



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

SECOND SECTION

CASE OF TELTRONIC-CATV v. POLAND

(Application no. 48140/99)

JUDGMENT

STRASBOURG

10 January 2006

FINAL

10/04/2006

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 Teltronic-CATV v. Poland,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEŃ,
Mr V. BUTKEVYCH,
Mr L. GARLICKI,
Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 3 May and on 6 December 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 48140/99) 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 Teltronic-CATV, a limited liability company registered in Poland (“the applicant company”), on 25 January 1999.

2. The applicant company was represented by Mr J. Gałkowski, a lawyer practising in Bielsko-Biała. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz, of the Ministry of Foreign Affairs.

3. The applicant company alleged that it had been deprived of its right of access to a court.

4. The application was allocated to the Third 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.

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

6. By a decision of 3 May 2005, the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 15 April 1997 the applicant company filed a claim against the Best-Sat company in the Bielsko-Biała District Court (*Sąd Rejonowy*). The value of the claim was PLN 246,969.86. The claim resulted from Best-Sat's refusal to pay the applicant company's invoice issued on 8 October 1995 for the construction of a TV cable network, in accordance with the contract concluded between the parties. The applicant company requested that its claim be considered in a summary procedure (*postępowanie nakazowe*).

8. On 24 April 1997 the District Court decided that the case should be considered in the ordinary procedure as it did not fulfil the legal conditions for the summary procedure. On 14 May 1997 the applicant company filed with the Bielsko-Biała District Court an interlocutory appeal (*zażalenie*) against the decision of 24 April 1997. Subsequently, the court ordered the applicant company to pay a court fee of PLN 2,789.60 for the consideration of its interlocutory appeal. On 10 June 1997 the applicant filed with the Bielsko-Biała District Court an application for an exemption from that fee. However, on 21 July 1997 the District Court dismissed that application. The applicant filed another, apparently unsuccessful, interlocutory appeal against the decision of 21 July 1997, claiming that the company was on the brink of insolvency as a result of its enforceable claims not having been satisfied by the Best-Sat company.

9. On an unspecified later date, the case was transmitted to the Bielsko-Biała Regional Court (*Sąd Wojewódzki*) in order to be considered in the ordinary proceedings. On 3 February 1998 the Regional Court ordered the applicant company to pay a court fee of PLN 13,948.49 for lodging its claim.

10. On 17 February 1998 the applicant company filed with the Bielsko-Biała Regional Court an application for an exemption from the fee, pursuant to section 113 § 2 of the Code of Civil Procedure. It stated that the amount of the fee was considerably beyond its means. It also submitted that, for the first 10 months of 1997, it had made net profits of only PLN 7,695.37, while the company's assets amounted to PLN 31,366.98, but consisted mostly of claims to be satisfied.

11. The applicant company stressed that it had no possibility to dispose of its assets promptly in order to secure funds to pay the court fee and, even if that were possible, it would lead to the winding up of the company. It further argued that the lack of funds to pay the court fee did not result from any fault in its activities or from a negligent failure to secure funds for the litigation. It also maintained that its claim resulted from work done over the past few years which had dominated the activities of the company.

Consequently, it did not have other possibilities to secure sufficient funds from other contracts.

12. On 2 March 1998 the Regional Court ordered the applicant company to produce a number of documents concerning its financial situation. The relevant documents were submitted to the court as enclosures to a letter of 16 March 1998. In the same letter the applicant supplemented its application for exemption from the court fees. It stated that it had three enforceable claims, including two against the Best-Sat Company which were the subject of the pending litigation. The third claim, although enforceable as of 25 November 1997, had not been satisfied. The applicant company stated that its fixed assets of PLN 11,670.90 were necessary to continue the running of its business and, if disposed of, the company would have to be wound up. The plaintiff also submitted that in 1997 it had made net profits of PLN 2,723.19, which were used to set off the losses made in 1995 and 1996.

