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

FIRST SECTION

DECISION

Application no. 18487/17
Zofia SMOLORZ
against Poland

The European Court of Human Rights (First Section), sitting on 2 July 2026 as a Committee composed of:

Davor Derenčinović*, President*,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 18487/17) 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") on 27 February 2017 by a Polish national, Ms Zofia Smolorz ("the applicant"), who was born in 1961 and lives in Lędziny, and was represented by Mr J. Kamiński, a lawyer practicing in Warsaw, and, subsequently, by Mr T. Duraj, a lawyer practising in Katowice;

the decision to give notice of the complaint concerning the alleged restriction on the applicant's access to the Supreme Court to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the refusal to grant the applicant an exemption from the payment of a court fee, which led to the rejection of her cassation appeal in civil proceedings brought against her.

2. The applicant was in a civil dispute over her allegedly improper fulfilment of an agreement under which she had undertaken to remove trees from a construction site and to replant them in another location.

3. On 26 January 2016 the Gdańsk Court of Appeal ultimately upheld a payment order obliging her to pay the claimant 217,939.52 Polish zlotys (PLN – approximately 58,500 euros (EUR)) plus interest and legal fees.

4. The applicant lodged a cassation appeal. She applied for an exemption from the applicable court fee in so far as it was to exceed PLN 500 (approximately EUR 110).

5. On 19 May 2016 the Gdańsk Court of Appeal dismissed the exemption request without giving reasons. That decision was not amenable to an appeal. Subsequently, the applicant was ordered to pay the fee in full, which amounted to a total of PLN 8,382 (approximately EUR 1,900). She did not comply with the order.

6. On 29 August 2016 the Gdańsk Court of Appeal rejected the applicant's cassation appeal as unpaid. The applicant did not lodge an interlocutory appeal (*zażalenie*) against that decision.

7. Before the Court, the applicant complained under Article 6 of the Convention that requiring her to bear a disproportionately high fee for a cassation appeal had effectively deprived her of access to the Supreme Court.

THE COURT'S ASSESSMENT

8. The Government submitted that the applicant had failed to exhaust domestic remedies. They acknowledged that, at the material time, second-instance decisions dismissing a party's exemption request, such as the decision delivered in the applicant's case (see paragraph 5 above), had been final. Nevertheless, they submitted that the applicant could have and should have included her complaints in respect of the dismissal of her exemption request in an interlocutory appeal against the decision rejecting her cassation appeal as unpaid (see paragraph 6 above). In this regard, they cited several rulings of the Supreme Court confirming its competence to examine such complaints under Article 380 in conjunction with Article 398^{21} of the Code of Civil Procedure.

9. The applicant disagreed, alleging that the rejection of her cassation appeal had been a direct result of the dismissal of her exemption request. She further argued that an interlocutory appeal against the decision rejecting her cassation appeal would also have been subject to a fee amounting to one fifth of the full fee (that is, amounting to PLN 1,676 – approximately EUR 390). Given her financial situation, she would also not have been able to pay that lower fee. Furthermore, even if she had applied for an exemption from that lower fee, such application would have been dismissed again. In addition, the law required that such an interlocutory appeal had to be prepared and signed by a lawyer, whom she could also not have afforded.

10. The Court notes that at the material time no appeal laid against the decision dismissing a request for exemption of court fees. However, it was open to the applicant to lodge an interlocutory appeal against the decision of 29 August 2016 to reject her cassation appeal. In such an interlocutory appeal she could have raised her grievances relating to the dismissal of her exemption request and the Supreme Court would have been competent to examine that matter under Article 380 in conjunction with Article 398^{21} of the Code of Civil Procedure.

11. The Court is not persuaded by the applicant's arguments that such interlocutory appeal would have been subject to a prohibitive fee and that her potential request to be exempted from it would surely have been dismissed. It considers those arguments purely speculative and reiterates that mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to pursue that avenue of redress (see *Mansouri v. Italy* (dec.) [GC], no. 63386/16, § 99, 29 April 2025). In addition, while it is true that domestic law required that interlocutory appeals to the Supreme Court be prepared by a lawyer, the Court notes that it also provided for an opportunity to apply for legal aid for that purpose.

12. Having regard to the facts above, the Court concludes that by not lodging an interlocutory appeal against the decision to reject her cassation appeal, the applicant failed to avail herself of a domestic remedy that was available to her (see *Grudziński v. Poland* (dec.), no. 13828/02, 9 December 2008). Accordingly, the Government's preliminary objection must be upheld.

13. Consequently, the Court considers it unnecessary to examine the Government's second preliminary objection alleging that the applicant had abused her right of individual application.

14. Lastly, the Court notes that, in her initial application as well as in her observations, the applicant raised a complaint under Article 1 of Protocol No. 1 to the Convention. However, at the communication stage this complaint was declared inadmissible by the President of the Section, sitting as a single judge (under Rules 27A § 2 (a) and 54 § 3 of the Rules of Court read in conjunction with Rule 12) and consequently the Government were not given notice of this complaint. Such a decision is final (Article 27 § 2 of the Convention and Rule 54 § 3) and the Court therefore will not re-examine that complaint (see *Jaupi v. Albania*, no. 23369/16, § 60, 29 April 2025, with further references).

15. It follows that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 September 2026.

Liv Tigerstedt Deputy Registrar	Davor Derenčinović President