



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

FOURTH SECTION

CASE OF PODBIELSKI AND PPU POLPURE v. POLAND

(Application no. 39199/98)

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 Podbielski and PPU Polpure 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. BORRERO BORRERO, *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. 39199/98) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Janusz Podbielski ("the applicant") who also acted on behalf of a limited liability company "Polpure" (the company), of which he was the owner, on 15 December 1997.

2. The applicant, who had been granted legal aid, was represented by Mr W. Hermeliński, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their, Agents, Mr K. Drzewicki and, subsequently, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged that the excessive court fees required for proceeding with his appeal of 29 November 1996 constituted a disproportionate restriction on his access to a court since they had prevented him from pursuing his civil claim.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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

Kniat v. Poland and *Jedamski and Jedamska v. Poland* (applications nos. 71731/01 and 73547/01) (Rule 42 § 2).

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

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

8. 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

9. The applicant was born in 1949 and lives in Witoszów Dolny, Poland.

A. Background of the case

10. The proceedings described below have already been examined by the Court from the point of view of the “reasonable time” requirement. In its judgment of 30 October 1998 the Court unanimously held that the Polish authorities had been in breach of Article 6 § 1 (*Reports* 1998-VIII, pp. 3387-3400).

B. Facts of the case

(a) Claims for payment and damages

(i) *Facts before 1 May 1993*

11. On 25 May 1992 the applicant, who was at that time the owner and the president of the management board of the company “Polpure” sued the Świdnica Municipality (*Miasto Gmina*) in the Wałbrzych Regional Court (*Sąd Wojewódzki*), seeking payment for construction works which it had carried out for the defendant. He also sought damages for the defendant’s delay in payment and penalties resulting from the breach of contract.

12. On 27 May 1992 the company was exempted from court fees due for lodging the claim.

13. On 7 September 1992 the Wałbrzych Regional Court gave judgment. It declared certain clauses of the contract null and void, as being in breach of a number of substantive civil law provisions.

14. Following the applicant's appeal, the judgment was later quashed and the case remitted.

15. On 1 February 1993 the Wałbrzych Regional Court allowed the applicant's claim for payment but declared null and void a clause of the contract that imposed penalties for the breach of contract. The parties' further appeals were dismissed by the Wrocław Court of Appeal (*Sąd Apelacyjny*) on 27 April 1993.

(ii) Facts after 1 May 1993

16. On 25 June 1993 the Ombudsman filed with the Supreme Court (*Sąd Najwyższy*) an extraordinary appeal on behalf of the company, submitting that the Court of Appeal's judgment had been in flagrant violation of substantive civil law and had unduly restricted the parties' freedom of contract. That appeal was rejected on 7 October 1993.

17. On 28 January 1994 the Supreme Court, on an application made by the applicant, reopened the extraordinary appeal proceedings. It amended its judgment of 7 October 1993, set aside the judgments of 1 February and 27 April 1993 and remitted the case to the court of first instance. It ordered that the claims, save for the already-awarded claim for payment, be reconsidered. The Supreme Court held that the previous judgments were in breach of substantive civil law. It gave guidelines as to how to proceed with the claims.

18. On 5 May 1994 the applicant modified the claims and asked for a total award of 18,321,586,800 old Polish zlotys (PLZ). He also made an application to the Regional Court, asking for an exemption of the company from all court fees involved in the litigation.

19. On 6 June 1994 the court partly granted the application and exempted the company only from a court fee due for lodging the modified claim (which would normally have amounted to PLZ 932,080,000), except for the first PLZ 66,000,000.

20. The court observed that while it was true that the applicant's company had encountered significant difficulties in recovering payments from third parties, had lost its credit solvency and was charged with debts, it had not yet been declared insolvent and was, accordingly, able to continue its commercial activity. In view of that, the court considered that exempting it from all future court fees would not be justified.

21. On 20 July 1994, on an appeal filed by the applicant, the Wrocław Court of Appeal quashed that decision and held that the exemption from the court fee due for lodging the claim, granted on 27 May 1992, was still in force and applied to the modified claim.