13. On 25 May 1998 the Bielsko-Biała Regional Court rejected the application. The court gave the following reasons for its decision:

“At the request of the court, the plaintiff has submitted its balance sheets as of 30 November 1997 and of 30 March 1998, as well as a bank statement regarding its accounts as of 17 March 1998. In the court’s view the above documents prove unequivocally that the plaintiff makes profits from its business, as evidenced by the balance on its bank accounts for the period between December 1997 and March 1998. It should also be pointed out that the plaintiff has gross profits (*przychód*) from its business activity estimated at PLN 26,322.95, including gross profits from the sale of goods and materials in the amount of PLN 2,365.81.

Furthermore, according to the balance sheet of 3 March 1998, the plaintiff company has significant fixed assets (*majątek trwały*) in the amount of PLN 7,192.67, and current assets (*majątek obrotowy*) in the amount of PLN 31,067.97.

The examination of the above documents leads to the conclusion that the plaintiff can afford to pay the court fees because it has sufficient funds.

It should also be pointed out that, in case of a lack of such funds, the plaintiff could obtain them by means of partners’ surcharges (*dopłaty*) since it is a limited liability company.

All the other expenses of the plaintiff should be treated by it on equal terms with the expenses which are necessary to pursue its claims...”

14. On 4 June 1998 the applicant company filed an interlocutory appeal against the decision of 25 May 1998 with the Katowice Court of Appeal. It submitted that the District Court had made a mistake in calculating the amounts of fixed and current assets because the figures relied on were from 1 January 1997, but the value of the assets had decreased since then. As of 31 January 1998 the amount of fixed and current assets was estimated at PLN 5,019.27 and PLN 18,494.77 respectively. The applicant company argued that the combined value of all its assets only slightly exceeded the

amount of the court fee, and that, if the latter had to be paid in that amount, the company would be forced to wind up.

15. The applicant company further pointed out that the fixed assets consisted of office equipment which was necessary to run the business, whereas its current assets consisted mostly of reserves of materials necessary to provide services to clients and claims which were the subject of separate litigation. Thus, even assuming that the value of current assets exceeded the amount of the court fee, it could not be presumed that the former could be disposed of in order to provide the funds necessary to pay that fee.

16. The applicant company also contested the Regional Court's view that all expenses should be treated equally, and pointed out that any surplus would be used to pay taxes since failure to do so could result in prosecution. Finally, the applicant observed that the unpaid invoice which gave rise to the present claim related to work done by the applicant company over a period of two years, which had dominated the applicant's business during that period. That was, to a large extent, the reason why the applicant company had been unable to secure funds for possible litigation expenses. Lastly, the applicant company, in principle, agreed with the Regional Court's view as to the possibility of obtaining additional funds by means of partners' surcharges. However, relying on section 113 § 2 of the Code of Civil Procedure, it stressed that a legal person was entitled to exemption from court fees if it proved that it did not have sufficient funds.

17. On 31 July 1998 the Katowice Court of Appeal rejected the applicant's appeal as follows:

“According to the plaintiff's documents, its financial situation deteriorated only in 1998. However, it emerges from the documents produced in support of the statement of claim that the plaintiff's claim results from work done between 1993 and 1995, since the notice to pay for that work is dated 16 January 1995. From that it unequivocally follows that the plaintiff could have secured the funds necessary for the pursuance of its claims prior to 1996 when its financial situation deteriorated, and when, as it transpires from its balance sheets, its assets and gross profits from the sale of goods and materials had been at the level which had been referred to in the contested decision.

The Court of Appeal also does not subscribe to the plaintiff's view that, if at the current moment the plaintiff does not have sufficient funds to pay the court fee, then it can successfully request to be exempted ... under section 113 § 2 of the Code of Civil Procedure.

