



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

FOURTH SECTION

CASE OF SUBICKA v. POLAND

(Application no. 29342/06)

JUDGMENT

STRASBOURG

14 September 2010

FINAL

14/12/2010

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

In the case of Subicka v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 24 August 2010,

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

PROCEDURE

1. The case originated in an application no. 29342/06 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 a Polish national, Ms Iwona Subicka (“the applicant”), on 6 July 2006.

2. The applicant, who had been granted legal aid, was represented by M. K. Gotkowicz, a lawyer practising in Gdansk. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained under Article 6 § 1 of the Convention that she had been denied effective access to a court.

4. On 25 September 2007 the President of the Fourth Section 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 was born in 1954. She lives in Gdańsk-Zaspa.

6. By a judgment of 30 March 2006 the Gdańsk Regional Administrative Court dismissed the applicant's appeal against a second-instance administrative decision by which she had been refused a monthly social

assistance benefit. This judgment, with its written reasons, was served on the applicant on 28 April 2006.

7. On an unspecified later date the applicant was granted, by a decision of an official of the court's registry, legal aid for the purposes of lodging a cassation appeal with the Supreme Administrative Court.

8. By a further decision of a registry official given on 25 April 2006 the registry requested the local Bar Association to assign a legal-aid lawyer to the case. That order was complied with on 12 June 2006.

9. On 19 June 2006 the Gdańsk Bar informed the court that Mr M. S. had been assigned to the case. Mr M.S. was so informed on 20 June 2006.

10. On 21 June 2006 he examined the case file and found that the time-limit for lodging a cassation appeal had expired on 28 May 2006.

11. By a letter to the court dated 1 July 2006 the lawyer informed the court that he saw no legal grounds on which he could draft a cassation appeal. He presented a detailed legal analysis of the case and an explanation why he considered that legal grounds for a cassation appeal did not obtain. He further observed that in the circumstances of the case he could not, in any event, be required to prepare an appeal, having been served with the judgment after the time-limit for its submission had already expired.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Legal aid in proceedings before the administrative courts

12. Legal aid can be granted under section 246 read together with section 247 of the Act on Procedure before Administrative Courts if a party to the proceedings demonstrates that he or she is unable to cover the relevant costs and the case has no prospects of success whatsoever. A decision on the request to grant legal aid can be issued either by the court or by an official from the court registry. Pursuant to section 244 of the Act, a grant of legal aid covers exemption from court fees and the appointment of a qualified representative. A representative is assigned to the case by a subsequent decision of the local Bar Association or other relevant professional organisation.

2. The cassation appeal in administrative proceedings

13. Section 173 of the Act on Procedure before Administrative Courts provides that a cassation appeal can be lodged against a judgment of the regional administrative court.

14. Pursuant to section 175, a cassation appeal should be prepared and lodged with the court by an advocate, legal counsel, a tax adviser or a patent agent. An appeal brought by a party him- or herself shall be rejected. Under section 177 § 1, the thirty-day time-limit for lodging a cassation appeal with

the Supreme Administrative Court starts to run on the day on which a judgment of the Regional Administrative Court, together with its written grounds, has been served on the party concerned or his or her representative, if the party is legally represented.

3. Retrospective leave to appeal or to submit pleadings out of time

15. Pursuant to section 86 of the Law on the Procedure before Administrative Courts, a party to the proceedings may request retrospective leave to take a procedural step outside the prescribed time-limit. Under section 87, this step shall be performed simultaneously with the act of lodging the request for leave and within seven days from the removal of the impediment which had prevented the party from taking this step.

4. Calculation of the time-limit for the lodging of a cassation appeal

16. In a number of decisions the administrative courts have held that the running of the time-limit for lodging a cassation appeal is not affected in any way by a request for legal aid and its subsequent grant. The time-limit starts to run on the date when the party was served with the decision of the regional administrative court with its written grounds. They referred to what they considered to be the established case-law of the Supreme Administrative Court (the Supreme Administrative Court's decision, *Naczelny Sąd Administracyjny* - hereinafter referred to as NSA – see decisions NSA, II OZ 393/05 of 24 June 2005; I OZ 160/08 of 14 March 2008, II OZ 1036/07 of 19 October 2007; II OZ 318/07 of 13 April 2007; the Olsztyn Regional Administrative Court, II SA/OI 711/07 of 14 January 2008).