22. In a judgment of 20 February 1995 the Wałbrzych Regional Court ordered the defendant to pay pecuniary penalties to the applicant, but reduced their amount to PLZ 1,844,300,000 because it considered that the

penalties originally fixed in the contract were excessive. It dismissed the claim for damages arising from the defendant's delay in payment.

23. On 30 March 1995 the applicant appealed against the judgment of 20 February 1995, arguing that the court had not made certain findings of fact which were relevant to the outcome of the case and that it had committed a number of procedural errors. He also asked for an exemption from court fees due for lodging an appeal on behalf of the company. That fee amounted to 84,593.54 new Polish zlotys (PLN). The Regional Court partly exempted the company, ordering that it should pay PLN 40,000.

24. On 25 May 1995 the Wrocław Court of Appeal, on the applicant's appeal lodged on behalf of the company, quashed that decision and exempted the company from the entire fee due for lodging the appeal. The court, finding that all the company's assets had been attached in enforcement proceedings against it, that its bank accounts had been frozen and that its debts exceeded PLN 1,605,184, held that it was impossible for it to pay the fee in question.

25. On 31 August 1995 the Wrocław Court of Appeal set aside the judgment of 20 February 1995 in so far as it had rejected the applicant's claim for damages for the defendant's delay in payment. It ordered that that claim be reconsidered since the trial court had failed to comply with the Supreme Court's legal opinion and guidelines on that matter. It also criticised the manner in which the trial court had taken expert evidence.

26. On 23 October 1996 the Wałbrzych Regional Court dismissed the claim for damages.

(b) Applications for an exemption from court fees for proceeding with the appeal of 29 November 1996

27. On 29 November 1996 the applicant filed, through the Wałbrzych Regional Court, an appeal to the Wrocław Court of Appeal. He submitted, among other things, that the Regional Court had for the second time failed to comply with the guidelines given by the Supreme Court and the Court of Appeal in respect of the claim for damages for the defendant municipality's delay in payment and that it had disregarded the instructions given by the Court of Appeal in the judgment of 31 August 1995. The value of the claim asserted in the appeal proceedings was PLN 3,511,334.03. The applicant asked for an exemption from court fees due for lodging an appeal. The relevant part of his application read:

"The plaintiff's application for an exemption from court fees is based on the fact – a fact already ascertained by the court – that its financial situation has not improved but has become more difficult. The entire sum awarded by the previous judgment was, without any basis whatsoever, attached by the Bailiff of the Swidnica District Court. The defendant municipality, for its part, unjustifiably deducted its debts... from the sums awarded. The adjudicated claim was not therefore satisfied and the Bailiff in addition deducted from that sum PLN 73,014.28 by way of [costs of enforcement

proceedings]. In consequence, the plaintiff sustained further loss. Moreover, the plaintiff's debts have been climbing rapidly due to interest on arrears."

28. On 3 January 1997 the Wałbrzych Regional Court exempted the applicant's company from all court fees save for the first PLN 20,000 and dismissed the remainder of the application. The relevant part of that decision read:

"... the applicant has declared that it is still conducting its business activity, although it has limited it considerably. It emerges from entries made in the company's cash book from January to October 1996 that since June 1996 cash holdings and disbursements exceeded PLN 20,000 and, in October, they reached PLN 44,000.

In the circumstances, exempting the applicant from the entire fee would be unjustified and that court exempts it only from fees exceeding PLN 20,000."

29. The applicant appealed against that decision on 15 January 1997. The appeal read, in so far as relevant:

"... the Regional Court made erroneous findings in respect of the plaintiff's financial situation:

1. As the plaintiff already stated, its situation, [assessed as bad by the Court of Appeal already on 25 May 1995] had not improved but had become worse. [the applicant further repeated the arguments adduced in the above-cited application];

2. The plaintiff has already produced abundant documentary evidence [including the 1995 balance sheet, cash books, the relevant bank report and documents setting out financial analyses of the company's standing] confirming the previously-described financial situation, a situation with which the Regional Court has become well acquainted throughout that lengthy trial. That situation is as follows: in the year 1995 the company sustained losses; in the year 1996 it sustained losses in each month; the income did not cover debts (the outstanding debt is PLN 4,945.74); all assets were attached (see the enclosed list of court files); the bank account is practically empty (see the bank's report); ... the outstanding debt of PLN 4,945.74 was eventually covered by the partner in order to avoid the institution of winding-up proceedings. ...;

3. There is no dispute that the defendant ruined the plaintiff company ... which now is able to carry out only casual construction works;

4. The opinion of the Court of Appeal expressed in its decision of 25 May 1995 [as to the bad financial situation of the applicant's company] is therefore still valid

..."