As follows from the established case-law of the Supreme Court, and also the case-law of this Court of Appeal, the possibilities of paying the court fees by a legal person should be assessed in the larger context not only of the funds currently held but also those that could possibly have been secured. When the plaintiff holds a current bank account, where its turnover is recorded, and that turnover still in December 1997 was of significant volume, then there are no reasons to assume that the plaintiff could not take out the necessary loan in order to obtain the funds needed to pursue claims of the

very significant value of PLN 246,969.86. Obviously, interest will be charged on such a loan, but there are no grounds to hold that the cost of such a loan should be borne by the taxpayers, which would happen if exemption from court fees was granted...

The Court of Appeal also fully shares the Regional Court's argument that, since the plaintiff is a limited liability company, the obligation of the partners to make appropriate surcharges in order to secure funds to cover expenses related to the assertion of claims should be taken into consideration..."

18. The applicant company did not pay the required court fee. On an unspecified later date, the Bielsko-Biała Regional Court ordered that the applicant company's statement of claim be returned to it, which meant that its claim was of no legal effect.

19. According to the applicant company's tax return for 1997, in that year it made net profits of PLN 4,484.70.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. 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, unless granted 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).

21. 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).

22. The other categories of 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 activities.

23. In the 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 the claim are awarded to the State Treasury against the opponent.

24. 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.”

25. 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.”

26. 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.”

27. Exemption from the payment of court fees was (and still is) a matter for the discretion of the court competent to deal with the case. According to Section 112 § 2 of the Code of Civil Procedure, the competent court may grant partial exemption from the fees.

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

“An individual may ask the competent court dealing 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.”

28. 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.”

29. 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/her] declaration.”

30. Article 116 § 2 of the Code of Civil Procedure reads:

“The court shall refuse to grant a party [to the proceedings] exemption from court fees if [his/her] claim or defence are of a manifestly ill-founded character.”

31. 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 the case...”

32. 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.

33. 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

34. The applicant company complained that its right of access to a court, guaranteed by Article 6 §1 of the Convention, had been violated because the excessive amount of court fees required for lodging its claim resulted in the claim not being examined by the court. Article 6 § 1 of the Convention, in so far as relevant, provides:

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

A. The parties' submissions

1. *The applicant company*

35. The applicant company submitted that it had been deprived of the effective right of access to a court, guaranteed by Article 6 § 1, as a result of the courts' refusal to exempt it from the court fees which it could not afford to pay. This refusal, in turn, prevented it from pursuing its claims in court.

36. The applicant company argued that the amount of the court fee at issue had been disproportionate. It maintained that there was no justification to distinguish between natural and legal persons as regards their applications for an exemption from court fees. It stressed that, under Polish law, both natural and legal persons could apply for such exemption on very similar grounds. In respect of both categories of persons, the decisive element was the actual impossibility to pay the court fees because of an unintentional lack of resources.

37. The applicant company also submitted that, in accordance with the laws applicable at the relevant time, following the issue of the invoice of 8 October 1995, it had been obliged to pay a VAT bill (PLN 44,486.32) by 25 November 1995 and, in the same month, to pay income tax on the amount due, regardless of the fact that its invoice had not been paid by the Best-Sat company. In case of failure to pay those taxes, the persons in charge of the company risked prosecution.

38. Furthermore, the applicant company maintained that it had attempted to take a loan in order to provide funds for the litigation. However, no bank had been prepared to grant such a loan, given the company's difficult financial situation.

39. In respect of the reasons relied on by the Bielsko-Biała Regional Court in its decision of 25 May 1998, the applicant company submitted that the Regional Court had erred in apparently equating its gross profits with

net profits. Likewise, the Regional Court had been wrong in concluding that the value of the applicant company's fixed and current assets had enabled it to pay the court fees, since those assets had been indispensable for the running of the company. Had the applicant company disposed of those assets, it would have had to have been wound up.

40. As regards the argument that the relevant funds could have been obtained by means of the partners' surcharges, it stated that it had been a small limited liability company and the partners had had no real possibility of providing additional capital for its activities. As to the argument about the allegedly late submission of the principal claim to the court, the applicant company explained that it had first attempted to pursue its claims out of court, which had delayed matters.

