts had acted arbitrarily and had based their decisions on a speculative assessment of their financial situation. The applicants submitted that the Regional Court had assumed that they had been able to pay the court fee with the income drawn from the farm and property. They stated that it had disregarded the fact that the income derived from the farm had been estimated at PLN 66,000 per year. Furthermore, they argued that the seven days time-limit had been too short to organize the sale of some of their movable property. Moreover, they submitted that their financial situation had eliminated their chances to obtain a bank credit or any other means to finance the proceedings in question.

42. The applicants underlined that the Court of Appeal had not taken into account the fact that they had had no possibility to freely dispose of their savings as the decision attaching the applicants' most valuable assets had been in force at the material time.

43. They also considered that the relevant courts had no basis on which to disbelieve the true facts they had stated in their declarations of means. Furthermore, they argued that the courts had been obliged to verify their declarations of means if they had doubts to its accuracy.

44. The applicants submitted that the Government had misread their arguments and, in consequence, had made wrong findings of fact. For instance, the applicants had not stated that they had been deriving the anticipated income presented in the certificate issued by the Mikołajki Pomorskie Commune Office. Furthermore, they argued that they had not transacted any business on the stock exchange market as their shares and cash had been attached.

45. The applicants referred to the Court's established case-law on the matter and stressed that the right to a court, even though not an absolute one, must be effective and that the authorities had not been allowed to restrict or reduce that right in such a way that the very essence of it had been impaired. They underlined that the Government had not specified any legitimate interest that would have justified the decision to deny them access to the court by ordering them to pay the court fee in the amount of PLN 100,000.

46. The applicants also stated that the judicial authorities had failed to secure a proper balance between the fiscal interest of the State in collecting the court fees and the interest of the applicants in having access to the court.

47. Turning to the particular circumstances of the present case, they maintained that setting a court fee in the amount of PLN 100,000 - a sum exceeding more than fifty times the average monthly salary in Poland at that

time - and refusing them an extra exemption had deprived the applicants of their right to bring a civil claim before a court.

48. They disputed the Government's argumentation that they could have limited their claims. They stated that it would have deprived them from claiming the remaining part of their claim. They argued that, due to the one year time-limit for lodging their claim, they had had doubtful chances of having the proceedings completed before the expiry of that period.

49. The applicants also stated that under the Polish law an exemption from payment of court fees could have been revoked at any time by the courts if the basis therefor had ceased to exist.

50. In sum, they invited the Court to find that there had been a violation of Article 6 § 1 of the Convention.

2. The Government

51. The Government disagreed. They submitted that the court fee in question had been levied on the applicants in accordance with the law and had pursued a legitimate aim. They added that it had not been disproportionate to their means or imposed arbitrary. However, the Government admitted that the amount of the court fee, if considered from the perspective of the "ordinary litigant", had been substantial.

52. They further argued that the applicants could have sought damages in parts. They stated that this would have allowed them to bear the court fees gradually.

53. The Government pointed out that the applicants' monthly income had substantially exceeded the average salary in Poland. They referred to the applicants' financial transactions on the stock exchange market.

54. Furthermore, they maintained that it had been incumbent on the applicants to prove that they had been unable to pay the court fees imposed on them. However, they had not submitted any convincing evidence in support of their request for the exemption from court fees. Moreover, the Government argued that the applicants' declaration of means had been dubious.

55. They also submitted that at the material time the applicants had been involved in other civil proceedings and, consequently, should have been aware of the amount of fees required for lodging such a claim. According to the Government, the applicants had assumed that they would be unconditionally exempted from the court fees.

56. The Government accordingly asked the Court to find that there had been no violation of Article 6 § 1 of the Convention.

B. The Court's assessment

1. Principles deriving from the Court's case law

57. The Court recalls that, as it has held on many occasions, Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal (see, among many other authorities, *Kreuz v. Poland*, judgement of 19 June 2001, no. 28249/95, § 52, ECHR 2001-VI).

58. The Court further recalls that Article 6 § 1 embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect.

However, this right is not absolute, but may be subject to limitations. The Court has ruled that, guaranteeing to litigants an effective right of access to courts for the determination of their “civil rights and obligations”, Article 6 § 1 leaves to the State a free choice of the means to be used towards this end but, while the Contracting States enjoy a certain margin of appreciation in that respect, the final decision as to the observance of the Convention's requirements rests with the Court (see, *Kreuz v. Poland*, cited above, § 53, and, *mutatis mutandis*, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, pp. 14-16, § 26).

The Court must be satisfied that the limitations applied do not restrict or reduce the access afforded to the individual in such a way or to such an extent that the very essence of that right is impaired (see, *Kreuz v. Poland*, cited above, § 58).

Furthermore, the Court underlines that a limitation will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see, for instance, *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, judgment of 10 July 1998, *Reports* 1998-IV, p. 1660, § 72).

59. The Court also recalls that its role is to review under the Convention the decisions that the relevant domestic authorities have taken in the exercise of their power of appreciation and ascertain whether the consequences of those decisions have been compatible with the Convention (see, *mutatis mutandis*, *Kreuz v. Poland*, cited above, § 56).