30. On 13 February 1997 the Wrocław Court of Appeal dismissed the appeal, considering that the applicant's company had sufficient means to pay the court fees. The court stressed that, pursuant to Article 113 § 2 of the Code of Civil Procedure, grounds for exempting a legal person from court fees were stricter; the court "could" but did not "have to" exempt it from such fees even if it proved that it did not have means to pay them. Furthermore, the Court of Appeal observed that since the applicant's

company still continued its business activity and derived a systematic income from it (which, recently, had been in excess of the PLN 20,000 needed for the required court fees), the Regional Court had correctly concluded that the applicant could pay that sum. A prospective litigant, the court added, should take into account the need to secure the court fees for the litigation and put aside part of his or its income for that purpose.

31. On 9 March 1997 the applicant made another application for an exemption from court fees, arguing that in the course of the prolonged litigation his company's financial situation had deteriorated very significantly. He stressed that three days earlier the Bailiff had frozen the last two of the company's bank accounts and attached PLN 2,214.15 and PLN 1,294.83 respectively (those sums had been the applicant's salaries). Furthermore, the Świdnica Tax Office (*Urząd Skarbowy*) had ordered the company to pay immediately PLN 28,656.90 in tax arrears, together with default interest. In the circumstances, the company did not have any means whatsoever to pay the court fees. The applicant produced the relevant documentary evidence in support of his application. Those documents showed that the company had incurred a loss of PLN 23,711.04 in the year 1996, a loss of PLN 425,49 in January 1997 and a loss of PLN 4,954.79 in February 1997.

32. On 3 April 1997 the applicant's lawyer filed a pleading with the Regional Court and asked it to hear evidence from the applicant in order to establish the current financial standing of the company.

33. On 14 April 1997 the court exempted the company from court fees exceeding PLN 10,000. It observed that in December 1996 the applicant's company had an income of PLN 20,000 and that it could therefore pay the court fees previously imposed on it. In the court's opinion, the documents produced by the applicant showed that since December 1996 to March 1997 the company's management could have put aside money for securing court fees. However, having regard to the new facts supplied by the applicant on 9 March 1997, the court considered that the original fee should be reduced.

34. The applicant appealed on 8 May 1997. He stated, among other things, that he had been a "well-known bankrupt" and that he had no means whatsoever to pay court fees and, by reason of the fact that the company had lost its credit solvency, he could not even obtain a loan for the purpose of securing court fees. Yet as he had obtained a modest financial support, i.e. PLN 500 from a third person, he was prepared to pay that sum to the court. He further criticised the court for having considered only cash reports, which had not reflected the real state of the company's business, and for having ignored the fact that under the applicable laws his company had a legal duty to disburse all cash in hand for tax arrears. He also stressed that the court had completely overlooked the losses the company had incurred.

35. On 9 June 1997 the Wrocław Court of Appeal dismissed the appeal. It considered that despite the losses sustained, the company could have put aside money for the court fees in question. In the court's view, the company's cash holdings should, in the first place, have been used for the court fees. The court also observed that the company should have regarded payment of those fees as its priority. Lastly, the court noted that the proceedings relating to the exemption from court fees had lasted for such a long time that the plaintiff could have secured money for the fees.

36. On 16 July 1997 the applicant made yet another application for an exemption from the court fees for lodging the appeal, save for the first PLN 500. He asked the Regional Court to obtain expert evidence and to hear evidence from himself as the president of the management board in order to establish the financial standing of his company. He submitted documents showing that he had in the meantime applied to two banks for loans to secure the court fees but that his applications had been rejected because of the very bad financial situation of the company. On 12 August 1997 the applicant filed a pleading and produced further documentary evidence. It emerged from the relevant documents that from 1 January to 30 June 1997 the applicant's company had incurred a loss of PLN 3.090,71.