In its decision no. II FZ 651/07 of 18 January 2008 the Supreme Administrative Court held that a request for leave to appeal out of time was the only method by which a cassation appeal submitted after the expiry of the time-limit by a legally-aided applicant could be admitted for examination.

17. When legal aid has been granted and the time-limit for the submission of a cassation appeal has already expired, it is open to the legally-aided party to submit the appeal together with a request for leave to appeal out of time made under sections 86 and 87 of the Law on the Procedure before Administrative Courts (e.g. NSA FZ 754/04 of 31 January 2005 and NSA, I OZ 160/08 of 14 March 2008). In certain cases the courts stated that such a request should be submitted within seven days from the date on which the lawyer obtained a power of attorney from the party, which date is considered as the date on which the impediment to lodging an appeal ceased to exist (e.g. the Białystok Regional Administrative Court, II SAB Bk 27/07 of 10 April 2008), or from the date when the lawyer could

obtain effective access to the case file (e.g. the Poznań Regional Administrative Court, IV SA/Po 865/06 of 13 November 2007).

18. In a number of its recent decisions the Supreme Administrative Court acknowledged the difficulties which legally-aided parties experienced in connection with lodging their cassation appeals against judgments of the first-instance administrative courts. It expressed the view that they should not be penalised for the fact that their requests for legal aid were not processed speedily enough. It analysed relevant case-law of the administrative courts and noted that the manner in which the beginning of the time-limit for lodging cassation appeals was determined had led to divergent results. It held that it was necessary to determine that moment in a manner compatible with the effective access to the highest administrative court and equal for parties represented by lawyers appointed under the legal-aid scheme and by privately hired lawyers. The court held that the time-limit for a legally-aided party started to run only on the day when a legal-aid lawyer had a genuine possibility of lodging the cassation appeal; not when he or she was informed of having been assigned to the case. The court was of the view that the latter approach was far too rigorous and rendered the effective enjoyment of legal assistance granted under the legal-aid system illusory. In any event, the cassation appeal had to be lodged within thirty days from the day on which the party was informed of the appointment of the legal-aid lawyer (I FZ 569/06 of 8 December 2006; I FZ 667/06 of 15 January 2007; I FZ 30/09 of 2 March 2007; II FZ 177/08 of 25 June 2008; II OZ 513/08 of 27 May 2008; I OZ 376/08 of 13 June 2008; I FZ 30/09 of 2 March 2009; II OZ 1093/09 of 9 December 2009; I FZ 30/09 of 2 March 2009).

5. Resolution of the Supreme Court of 2000 (III CZP 14/00)

19. In 2000 the Supreme Court issued a resolution in reply to a legal question whether a legal-aid lawyer could refuse to lodge a cassation appeal in civil proceedings. It replied to the question in the affirmative, having noted that issues involved in the grant of legal aid concerned not only the proper administration of justice, but also touched on human rights, and the right of access to a court in particular. The mere fact that it was necessary for a cassation appeal to be lodged by a qualified representative was not open to criticism.

20. The court observed that the notion of legal assistance could not be identified with a simple obligation of a lawyer to act in accordance with the client's wishes. The role of a legal-aid lawyer had rather to be understood as obliging him or her to provide legal advice to the party, including as to the prospects of success offered by a cassation appeal against a given judgment.

21. This resolution was summarised in detail in the Court's judgment in the case of *Zapadka v. Poland*, no. 2619/05, §§ 38-43, 15 December 2009.

6. Case-law of the Supreme Court concerning criminal proceedings

22. On 26 February 2002 the Supreme Court changed its previous position concerning the date on which the time-limit for lodging a cassation appeal started to run. It examined a particular situation where a legal-aid lawyer had refused to represent a convicted person for the purposes of cassation proceedings, finding that a cassation appeal would offer no prospects of success. It held that in such a situation the appellate court was obliged to instruct the defendant that the time-limit for lodging a cassation appeal started to run only on the date on which the defendant was served with the lawyer's refusal and not on the earlier date when the judgment of the appellate court was served on the defendant himself. It stated that it was not open to doubt that a defendant faced with a legal-aid lawyer's refusal had a right to take other measures to seek legal assistance necessary for an effective lodging of a cassation appeal (III KZ 87/01).

