FOURTH SECTION

DECISION

Application no. 48590/07
Inese GAILE
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 26 November 2013 as a Committee composed of:

 Ledi Bianku, *President,* Paul Mahoney, Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 August 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Ms Inese Gaile, is a Latvian national, who was born in 1978 and lives in Riga.

2.  The Latvian Government (“the Government”) were represented by their Agent at the time, Ms I. Reine.

A.  The circumstances of the case

3.  The relevant facts of the case, as submitted by the parties, may be summarised as follows.

4.  On 19 January 2007 the applicant brought a claim before the Riga City Latgale District Court (*Rīgas pilsētas Latgales priekšpilsētas tiesa*), requesting, *inter alia*, that a purchase contract between G.Z. and L.F. be declared null and void. The purchase contract related to G.Z.’s undivided shares in a property owned jointly with the applicant, who argued that she wished to exercise her pre-emptive right in acquiring the undivided shares. The applicant claimed that she was prevented from doing so due to a clause in the contract which provided for her duty to compensate L.F. The applicant also asked that the court grant an injunction prohibiting G.Z. from making any alterations to the property.

5.  On 23 January 2007 the Riga City Latgale District Court stayed the proceedings. It found that the value of the disputed purchase contract was 45,300 Latvian lati (LVL). Therefore, the court fee payable for the claim was LVL 743 and for the request for an injunction – LVL 226, in total – LVL 969.

6.  The applicant asked that the court fee be lifted or decreased due to her financial situation. She pointed out that she had been out of work for more than two years due to a maternity leave and had resumed working only three months previously. Further, she did not have any savings, needed to pay electricity and gas bills and to care for her two-year old daughter.

7.  On 6 February 2007 the Riga City Latgale District Court denied the applicant’s request for exemption from the court fee. It considered the applicant’s conditions outlined above (paragraph 6) and further reasoned:

“From a notice appended to the [applicant’s] request it follows that the applicant’s monthly income ... is LVL 400.04.

...

She owns half of the undivided shares in the property ... and has stated that she wishes to exercise her pre-emptive right ... this indicates that the applicant has the funds to acquire the property.

In view of the foregoing ... [and] that the court needs to assess not only the amount of salary but the financial condition as a whole, there does not exist any basis to exempt the applicant from the payment of the State (court) fee (*valsts nodeva*).”

8.  In the appeal against the refusal the applicant maintained the argument about her financial situation and added that she had been paid the salary for only two out of three months and had recently received a notice of termination of her employment. The applicant also argued that she did not use the property for any commercial purpose and she intended to purchase G.Z.’s undivided shares in the property for LVL 3,000 and planned to take a bank loan for 20 years.

9.  On 12 April 2007 the Riga Regional Court (*Rīgas apgabaltiesa*), in affirming the impugned decision, further noted:

“The circumstances adduced by [the applicant] do not attest to ... [her] low-income (*maznodrošināts*) status, which would deny access to court due to the payable State (court) fee (*valsts nodeva*).

...

A person who owns half of the undivided shares in a property ... and who wishes to exercise the pre-emptive right cannot be considered to be of a low-income...”

10.  The applicant did not pay the court fee. For that reason, the proceedings on 19 April 2007 were discontinued.

B.  Relevant domestic law

1.  Civil Procedure Law

11.  The relevant provisions of the Civil Procedure Law,effective at the material time, are set out in the judgment of *Marina v. Latvia* (no. 46040/07, §§ 23-25, 26 October 2010). Other relevant provisions of the Civil Procedure Law, effective at the material time, read as follows:

Section 34

“(1) For each claim ... the following State (court) fee shall be payable:

1) for a claim assessable in the amount of money:

...

e) from LVL 20,001 to LVL 100,000 – LVL 490 plus 1 per cent of the amount of the claim exceeding LVL 20,000.

...

5) for an application for injunction ... where the claim exceeds LVL 4,000 – 0.5 per cent from the amount of the claim.”

2.  Civil Law

12.  The relevant provisions of the Civil Law are worded as follows:

Section 1072

“An undivided share of each joint owner in the joint object belongs only to him [her] ... he [she] may handle it in all ways ... unless such action affects the undivided shares of the other joint owners ... each joint owner is also entitled to alienate ... his [her] undivided share.”

Section 1073

“If any of the joint owners alienates his [her] share to a person who is not a joint owner, the other joint owners ... shall have the right of pre-emption...”

Section 2062

“If a person holding the right of pre-emption wishes to utilise that right, unless otherwise agreed, he [she] must fulfil the same conditions as offered by the new purchaser.”

COMPLAINT

13.  The applicant complained under Article 6 § 1 of the Convention that she had been denied access to court because of the excessive court fee.

THE LAW

A.  Complaint under Article 6 § 1 of the Convention

14.  The applicant complained that she had been denied access to court because she could not afford to pay the requested court fee. She relied on Article 6 § 1 of the Convention, which reads as follows:

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

1.  Submissions of the parties

15.  The Government, first, contested the applicability of Article 6 § 1. Relying on sections 1072 and 1073 of the Civil Law (paragraph 12 above) they argued that there was no legal basis in domestic law for the applicant to interfere with the right of the other joint owner, G.Z., to sell her undivided shares or to set their price.

16.  Second, the Government maintained that the court fee had been proportionate. They argued that the applicant had never been granted a status of a low-income or indigent person. In addition to the circumstances relied upon by the domestic courts (paragraphs 7 and 9 above), they noted that the applicant’s salary at the material time, in 2007, had been well above the average monthly net salary in the State, LVL 286.