37. On 17 July 1997 the applicant paid PLN 500 to the court.

38. On 1 September 1997 the Wałbrzych Regional Court refused to grant the plaintiff any further exemption from court fees. The court reiterated the grounds already cited in its previous decisions. It rejected the application for evidence to be obtained from the applicant and the expert proposed by him.

39. The applicant appealed against that decision, but on 16 October 1997 the Wrocław Court of Appeal rejected his appeal.

40. On 15 December 1997 the applicant asked the Regional Court to allow him to pay the fee in instalments but his application was refused.

41. On 17 December 1997, the Wałbrzych Regional Court refused to proceed with the appeal against the judgment of 23 October 1996 and rejected it for non-compliance with the court's decision ordering the company to pay the court fees for lodging the appeal.

42. From 29 January to 30 March 1998 both the Regional Court and the Court of Appeal considered the applicant's subsequent, repeated and eventually unsuccessful applications for an exemption from court fees.

43. On 29 May 1998 the Wrocław Court of Appeal dismissed the applicant's appeal against the decision rejecting his appeal of 29 November 1996 on formal grounds.

44. The applicant lodged with the Supreme Court a cassation appeal against that decision on 30 June 1998. The company was ordered to pay a court fee of PLN 10,000 for proceeding with the cassation appeal. That sum was paid on 16 November 1998. The applicant first submitted that the company had never paid a court fee to proceed with the cassation appeal

since it could not afford it. Subsequently, he stated that that amount was paid by his friends on his behalf.

45. The cassation appeal was rejected on 10 June 1999.

II. RELEVANT DOMESTIC LAW AND PRACTICE

46. The legal provisions applicable at the material time and questions of practice are set out in paragraphs 23-33 of the judgment delivered by the Court on 19 June 2001 in the case of *Kreuz (no. 1) v. Poland* (appl. no. 28249/95, ECHR 2001-VI; see also *Jedamski and Jedamska v. Poland*, no. 73547/01), §§ 29-39).

47. 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.”

THE LAW

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

48. The applicant complained that the excessive court fee required for proceeding with his appeal of 29 November 1996 had amounted to a disproportionate restriction on his access to a court. He alleged a breach of Article 6 § 1 of the Convention, which states, in so far as relevant:

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

A. The parties' submissions

1. The applicant

49. In the applicant's submission, the courts had acted arbitrarily and based their decisions on a speculative and incomplete assessment of his company's financial situation. They had refused to accept evidence showing that the company could not afford the court fee in question. Their findings

had been based on his hypothetical earning capacity rather than on the facts he had supplied.

50. The applicant considered that the undisputed facts that he had adduced in his applications for an exemption from the court fee and in his appeals had clearly shown that the company's financial condition had been very poor at the relevant time. Not only had it incurred losses in the years 1996 and 1997 but, in addition, the Tax Office had ordered it to pay PLN 28,656.90 in tax arrears and its bank accounts had been frozen. That, in his view, had proved that the court fee of PLN 10,000 had exceeded the company's means.

51. Referring to the Government's argument that his company could have borne the fee in question because, in November 1998, it had paid exactly the same fee of PLN 10,000 for proceeding with its cassation appeal, the applicant stated that his company had never paid such a fee.

52. In sum, the applicant concluded that the refusal to exempt him from the fee for the appeal lodged by his company had been in breach of Article 6 § 1 of the Convention and that it had impaired the essence of his right of access to a court as he had had to desist from vindicating a substantial claim for damages.

2. The Government

53. The Government stressed that under Polish law there was a general obligation on the parties to civil proceedings to pay court fees for lodging any claim, any appeal or an objection to a judgment by default. The courts would not take any action if the required fee had not been paid.

54. They further explained that while it was possible for a party to seek an exemption from court fees, such an exemption was granted only in exceptional cases since it entailed a reduction in the State's income derived from court fees.