2. The Government

41. The Government submitted that, under Polish law, there was a general obligation to pay court fees for lodging claims with the courts. They recalled that that obligation could not 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. Having regard to the fact that the applicant company was a legal person engaged in a commercial activity, as opposed to a natural person on an average income, the Government argued that the amount of the court fee at issue should not be seen as disproportionate, especially in the light of the overall value of the claim.

42. They further maintained that there was nothing untoward in requiring the applicant company to take a loan in order to pursue its claims before the courts. They also stated that the applicant company could have instituted proceedings against the Best-Sat company earlier.

43. The Government argued that it was generally accepted that commercial entities should take into account the possible need for litigation. In their submission, that necessity was part of the risks involved in running a business. They further stressed that the applicant company's partners could have made appropriate surcharges to secure the funds necessary to pay the court fees.

44. In conclusion, the Government submitted that the court fee at issue had been imposed on the applicant company pursuant to a general binding rule in civil proceedings. They argued that the imposition of the court fee had had a legitimate aim and that its amount had neither been disproportionate to the applicant company's means nor arbitrary.

B. The Court's assessment

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

45. 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 v. Poland*, no. 28249/95, §§ 52 et seq., ECHR 2001-VI).

46. 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.

47. 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 (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.).

48. The requirement to pay fees to civil courts in connection with claims or appeals 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 that right of access and had “a ... hearing by [a] tribunal” (see *Kreuz* and *Tolstoy-Miloslavsky* judgments, cited above).

49. The Court recalls that its task is not to substitute itself for the competent domestic authorities in determining the most appropriate means of regulating access to justice, nor to assess the facts which led those courts to adopt one decision rather than another. The Court's role is to review under the Convention the decisions that those 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*, *Tolstoy-Miloslavsky*, cited above, *ibid.*, and *Brualla Gómez de la Torre*, cited above, p. 2955, § 32 *in fine*).

2. Application of the above principles to the present case

50. In the present case the applicant company was prevented from pursuing its claims in court on account of the refusal to exempt it from the court fee of PLN 13,948.49 for lodging its action. The applicant company argued that it was unable to pay the court fee at issue.

51. The Government underlined that the applicant company was a legal person engaged in a commercial activity and argued that, as such, it had to secure in advance funds for potential business-related litigation. The Government also maintained that the amount of the court fee at issue could not be considered disproportionate given the overall value of the claim sought.

52. The Court notes that the applicant company was a small limited liability company¹ which in 1993-1995, under contract, constructed a cable TV network for the Best-Sat company. The latter company refused to pay the applicant company's invoice of 8 October 1995 in the amount of PLN 246,969.86². It appears that, regardless of that refusal, the applicant company was required to pay in November 1995 a substantial VAT bill of PLN 44,486.32³ on that amount⁴, as well as income tax. It is noteworthy that the failure to meet the tax obligations could result in prosecution of the persons in charge of the applicant company. It also appears that the refusal to pay the said invoice put the applicant company on the brink of insolvency.

53. The Court observes that in the instant case, the domestic courts, when refusing the applicant company's request for exemption from the court fee at issue, relied on the amount of its gross profits and the value of its fixed and current assets. Furthermore, the courts considered that the applicant company could have secured the funds necessary for litigation before its financial situation had deteriorated. They held that the applicant

1. The applicant company's share capital was PLN 1,200.

2. Approximately 76,000 euros ("EUR") at the relevant time.

3. Approximately EUR 13,700 at the relevant time.

4. Under the applicable tax legislation, the company which issued an invoice must pay VAT on the amount due in the month following the issue, regardless of whether the debtor paid the invoice.

company could have obtained a bank loan or required the company's partners to make appropriate surcharges (see paragraphs 13 and 17 above).

54. However, the Court does not find those grounds persuasive, in particular when weighed against the importance of securing to the applicant company "effective" access to a court.