23. The Supreme Court reiterated its position in a decision of 6 May 2008 and in a number of similar decisions given in 2008. It observed that there had been certain discrepancies in the judicial practice as to the manner in which the time-limit in such situations was calculated, but the strand of the case-law launched by the decision given in February 2002 was both dominant and correct, and also accepted by doctrine as providing to defendants adequate procedural guarantees of access to the Supreme Court within a reasonable time-frame (II KZ 16/08).

THE LAW

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

24. The applicant complained that as a result of the legal-aid lawyer's refusal to prepare and lodge a cassation appeal with the Supreme Administrative Court she had been denied access to that court. She referred to Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

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

A. Admissibility

25. The Government argued, firstly, that the application was incompatible *ratione personae* with the provisions of the Convention. Any disagreements that might have arisen between the applicant and the

legal-aid lawyer could not incur the liability of the State. The public authorities did not exercise any direct control over lawyers' methods of work and could not impose on a legal-aid lawyer an obligation to draw up a cassation appeal.

26. The Government further submitted that the applicant had failed to exhaust relevant domestic remedies. She could have complained to the local Bar Association under section 28 of the Bar Act about the lawyer's alleged negligence. She should also have brought a civil action for compensation against him or requested leave to lodge a cassation appeal with the Supreme Administrative Court out of time.

27. The applicant disagreed. She submitted that the circumstances of the case had engaged the State's responsibility, because the State had failed to put in place a coherent system of procedural provisions governing the granting of legal aid and ensuring the efficient functioning of the system in practice.

28. The applicant further submitted that in the light of the established case-law of the Supreme Court and the Supreme Administrative Court, a refusal to prepare a cassation appeal could not by itself be regarded as negligence in respect of which she could seek damages before a civil court. Hence, such a refusal could not give rise for the applicant to any ground for a well-founded complaint about the lawyer's conduct, let alone to a civil liability claim offering any reasonable prospects of success.

29. The Court observes that the remedies referred to by the Government were merely of a retrospective character. They could only, and if the applicant had been successful, have resulted either in the courts granting damages or in the Bar Association finding the lawyer at fault. Such retrospective measures alone were not sufficient to ensure effective access to a court competent to determine the applicant's civil rights and obligations. The Court therefore rejects the Government's objection as to non-exhaustion of domestic remedies.

30. The Court further considers that the Government's objection that the application was incompatible *ratione personae* with the provisions of the Convention is closely linked to the substance of the applicant's complaint under Article 6 § 1. Its examination should therefore be joined to the merits of the case (see *Siałkowska v. Poland*, no. 8932/05, § 59, 22 March 2007).

31. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

32. The applicant submitted that in the circumstances of the case her access to court had been restricted and proved illusory. This was because under Polish law there were no coherent procedural regulations regarding the obligations of legal-aid lawyers in connection with cassation appeals. The regulations and relevant judicial practices were different for civil, administrative and criminal proceedings. The resolution of the Supreme Court given in 2000 (see paragraphs 18 – 20 above) by which that court had sought to alleviate difficulties which had arisen in connection with the functioning of the legal-aid system in the context of cassation proceedings, was not applicable to proceedings before the administrative courts. By creating such confusion as to the rights and obligations of legal-aid lawyers and their clients, the State had failed to comply with its duty to properly regulate access to the courts, including the administrative courts.

The applicant submitted that the domestic law should create a universally binding regulatory framework governing the provision of legal-aid services for the preparation of cassation appeals. Ideally, such a framework would provide that the time-limit for lodging a cassation appeal did not start to run until the legal-aid lawyer had been appointed.

33. The applicant argued that in the proceedings before the administrative courts the time-limit for lodging a cassation appeal started to run on the date when the judgment of the regional administrative court was served on the party concerned. It was open to that party to apply for legal aid afterwards. However, when legal aid was subsequently granted and a legal-aid lawyer was assigned to the case already after the expiry of the thirty-day time-limit or just before it, he or she could only ask for retrospective leave to appeal out of time.