55. Referring to the circumstances of the present case, the Government stressed that the applicant had been partly exempted from the fee for lodging the appeal of 29 November 1996 and that the sum eventually levied had been lower than the company's cash holdings and disbursements at the material time.

56. As regards the grounds for the court decisions, the Government considered that the courts had taken into account all relevant factors, such as the company's financial standing, its assets and cash reserves and had made a thorough and careful assessment of evidence before them.

57. It was true, they added, that the Regional Court had refused to hear evidence from the applicant but such matters as the admission of evidence were normally left for the domestic courts' discretion. Moreover, that refusal had not had any bearing on the general fairness of the procedure in which his repeated applications for an exemption from court fees had been examined.

58. The Government admitted that the applicant had also offered to pay PLN 500 which, according to him, had been the only amount obtainable and, alternatively, had asked for the fee to be payable in instalments. Yet the courts could not accept the sum proposed by him since it would have infringed the principle of equality before the law in respect of other litigants who, despite their difficult financial situation, had to pay court fees as ordered by the courts, not as determined by them.

59. In the Government's submission, the subsequent events had proved that the courts had been right in finding that the applicant could gather enough cash to pay the fee of PLN 10,000 because, on 16 November 1998, his company had paid exactly the same amount for proceeding with its cassation appeal to the Supreme Court. That fact had fully confirmed the conclusion that the applicant could have put aside some part of his income and secure the court fee for the appeal of 29 November 1996.

60. They accordingly concluded that it could not be said that the fee in question had been disproportionate to the applicant's means or fixed arbitrarily.

B. The Court's assessment

1. General principles deriving from the Court's case-law

61. 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. In this way, that provision 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 only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6 (see, among many other authorities, *Golder v. the United Kingdom*, judgment of 21 January 1975, Series A no. 18, pp. 16-18, §§ 34 *in fine* and 35-36, and *Kreuz (no. 1) v. Poland*, cited above, §§ 52 et seq.)

62. The "right to a court" is not absolute. It may be subject to limitations permitted by implication because the right of access by its very nature calls for regulation by the State. 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 ultimate decision as to the observance of the Convention's requirements rests with the Court.

In particular, Article 6 § 1 does not compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a Contracting State which sets up an appeal system is required to ensure that persons within its jurisdiction enjoy before appellate courts the fundamental guarantees in Article 6, regard being had to the fact that the manner of application of that

provision to such courts depends on the special features of the proceedings involved and that account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see, for instance, *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 33, and *Tolstoy-Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, pp. 80-81, §§ 61 et seq.; and *Kreuz (no. 1)*, cited above).

63. The Court has accepted that in some cases, especially where the limitations in question related to the conditions of admissibility of an appeal, or where the interests of justice required that the applicant, in connection with his appeal, provide security for costs to be incurred by the other party to the proceedings, various limitations, including financial ones, may be placed on his or her access to a “court” or “tribunal”. However, such limitations must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (*ibid.*)

64. The requirement to pay fees to civil courts in connection with claims, or appeals, they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible *per se* with Article 6 § 1 of the Convention. However, the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicant’s 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” (see *Kreuz (no. 1)* and *Tolstoy-Miloslavsky*, cited above).

2. Application of the above principles to the present case

65. In the present case the applicant had to desist from pursuing his case before civil courts because his company was unable to pay the court fee of PLN 10,000; which it had been required to pay for proceeding with the appeal.

It is true that no right to appeal in civil cases can be inferred from the Convention and that, given the nature of appeal proceedings and the fact that a person has already had his case heard before the first-instance court, the State would in principle be allowed to put even strict limitations on access to a court of appeal.

It is also true that in the *Tolstoy-Miloslavsky v. the United Kingdom* case, the Court found that the requirement to secure a significant sum for the anticipated legal costs of the applicant’s opponent in appellate proceedings had pursued a “legitimate aim”, especially given the poor prospects of success in the applicant’s appeal. It also attached “great weight” to the fact that the case had been heard for 40 days at first instance and, in that context, stressed that in cases where access to a court was concerned, the entirety of

the proceedings had to be taken into account (see *Tolstoy-Miloslavsky* cited above, §§ 61-67).

