



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

FOURTH SECTION

CASE OF FELIX BLAU SP. Z O.O. v. POLAND

(Application no. 1783/04)

JUDGMENT

STRASBOURG

19 January 2010

FINAL

19/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Felix Blau SP. Z O.O. v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 1783/04) 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 Felix Blau sp. z o.o. (“the applicant company”), a limited liability company based in Wrocław, Poland, represented by the president of the management board, Mr Andrzej Flis, on 30 November 2003.

2. The applicant company was represented before the Court by Mr M. Czarnecki, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant company alleged, in particular, that it had been deprived of the right of access to a court, contrary to Article 6 of the Convention.

4. On 8 September 2008 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company is a limited liability company which at the material time carried on a business of buying debts.

A. The first set of civil proceedings

6. On 14 February 2002 the applicant company instituted civil proceedings before the Wrocław Regional Court (*Sąd Okręgowy*) against the Dolnośląsk Sickness Fund (*Dolnośląska Regionalna Kasa Chorych*). The applicant company had agreed to buy from four hospitals the debts owed by the Sickness Fund to the hospitals in the amount of 60,000,000 Polish zlotys (PLN) provided that the company won its case against the Fund. The applicant company sought payment of the above-mentioned sum together with interest, which amounted to PLN 89,316,240 (approximately 22,000,000 euros (EUR)). The hospitals claimed that the Fund should be liable for paying the cost of medical treatment that had exceeded the contract that every hospital had negotiated with the Fund but which had been necessarily sustained by them in providing medical services to insured persons.

7. The applicant company also asked for exemption from court fees, submitting that it had been involved in several court disputes in order to claim debts for medical services.

8. On 12 March 2002 the Wrocław Regional Court partly allowed the claim and exempted the company from court fees in excess of PLN 50,000 (EUR 12,000). The court examined the profit generated by the company and found that the assets deposited in its bank account amounted to PLN 50,000. Moreover, in December 2001 the president of the board had received PLN 43,000 as payment for an unknown service. The court thus concluded that the company had been able to pay this amount of court fees without damaging its operation.

9. On 27 September 2002 the Wrocław Regional Court dismissed the action. The court agreed with the arguments of the defendant, who had refused liability for costs in excess of the amounts agreed in the contracts between the Fund and the hospitals. The court established that the contracts had not been renegotiated and had remained valid, which excluded the Fund's liability for expenses sustained by the hospitals that exceeded the contracts.

10. The applicant company lodged an appeal against the judgment.

11. On 4 November 2002 the Wrocław Regional Court ordered the applicant company to pay a further PLN 50,000 in court fees for pursuing

its appeal. On 8 November 2002 the applicant company applied for an exemption from those fees, claiming that the company had already been exempted from fees and should not be ordered to pay any more at the appeal stage. In its supplementary documents the applicant company submitted that the company did not have the required sum of money in its bank account and that previously it had had to borrow from a private individual. The company was small and new on the market, thus it would not be able to obtain a bank loan. In sum it had not been possible for it to pay a further PLN 50,000 and the refusal to exempt it from court fees would amount to a violation of its right to court.

12. On 26 November 2002 the Wrocław Regional Court dismissed the application for exemption from the court fees. The court established that the monthly turnover of the company had reached PLN 30,000 (EUR 7,500) although in its bank account it only had PLN 3,000. The court, in one point of its reasoned decision, found that the company had generated over PLN 230,000 gross income (*przychód*), but it had then taken this amount to be net profit (*dochód*). The court also acknowledged that the applicant company had declared costs and expenses in the amount of about PLN 500,000, and thus generated a net loss. In sum, the court concluded that the company must have had other sources of revenue which would make it possible to pay the court fees.

13. The applicant company appealed against the decision, pointing to the difference between gross and net income. The applicant company maintained that it had been generating no profits but high net losses. The sum of PLN 230,000 was gross income, from which costs and expenses should be subtracted to yield the net loss. It had been a mistake on the part of the court to take this sum to be the net profit.

