

# Review of case law of the European Court of Human Rights applicable in cases where high court fees might have barred the right to a court

The following quotations from judgments of the European Court of Human Rights demonstrate its attitude towards exemptions from court fees and related issues, the attitude that was held so far:

- **Kreuz v. Poland, 2001, §§ 62-66:** „In that connection, the Court notes at the very outset that (...) the sum ultimately required from the applicant (...) was nevertheless equal to the average annual salary in Poland at that time. That amount, if seen from the perspective of the ordinary litigant, was undoubtedly substantial. The applicant was a businessman, however, and the relevant courts, when setting the court fee, relied to a considerable degree on the assumption that engaging in a business activity could in itself imply the necessity of litigation. On that basis, they came to the conclusion that the applicant should have taken into account the need to secure in advance sufficient funds for court fees. [So far everything is very similar to the case of *Sidereus Investments Inc.*, almost a duplicate.] To that assumption, the courts added the hypothesis that the applicant (...) and that the scale of his investments (...) proved his ability to pay the court fee. [In the case of *Sidereus Investments Inc.*, the court noted that the turnover on the applicant's bank account in previous years was a 7-digit sum.] **The court does not find those grounds persuasive, in particular if weighed against the importance of securing to a person »effective« access to a court.** [Here, the court said that the lawsuit had been not about normal business activity, but about an unexpected breach by a public authority which resulted in damages to the applicant's business.] The Court (...) observes, secondly, that the findings which the relevant courts made in respect of the applicant's financial situation appear to have been based on his hypothetical earning capacity rather than on the facts he supplied. (...) in the present case the Court notes that **the judicial authorities refused to accept the applicant's argument that he was unable to pay the court fees, without obtaining or considering any evidence contradicting the facts he stated in his declaration of means.** (...) The Court also observes that under Polish law an exemption from payment of court fees can at any time be revoked by the courts if the basis thereof has ceased to exist. Allowing the applicant to proceed with his claims at the initial phase of the proceedings would not therefore have prevented the Polish courts from collecting court fees if at some further stage his financial situation has improved (...). (...) 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.”
- **Podbielski and PPU Polpure v. Poland, 2005, §§ 65-69:** „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 the proceeding with the appeal. (...) [Such] restrictions [of the right to court] which are of 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 (...). 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.”
- Similar instance: **Weissman and Others v. Romania, 2006.**