However, restrictions which are of a purely financial nature and which, as in the present case, are completely unrelated to the merits of an appeal or its prospects of success, should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice (see paragraphs 63-64 above).

66. The Court notes that, indeed, the courts at several instances heard Mr Podbielski's case and that, eventually, the fee for lodging his company's appeal of 29 November 1996 was significantly reduced (see paragraphs 28 and 33 above). Yet, in contrast to the *Tolstoy-Miloslavsky* case, the money that the applicant was obliged to secure did not serve the interests of protecting the other party against irrecoverable legal costs. Nor did it constitute a financial barrier protecting the system of justice against an unmeritorious appeal by the applicant. Indeed, the principal aim seems to have been the State's interest in deriving income from court fees in civil cases (see paragraphs 30, 35 and 54 above).

67. Moreover, it appears that the sum in question was still far too high for the company which, from at least May 1995 up to the material time (October 1997), had been on the verge of winding-up its business, had constantly incurred losses, had its assets attached and had gradually had all its bank accounts frozen (see paragraphs 24 and 27-39 above).

The applicant asked the courts to allow him to pay the fee in instalments and even paid to the court an initial, albeit modest, amount of PLN 500. That solution does not seem to have been taken seriously by the courts.

It further emerges from their decisions that they considered that however difficult was the situation of the company and whatever were its tax and other financial obligations, the applicant should first and foremost have secured money for the litigation (see paragraphs 30 and 35 above).

68. The Government argued that the fact that the applicant had – nearly two years later – paid a court fee of PLN 10,000 for lodging his cassation appeal proved that the courts had made a correct and fair assessment of his situation (see paragraph 59 above). The applicant first submitted that had never paid any such fee because he could not afford it and then explained that the fee had been paid by third persons (see paragraph 44 above).

Be it as it may, the Court can hardly accept that such an event “retrospectively” proved the applicant's company ability to pay the fee at the material time, in particular given the particular situation in which it found itself and the time-limit for paying the fee (see paragraphs 24-36 above).

69. In the circumstances 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 applicant in vindicating his claim through the courts.

3. Conclusion

70. The Court therefore concludes that the imposition of the court fees on the applicant constituted a disproportionate restriction on his right of access to a court.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant sought 100,000 euros (EUR) in compensation for pecuniary and non-pecuniary damage he suffered on account of the alleged violation of the Convention. He submitted that the prolonged litigation and the resultant impossibility to recover his claim in its entirety resulted in his company not only losing its assets but also any opportunity of further business expansion. Once highly respected and appreciated for his reliability, professionalism and responsibility, the applicant had become a bankrupt, lost his good name and any possibility to run business activity. He added that the proceedings and the manner in which his claim had been handled put a severe strain on him and his family.

73. Referring to the claim for pecuniary damage, the Government submitted that there was no causal link between the alleged violation of Article 6 § 1 of the Convention and the alleged losses sustained by the applicant. As regards the claim for non-material damage, they invited the Court to reject it as being extremely exorbitant.

74. The Court sees no causal link between the pecuniary damage claimed and the financial loss allegedly sustained by the applicant. It therefore rejects the claim in its entirety. However, the Court accepts that the applicant suffered non-material damage, such as stress and frustration

involved in his futile efforts to have his appeal heard by the court. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 under this head.

B. Costs and expenses

75. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought EUR 2,500 for costs and expenses involved in the proceedings before the Court.

The Government considered that the sum was excessive. They asked the Court to make an award, if any, only in so far as the costs and expenses concerned had been actually and necessarily incurred and are reasonable as to quantum.

76. The Court considers it reasonable to award the applicant EUR 2,000 for costs and expenses involved in the proceedings before it, less EUR 660 received by way of legal aid from the Council of Europe.

C. Default interest

77. 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses; to be converted into Polish zlotys at the rate applicable at the date of settlement, less EUR 660 (six hundred and sixty euros), plus any tax that may be chargeable;
 - (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