14. On 19 December 2002 the Wrocław Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant company's appeal. The court considered that the applicant company had been conducting its business activity and producing gross income. The fact that the company declared high costs for its activity had not justified exemption from court fees as it had freedom to spend its gross income as it chose. The court fees should be considered as one of the costs of its business activity.

15. On 30 April 2003 the Wrocław Regional Court rejected an appeal by the applicant company on grounds of inability to pay the court fees. An appeal by the applicant company against this decision was dismissed on 30 May 2003.

16. On 16 April 2003 the applicant company lodged a constitutional complaint against the provisions governing the imposition of court fees and exemptions from them.

17. On 3 September 2003 the Constitutional Court refused to hear the constitutional complaint.

18. On 4 February 2004 the Constitutional Court dismissed an appeal by the applicant company against the above decision.

19. The applicant company made another unsuccessful attempt to challenge the constitutionality of the provisions governing court fees. However, on 5 May 2004, the Constitutional Court, in a final decision, refused to hear the second constitutional complaint.

B. The second set of civil proceedings

20. On 20 December 2002 the Olsztyn Regional Court dismissed a civil claim for payment lodged by the applicant company against the National Health Fund (*Narodowy Fundusz Zdrowia*). The applicant company lodged an appeal.

21. On 30 June 2003 the Białystok Court of Appeal dismissed the applicant company's appeal.

22. On 14 January 2004 the Supreme Court dismissed a cassation appeal lodged by the applicant company.

II. RELEVANT DOMESTIC LAW

23. 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 v. Poland* (no. 28249/95, ECHR 2001-VI; see also *Jedamski and Jedamska v. Poland*, no. 73547/01, §§ 29-39).

THE LAW

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

24. The applicant company complained under Article 6 § 1 that the excessive amount of court fees required from it in order to proceed with the appeal against the Regional Court's judgment had been in breach of the right of access to a court for the determination of its civil rights. The relevant part of Article 6 § 1 provides:

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

25. The Government contested that argument.

A. Admissibility

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

27. The applicant company maintained that the sum required from it for proceeding with its appeal had been excessively high and disproportionate to its means. Even after partial exemption, it had been impossible to pay the fees since the company had declared losses which exceeded its gross income. Moreover, the applicant company argued that after partial exemption from court fees at the time of bringing the claim, it could reasonably expect that no further fees would be required at the following stages of the proceedings.

28. The applicant company also submitted that the domestic courts had confused gross with net income and incorrectly assessed the company's financial situation. It concluded that its right of access to a court had been breached.

29. The Government considered that, since the applicant was a limited liability company engaged in a commercial activity, the amount of court fees it had been ordered to pay had not been disproportionate. The applicant company had, to a large extent, been exempted from court fees and finally was ordered to pay 0.055% of the value of the claim and not 5% as would usually be the case. In their opinion, the requested sum of PLN 50,000 had not been excessive since the applicant company had been earning gross income and was free to decide how to spend it.

30. Moreover, the business model of the applicant company consisted of buying contentious debts with the purpose of instituting civil proceedings. When bringing a civil action for PLN 89,000,000 it should have been prepared to pay court fees and consider them as an element of the applicant company's activity costs.

31. The Government concluded that the domestic courts had maintained a proper balance between the interest of the State in collecting court fees for dealing with civil claims and, on the other hand, the interest of the applicant company in pursuing its claim. Moreover, it could not be said that the applicant company had been totally deprived of a right of access to a court as its claim had been examined at first instance. Finally, they argued that the applicant company had failed to substantiate its application for exemption from court fees.

32. In sum, the Government invited the Court to find that there had been no violation of Article 6 of the Convention.

2. The Court's assessment

(a) Principles deriving from the Court's case-law

33. The Court observes that in its judgment in *Kreuz v. Poland* (cited above, § 60) it dealt with the question whether the requirement to pay substantial fees to civil courts in connection with claims could be regarded as a restriction on the right of access to a court.

34. In this connection the Court held that 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 stage of the proceedings at which that restriction had been imposed were factors which were material in determining whether or not a person had enjoyed his right of access and had "a ... hearing by [a] tribunal".