2. Application of the above principles to the present case

60. Having regard to the aforementioned statement of principles established by its case-law, the Court reiterates that the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicants' ability to pay them, and the phase of the proceedings at which that restriction has been imposed are factors which are

material in determining whether or not a person enjoyed his right of access and had “a ... hearing by [a] tribunal”.

Bearing those factors in mind, the Court must next determine whether, in the particular circumstances of the present case, the fee actually charged constituted a restriction that impaired the very essence of the applicants’ right of access to a court.

61. The applicants complained that the requirement that they pay PLN 100,000 for lodging their action had amounted to a total bar on their access to a court (see paragraph 47 above).

The Government considered that that sum had been justified from the point of view of the interests of justice and had been based on an objective assessment of their financial situation (see paragraph 51 above). However, they admitted that the amount of the court fee, if seen from the perspective of the ordinary litigant, had been substantial.

In that connection, the Court notes that the sum finally required from the applicants exceeded more than fifty times the average monthly salary in Poland at that time (see paragraph 47 above). That amount was undoubtedly substantial.

62. The applicants had been involved in other civil proceedings at the material time, and the relevant courts, when setting the court fees, relied to a considerable degree on the assumption that being involved in a number of proceedings would in itself imply the necessity of paying the court fees. On that basis, they came to the conclusion that the applicants should have taken into account the need to secure in advance sufficient funds for the court fees (see paragraphs 25 and 27 above).

To that assumption, the courts added the hypothesis that transacting business on the stock exchange market and deriving income from the farm proved the applicants’ ability to pay the court fees (see paragraphs 25 and 27 above).

63. The Court does not find those grounds persuasive, in particular if weighed against the importance of securing to a person “effective” access to a court.

It observes, firstly, that the findings which the relevant courts made in respect of the applicants’ financial situation appear to have been based on their hypothetical earning capacity rather than on the facts they supplied. In particular, it clearly appears from the presented facts that the applicants had no possibility to dispose of their funds as the order attaching their most valuable assets was still in force at the material time (see paragraph 18 above).

64. It is true that the taking and evaluating of evidence are primarily matters for the domestic courts and that the Court's role is to ascertain whether those courts, when exercising their power of appreciation in that sphere, acted in accordance with Article 6 § 1 (see paragraph 59 above).

In the present case the Court notes that the judicial authorities refused to accept the applicants' argument that they were unable to pay the court fees. The relevant courts stated that the applicants' declaration of means was dubious; however, they failed to obtain any evidence contradicting the facts which the applicants stated in their declarations of means (see paragraph 27 above). In that context, the Court argues that under Polish law, in case of doubt as to the real financial situation of the party requesting the exemption from court fees, the court may order a verification of the declaration (see paragraph 37 above).

In addition, the Court notes that the Government's submissions which concern splitting the claim into several proceedings are of a speculative nature. They assume that if the applicants had won their case and had successfully enforced it against the debtors they would have obtained money to pursue the remainder of their claim. The Court does not find those arguments persuasive.

65. The Court also observes that under Polish law an exemption from payment of court fees can at any time be revoked by the courts if the basis therefor has ceased to exist. Allowing the applicants to proceed with their claim at the initial phase of the proceedings would not therefore have prevented the Polish courts from collecting court fees if at some further stage their financial situation had improved (see paragraph 37 above).

66. Assessing the facts of the case as a whole and having regard to the prominent place held by the right to a court in a democratic society, the Court considers that the judicial authorities failed to secure a proper balance between, on the one hand, the interest of the State in collecting court fees for dealing with claims and, on the other hand, the interest of the applicants in vindicating their claim through the courts.

The fee required from the applicants for proceeding with their action was excessive. It resulted in their desisting from their claim and in their case never being heard by a court. That, in the Court's opinion, impaired the very essence of their right of access.

67. For the above reasons, the Court concludes that the imposition of the court fees on the applicants constituted a disproportionate restriction on their right of access to a court. It accordingly finds that there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

69. The applicants sought an award of PLN 340,000,000 plus statutory interest calculated from 28 December 2000 until the date of payment.

70. The Government submitted that the amount was excessive. They stated that there had been no direct link between the alleged violation of the Convention and the pecuniary damage claimed. In sum, they requested the Court to rule that the finding of a violation of Article 6 § 1 would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

71. The Court finds no causal link between the violation complained of and the pecuniary damage alleged. It cannot speculate about the outcome of the proceedings had they been in conformity with Article 6 § 1.

72. However, it finds that the violation found cannot be compensated by the mere finding of a violation. The Court accepts that the applicants have suffered non-pecuniary damage. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicants jointly EUR 8,000 under this head.

B. Costs and expenses

73. The applicants also sought reimbursement of EUR 6,700 for their legal representation before the Court.

74. The Government submitted that the amount was exorbitant. They underlined that the applicants' lawyer had charged an excessive amount for her work on the case. The Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum.

75. As regards the costs and expenses incurred by the applicants in the proceedings before the Court, making its assessment on an equitable basis, the Court awards them the sum of EUR 2,000 to be converted into Polish zlotys at the rate applicable at the date of settlement, together with any tax that may be chargeable on this amount.

C. Default interest

76. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses, to be converted into Polish zlotys at a rate applicable at the date of settlement, plus any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President