55. The Court first observes that the judicial authorities appeared to equate the applicant company's gross and net profits. On that basis, they concluded that the applicant company did have sufficient funds to pay the court fee.

56. Secondly, the judicial authorities assumed that the company's assets, whose value had been slightly higher than the required court fee, could provide the funds needed to pay that fee. However, by doing so, they disregarded the reasonable objection of the applicant company that the disposal of those assets would lead to the company's winding-up.

57. Thirdly, the judicial authorities found that the applicant company could secure the necessary funds at an earlier stage of its activities. In this connection, the Government also argued that engaging in a commercial activity implied an obligation to secure in advance the funds for potential litigation. In the present case the Court does not find it necessary to pronounce itself on the Government's submission. However, in its view, the possibility of securing in advance the funds for court fees appears to be rather hypothetical, given the fact that the bulk of the applicant company's activities was related to the unpaid work done for the Best-Sat company over a substantial period of time (see paragraph 11 above).

58. Fourthly, the domestic courts referred to the possibility of taking a bank loan in order to pay the fee at issue. However, it appears questionable how the applicant company, which had been on the verge of insolvency, could obtain such a loan. In addition, the applicant company submitted that it had attempted to obtain such loan but to no avail (see paragraph 38 above).

59. Fifthly, the Court is not persuaded that the applicant company's partners were in a position to provide the company with any additional funds, given the value of the initial share capital of the applicant company and its subsequent financial situation.

60. In respect of the Government's submission that the relevant court fee could not be considered disproportionate in the light of the overall value of the claim sought, the Court observes that it had not been suggested that the claim at issue was unmeritorious or frivolous. The Court notes that the judicial authorities did not refuse the exemption from the court fee at issue on the basis of the manifestly ill-founded character of the claim, within the meaning of Article 116 § 2 of the Code of Civil Procedure (see paragraph 30 above). In any event, the Court's review in the present case is limited to the assessment of the applicant company's ability to pay the fee at issue. The Court also notes that the court fee that the applicant was obliged

to secure did not serve the interests of protecting the other party against irrecoverable legal costs.

61. Furthermore, the Court considers that restrictions on access to a court which are of a purely financial nature and which, as in the present case, are completely unrelated to the merits of the claim or its prospects of success, should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice (see, *mutatis mutandis*, *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65 *in fine*, 26 July 2005). It is also of significance for the Court that the refusal to grant exemption took place at the preliminary stage of the proceedings before the first-instance court and resulted in the applicant company's claims never being examined on the merits.

62. The Court 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. Consequently, allowing the applicant company to proceed with its claim at the initial phase of the proceedings would not have prevented the Polish courts from collecting court fees if at some further stage its financial situation had improved (see paragraph 31 above).

63. 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 applicant company to pursue its claims through the courts.

64. For the above reasons, the Court concludes that the imposition of the court fees on the applicant company constituted a disproportionate restriction on its 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

65. 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

66. The applicant company sought an award of PLN 864,897.23 in respect of pecuniary damage. That amount consisted of the principal claim against the Best-Sat company (PLN 246,696.86) and the statutory interest accrued on that claim from 16 October 1995 (PLN 618,200.37).

67. The applicant company also sought an award of PLN 200,000 in respect of non-pecuniary damage. It submitted that, in connection with the impossibility to recover its claims, the company had to suspend its operation. It also lost its leading position on the local market of companies specialising in the installation of cable TV networks and any possibility of further business expansion. The applicant company referred also to the obligation to pay the VAT bill and to meet other compulsory financial obligations despite the fact that its invoice had never been paid. In addition, the claim for non-pecuniary damage concerned the stress and the deterioration of health sustained by Mr M. Laprus, the owner and the President of the Board of the applicant company, which was related to the loss of his professional position and the source of his income.