(b) Application of the above principles to the present case

35. The Court will now determine whether, in the particular circumstances of the present case, the fee actually required constituted a restriction that impaired the very essence of the applicant's right of access to a court.

36. The Court firstly notes that the instant case concerned an action brought by the applicant company against the National Sickness Fund over alleged debts owed by the Fund which the applicant company had bought from four hospitals. The business model of the applicant company consisted of buying contested debts from hospitals on condition that the debts were recognised as enforceable by a civil court. Instituting civil proceedings was thus an inherent element of the applicant company's commercial activity and its financial success depended on their outcome. These debts were contested by the Fund and the applicant company was apparently unsuccessful in effectively enforcing this type of debt before the Polish courts. The present case thus differs from the cases previously examined by the Court where a company sustained losses resulting from a breach of contract and had been obliged to seize a civil court to enforce payment

from another business entity (compare and contrast *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 11, 26 July 2005, and *Teltronic-CATV v. Poland*, no. 48140/99, § 7, 10 January 2006).

37. The Court reiterates that a claim submitted to a tribunal for determination must be presumed to be genuine and serious unless there are clear indications to the contrary which might warrant the conclusion that the claim is frivolous or vexatious or otherwise lacking in foundation (see *Rolf Gustafson v. Sweden*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 38). Assuming that the dispute in the present case was “genuine and serious” within the meaning of the Court’s case-law (see *Kupiec v. Poland*, no 16828/02, § 47, 3 February 2009), the Court finds that when entering into risky litigation over contested debts amounting to almost PLN 90,000,000 the applicant company must have been aware of the obligation to pay court fees. According to the general rule, the amount of court fees for bringing a civil action and further appeals is set at 5% of the value of the claim. The applicant company obtained a substantial reduction of court fees as the amount it was finally ordered to pay amounted to 0.055% of the value of the claim. Nevertheless, it appears that the applicant company rather unrealistically expected a full exemption from court fees.

38. The Court also observes that the applicant company paid the reduced amount of court fees of PLN 50,000 for bringing the civil claim in March 2002 (see paragraph 8 above). In November 2002, at the appellate level, the applicant company was also partly exempted from court fees above PLN 50,000 (see paragraph 11 above). In this connection the Court firstly notes that there is no evidence that the applicant company substantiated its assertion that its financial situation had changed between March and November 2002 so that it was no longer possible for it to pay the same amount of court fees. Secondly, it should be noted that according to the documents submitted by the applicant company to the court, it was generating gross income and had a monthly turnover of PLN 30,000. The domestic courts, in two reasoned decisions, considered that the applicant company was free to manage its gross income and although it had declared losses which had exceeded its gross income, the court fees should have been considered as part of the activity costs of the applicant company. Consequently, the courts found that it had not been established that the applicant company would be unable to pay the reduced fees. The Court sees no reason to contest the domestic authorities’ assessment of the applicant company’s financial standing and considers that the alleged confusion of net profit with gross income by the court on 26 November 2002 appears to be a clerical mistake and was not repeated by the appellate court.

39. In the circumstances, regard being had to the risky nature of the claim and to the fact that the domestic courts had exempted the applicant company from the greater part of the applicable court fees, the Court considers that the amount of fees required from the applicant company in the present case cannot be considered disproportionate.

40. The Court concludes that there has been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. The applicant further complained that the second set of civil proceedings, which ended with the Supreme Court's judgment of 14 January 2004, had been unfair. Moreover, in its pleadings of 6 March 2009 it submitted that the facts of the case disclosed a breach of Article 1 of Protocol No. 1 to the Convention.

42. The Government contested these arguments.

43. The Court does not find that the applicant company has substantiated in any way its contention that there had been an interference with the peaceful enjoyment of its possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

44. Moreover, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

45. In the present case the applicant company did not allege any particular failure on the part of the relevant courts to respect its right to a fair hearing. Indeed, the complaint is limited to challenging the outcome of the proceedings. The Court finds no indication that the impugned proceedings were conducted unfairly.

46. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning lack of access to a court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards lack of access to a court.

Done in English, and notified in writing on 19 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President