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European Union interpretation of denial of exemption from court costs in civil cases

Тлумачення Європейським Союзом відмови у звільненні від сплати судових витрат у цивільних справах

Generally, civil proceedings are chargeable. The initiation of proceedings primarily involves the obligation to pay a court fee, as well as other court costs. Exemption from court costs is an exception to the obligation to pay them, the application of which in the Polish legal order depends on the demonstration of the prerequisites provided for in Article 102, paragraph 1 costs in civil cases Act.

This study aims to present the differences in Polish and EU interpretation regarding the refusal of exemption from court costs in civil cases.

The jurisprudence of the courts in Poland indicates that the institution of exemption from court costs is, in fact, the State aid to people who, due to their particularly difficult material situation, can not bear these costs without compromising the maintenance necessary for themselves and their families, especially the unemployed, sick, lonely, without sources of regular income and without assets, for whom the dismissal of the application for exemption from costs would violate their right to court.

The fundamental purpose of the institution of exemption from court costs is to guarantee a party's right of access to court, which has its guarantees in Article 45(1) of the Constitution of the Republic of Poland, as well as in Article 6(1) of the European Convention on Human Rights or Article 47 of the Charter of Fundamental Rights, among others. Legal regulation of the issue of incurring court costs is important for the fairness of the proceedings. The right to a court is a subjective right that has an intrinsic existence. The right to a court means, first of all, the right to initiate the procedure before the court, as well as the right to appropriate formation of the judicial procedure in accordance with the requirements of fairness and openness, the right to obtain a binding decision on a given case by the court, as well as the right to appropriate formation of the system and position of the bodies that hear cases.

The court deciding on exemption from court costs must verify whether the amount for which exemption is sought by a party constitutes a restriction that would violate the essence of the right of access to a court. The jurisprudence and legal doctrine point to the subsidiary role of European court rulings, which is limited to reviewing the provisions that the authorities of the member states have taken in the exercise of their powers to ascer-

tain whether they comply with the EU standard. Since the person applying for exemption from court costs will provide a statement of assets and the documents required of him, it is up to the national court to examine the above information and explain convincingly in the statement of reasons why the applicant has not met his burden of proof.

If the national court does not make an in-depth analysis of the applicant's financial situation, contenting itself with stating that the applicant, for example, owned real estate or had savings that allowed him to pay court costs, or has a certain monthly income, this may constitute a violation of the right to a court. The national court must therefore set forth precisely the reasons why it considers that the applicant does not meet the required conditions to obtain exemption from court costs.

It is accepted in EU jurisprudence that if the applicant does not provide the exact value of accumulated savings or assets in the asset declaration, and yet the national court does not raise any objections to the declaration, it may not deny the party exemption from court costs at this stage, as this will violate the right of access to court.

The jurisprudence of the EU, as well as the European Court of Human Rights, is abundant in Polish cases regarding the restriction of the right of access to the courts at various stages by requiring payment of court costs.

For example, in recent years, the European Court of Human Rights has, on more than a dozen occasions, found violations due to an improper balancing of conflicting interests: on the one hand, the state's interest in collecting court fees, and on the other, the interest of the applicants in asserting their rights before the courts. The Court assumed that the applicants' obligation to pay such high court fees constituted an overly restrictive limitation on their right of access to court.

When assessing the legitimacy of the refusal of release to the importance of the reasons for the court's decision should be emphasized. Article 6(1) of the ECHR, as well as Article 47 of the Charter of Fundamental Rights, impose an obligation on courts to give reasons for their rulings, but these provisions themselves cannot be understood to require a detailed response to every argument. The scope of this obligation varies from ruling to ruling and must be considered considering the circumstances of each case. Justification is important insofar as it is based on it that the court assesses whether there has been a violation of the right to a court. Thus, the denial of exemption from court costs should be duly justified, and the justification should refer to all the relevant arguments raised by the party. The justification should make it possible to reconstruct the reasoning that led the Polish courts, in assessing the financial situation of the applicant, to issue such and not a different decision. The lack of such reconstruction is tantamount to arbitrariness of the decision.

There is a principle in Poland that a party intending to initiate legal proceedings should be aware of the court costs involved. Therefore, its duty is to prepare for the initiation of these proceedings by making savings for court costs and limiting other expenses that are not necessary. The only exceptions to this rule are situations in which there is a need to initiate proceedings to ensure livelihood or emergencies that a party could not foresee (as, for example, in the case of a traffic accident). According to the established line of case law of the Supreme Court, a party cannot count on the Treasury to credit its obligations,

since exemption from court fees causes a drain on state revenues. Therefore, the court should keep in mind not only the realization of the right to court, but also the interest of the State Treasury.

Meanwhile, EU jurisprudence emphasizes that courts should always consider the possibility of partial exemption from costs, and the omission of this possibility may lead to a violation of the right to a court. Such a possibility is provided for by Article 101 in fine of the Polish Law on Costs in Civil Cases, which introduces the premise of exempting a party from court costs in part, assuming that this can be done if the party is able to bear only part of these costs. This provision must be read in conjunction with Articles 102 and 103 of this law. From an analysis of these norms, it follows that a party may pay only part of the court costs if he is able to bear them in part without compromising the necessary subsistence for himself and his family (an individual) or that he has sufficient means to bear part of them.

So here we have a clash of two conflicting concepts.

On the one hand, the Polish courts assume that the institution of exemption from court costs is an exception to the principle of chargeability of court proceedings and is an aid only to the poorest people. Since fees are a type of public tribute, exemption from their payment is a derogation from the constitutional obligation to bear them universally and equally. Hence the very restrictive attitude to exemptions.

On the other hand, EU jurisprudence emphasizes a much more lenient stance, pointing out that restrictions on access to court, which are purely financial in nature and have no relation to the content of the case or the chances of success, should be applied with extreme caution, and the courts should always take into account the possibility of partial exemption from costs, as well as the amount of court costs in a given case, taking into account the party's ability to pay them. Costs should not be excessively high, i.e. disproportionate to a party's financial capacity. The examination of proportionality is carried out considering the specific circumstances of the case and the stage of the proceedings at which the case currently stands. Failure to balance the public interest of the Treasury and the private interest of a party in pursuing its claims in court results in a disproportionate violation of a party's right to a court.

In addition, when assessing proportionality, it is important to examine the information provided by the person requesting the exemption and convincingly explain why the applicant has not met his burden of proof. Courts should present evidence in support of their case, especially when it may lead to a restriction of a person's right of access to court. This requires the court to rely on the procedural material collected in the case. A conclusion about a party's ability to pay court costs cannot be drawn from hypotheses of the court that are not reflected in the facts. Therefore, courts should not rely on a party's hypothetical earning capacity, but on the evidence and facts provided by the party. In addition, according to Article 109(1) of the Polish Law on Costs in Civil Cases, if the court has doubts about the actual financial status of a party seeking exemption from court costs, the court may order an appropriate investigation. Thus, the courts can check the actual financial situation of the applicant if they consider the material presented by the applicant to be incomplete or untrue.

To assess the realization of the right to a court in the case of refusal to exempt a party from court costs, it is also important to address both the nature of the case and the stage of the proceedings at which the party requests exemption from court costs. The denial of exemption from costs at the pre-litigation stage should be treated differently, and differently at the stage of cassation proceedings, where the case has already been heard twice on the merits. It is easier to violate the right to a court at the early stage of the proceedings before the case has even been heard on the merits or the appeal stage.