68. 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 award sought by the applicant company. As regards the claims for non-pecuniary damage, the Government maintained that they were exorbitant and of a highly speculative character. They invited the Court to rule that the finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, the Government requested the Court to make an award on the basis of its case-law in similar cases and the national economic circumstances.

69. 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. The Court therefore rejects the claim in its entirety.

70. However, the Court accepts that the applicant company has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation (see, *mutatis mutandis*, *Comingersoll v. Portugal* [GC], no. 35382/97, §§ 35-37, ECHR 2000-IV). Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant company EUR 6,000 under this head.

B. Costs and expenses

71. The applicant company also claimed PLN 20,496 for its legal representation before the Court.

72. The Government submitted that the claim for costs and expenses was exorbitant. They invited the Court to make an award, if any, only in so far as the costs and expenses were actually and necessarily incurred and were reasonable as to quantum.

73. The Court considers it reasonable to award the applicant EUR 2,000 for the costs and expenses involved in the proceedings before it.

C. Default interest

74. 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

1. *Holds* by 4 votes to 3 that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* 4 votes to 3
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with 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;
 - (iii) plus any tax that may be chargeable on the above amounts;
 - (iv) the above sums to be converted into Polish zlotys at the rate applicable on the date of settlement;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Messrs Baka, Garlicki and Popović is annexed to this judgment.

J-P.C.*

S.H.N.*

DISSENTING OPINION OF JUDGES BAKA, GARLICKI AND POPOVIĆ

It is with regret that we are unable to share the majority's position in this case. The Court considered that the Polish judicial authorities failed to secure a proper balance between the interests of the State and the interest of the applicant company. The Court analysed the grounds given by the domestic courts in imposing the court fees upon the applicant company and concluded that it "[did] not find those grounds persuasive".

We are not sure, however, whether this Court is adequately equipped to assess particular facts of particular cases and to contradict the domestic court's findings concerning the company's gross and net profits (§ 55), the probability of the company's being wound up (§ 56), the practicability of securing the necessary funds at earlier stages of the company's activity (§ 58), the possibility for the company to obtain a bank loan (§ 59) and, lastly, the willingness of the company's partners to provide it with additional funds (§ 60). The domestic courts based their decision on careful assessments of all relevant factors. Their decisions gave adequate reasoning and were reviewed by higher judicial instances. The domestic courts had, and used, every opportunity to research all relevant facts, to study all relevant documents and to arrive at conclusions which were consonant with those facts and documents. We wonder whether it is the task of this Court to substitute its own judgments and assessments for those adopted at the domestic level.

In our opinion, there are but two situations in which the intervention of the Strasbourg Court would not give rise to such reservations.

The first relates to a general legal regime governing how court fees are calculated. Polish legislation provides, as a rule, that court fees should represent 5% of the value of the claim. It also provides for several possibilities of partial or total exemption. This general rule has never been challenged by the Strasbourg Court. Hence it may simply be the manner in which this rule is applied in particular cases, which prompts the Court to find that the Convention has been violated. But once the Court embarks upon an assessment of particular applications of domestic legislation, it ventures into an area where it must abide by the principle of subsidiarity.

Therefore, the only situation in which the Court's intervention seems always to be legitimate is when domestic decisions and assessments are clearly arbitrary and/or discriminatory. But in such situations the burden of proof lies with the Strasbourg Court. In other words, the Court is always required to demonstrate that there has actually been arbitrariness in the case. Hence it is not enough to come to the conclusion that the domestic courts could have taken better decisions and could have assessed the facts of a case differently. Such a conclusion goes beyond the remit of the Strasbourg Court. That is why, in the present case, the Court, instead of finding that the

domestic courts' position was not persuasive, should have given its own persuasive arguments as to the arbitrariness of their decisions.

Each commercial company must calculate its business risks, particularly if, like in this case, it put all its resources into one major transaction. Courts procedures (and courts fees) represent an obvious component of business risk and when a company had not thought about it in advance, it is not the task of the Strasbourg Court to compensate its losses.