17.  The applicant disagreed. She argued that the disputed contract affected her legitimate interest in that it related to the joint property and contained a clause obliging her to compensate L.F. if she chose to utilise her pre-emptive right.

18.  Further, the applicant contended that the domestic law had not limited exemption from or reduction of the court fee to persons with a low-income or indigence status. She had asked that the court fee be lifted or reduced in view of her ability to pay. The ordered court fee however had not been proportionate to her financial condition (paragraphs 6 and 8 above).

2.  The Court’s assessment

19.  The Court does not need to rule on all the preliminary objections raised by the Government. Even if the complaint were to fall within ambit of Article 6 § 1, the Court finds it manifestly ill-founded based on the following.

20.  The Court recalls that various limitations, including financial ones, may be placed on the individual’s access to a “court” or “tribunal” (see, among other authorities, *V.M. v. Bulgaria*, no. 45723/99, §§ 41 and 42, 8 June 2006, and *Kreuz v. Poland*, no. 28249/95, §§ 53 and 54, ECHR 2001‑VI).

21.  However, a restriction placed on access to a court or tribunal will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (*V.M. v. Bulgaria*, cited above, § 44, and *Kreuz*, cited above, § 55).

22.  When assessing compliance with the above-mentioned standards, the Court’s task, however, 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 (*V.M. v. Bulgaria*, cited above, § 45, and *Kreuz*, cited above, § 56).

23.  In the present case the applicant contested precisely the proportionality of the court fee applied to her. The Government in turn argued that the court fee had not been excessive.

24.  The Court observes at the outset that the court fee pursuant to section 34 of the Civil Procedure Law had been calculated from the value of the claim (paragraph 11 above). With regard to section 34 of the Civil Procedure Law, the Court has already held in *Marina* that, even if not related to the prospects of success of the claim, the court fee partly served as a measure to dissuade potential litigants from bringing unreasonable and unmeritorious claims. In this line, in order to guarantee a fair balance between preserving the smooth functioning of the judiciary and safeguarding the interests of litigants in bringing a claim before a court, the domestic courts, by virtue of section 43(4) of the Civil Procedure Law, could grant a full or partial exemption from a court fee to a litigant who could prove to have a poor financial situation (*Marina*,cited above §§ 24, 25 and 52).

25.  Contrary to the facts in *Marina*, in the present case the local municipality had not granted the applicant the status of a low-income person. The applicant contended that the national law did not foresee that only a low-income or indigent person could benefit from a full or partial exemption from a court fee.

26.  In that regard the Court observes that the Riga City Latgale District Court, relying on section 43(4) of the Civil Procedure Law, deemed it necessary to consider the applicant’s financial situation “as a whole” (paragraph 7 above). Upon appeal the Riga Regional Court affirmed this reasoning of the first instance court. Even if the Riga Regional Court appeared to place an emphasis on whether or not the applicant had the status of a low-income person, the domestic courts’ assessment taken as a whole indicated that they took into consideration a range of factors to determine the applicant’s financial condition. Her low-income status, or rather the lack of it, was only one of the factors.

27.  Therefore, section 43(4) of the Civil Procedure Law enabled the domestic courts to decide on the court fee suited to the circumstances of the applicant.

28.  The court fee applied to the applicant in comparison with her income and with the average salary at the material time in the State was substantial. However, given the financial nature of the dispute, it did not appear to be excessive in itself (contrast, *Kreuz*, cited above, § 63).

29.  The domestic courts took into consideration the applicant’s evidence that she had been out of a job, did not have savings, and had resumed working recently and that her salary had been LVL 400.04 a month. At the same time, they reasoned that the applicant owned half of the undivided shares of the property and had expressed a wish to exercise her pre-emptive right. This indicated that the applicant had funds for purchase of the property.

30.  The Court notes that, in accordance with section 2062 of the Civil Law, in the exercise of her pre-emptive right the applicant would have had to pay the price agreed in the contract between G.Z. and L.F. (paragraph 12 above) – LVL 45,300. The applicant contended that she had planned to buy the undivided shares of the property for a much lower price. However, she did not supply any convincing argument that the seller of the property, G.Z. had agreed to her price. Quite to the contrary, G.Z. had entered a contract with L.F. for the price of LVL 45,300. Moreover, the Court recalls that in her claim to the Riga City Latgale District Court (see paragraph 4 above) the applicant had stated that she had wished to exercise her right of pre-emption with respect to this purchase contract between G.Z. and L.F.

31.  The Court observes that the domestic courts’ conclusion on the applicant’s financial situation was not merely hypothetical. The factors they considered allowed an inference on the applicant’s potential financial capacity.

32.  In that respect, the Court recalls that the national authorities are in principle better placed to assess the evidence before them and, in this case, to assess the applicant’s capacity to pay the required court fee (*V.M. v. Bulgaria*, cited above, § 55).

33.  In view of the foregoing, the Court does not find that the domestic courts, in exercise of their power of appreciation, had acted in a manner incompatible with Article 6 § 1 (see paragraph 22 above).

34.  In the light of these observations and after having performed a thorough assessment of the facts of the case, the Court is unable to uphold the applicant’s complaint that the court fee ordered had constituted a disproportionate restriction that had impaired the very essence of her right of access to court.

35.  It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B.  Other complaints

36.  The applicant also complained under Article 6 § 1 of the Convention about two other sets of civil proceedings.

37.  Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that also this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

 Fatoş Aracı Ledi Bianku
 Deputy Registrar President