34. The applicant referred to the Court's finding of a violation of the Convention in the case of *Siałkowska v. Poland*, referred to above. She emphasised that when making its finding the Court relied on the fact that the domestic law had failed to regulate the provision of legal aid in the context of cassation proceedings with requisite clarity. The same lack of clarity characterised the provision of legal aid in proceedings before the administrative courts. The State had therefore failed in its duty to ensure the requisite balance between, on the one hand, the effective enjoyment of access to justice and, on the other, the independent functioning of the legal profession.

35. The Government submitted that the mere fact that it was necessary for a cassation appeal to be lodged by a qualified representative was not open to criticism. They further referred to the ruling of the Supreme Court given in September 2000. That court had held that a lawyer assigned to a

case under the legal-aid scheme was entitled to refuse to lodge a cassation appeal in civil proceedings, if he or she was of the view that this remedy offered no reasonable prospects of success.

36. The Government further submitted that in the instant case the regional court had granted legal aid to the applicant. The lawyer had subsequently examined the case and given a legal opinion explaining in detail why, in his view, there were no legal grounds on which to prepare a cassation appeal against the judgment of the regional court. He had informed the court, the Bar Association and the applicant of the reasons for his refusal. There had been no indication that the lawyer had been negligent in his handling of the applicant's case. Hence, the State had properly discharged its obligation to provide legal aid to the applicant.

37. The Government stressed that the notion of legal aid was not to be understood as providing legal representation in proceedings in all cases. It also comprised the provision of legal advice on the prospects of success offered by a given legal remedy in the particular context of each case. The lawyers' tasks could not be perceived as following uncritically their clients' instructions and wishes. Hence, the lawyer's refusal to appeal had served the purpose of securing the proper administration of justice by the Supreme Administrative Court.

38. The Government further argued that after the lawyer's refusal the applicant could have lodged a cassation appeal together with a request for leave to submit the appeal out of time, provided for by section 87 of the Law on the Procedure before Administrative Courts (see paragraph 15 above). The established practice and case-law of the administrative courts provided that a protracted examination of the motion for the grant of legal aid constituted a basis on which retrospective leave to submit a cassation appeal out of time could subsequently be granted.

39. The Government concluded that in the present case the refusal to prepare and submit a cassation appeal against the judgment of the regional administrative courts and the procedure in which legal aid was provided as applied to the applicant's case were compatible with the requirements of Article 6 § 1 of the Convention.

2. The Court's assessment

40. The Court has already had occasion to set out at length the relevant principles derived from its case-law in this area (*Siałkowska v. Poland*, no. 8932/05, §§ 99-107, 22 March 2007; *Smyk v. Poland*, no. 8958/04, §§ 54-59, 28 July 2009; *Zapadka v. Poland*, no. 2619/05, §§ 57-61, 15 December 2009). It adopts those principles for the purposes of the instant case.

41. Turning to the circumstances of the present case, the Court first observes that where a party to administrative proceedings is represented by a lawyer, the procedural time-limits set by the Act on Procedure before Administrative Courts start to run on the date of the service of judicial

decisions on the lawyer (see paragraphs 14 and 16 above). In such situations no difficulties arise in connection with establishing the date on which the thirty-day time-limit for lodging a cassation appeal, applicable at the material time, would expire.

42. The situation is significantly different where a party does not have legal representation before the Regional Administrative Court, as in the present case, and is granted legal aid only after the second-instance judgment has been given.

43. The case-law of the Supreme Administrative Court provides that the time-limit for lodging a cassation appeal starts to run from the date on which the judgment of the Regional Administrative Court has been served on the non-represented party (see paragraph 14 above). The administrative courts have repeatedly held that his or her request for legal aid did not affect the running of the time-limit. A party who was subsequently granted legal aid was put in a difficult position, because at the time of service the time-limit has already started to run. A lawyer subsequently assigned to the case had therefore less time to examine the case and decide, still within the time-limit, whether a cassation appeal offered prospects of success and to prepare an appeal. This may lead to a situation, as happened in this case, where a lawyer subsequently assigned to the case only learned about his appointment after the time-limit for lodging the cassation appeal had expired.

44. The Supreme Administrative Court has, on numerous occasions, addressed this problem. As a result, a body of case-law has developed to the effect that in situations where a legal-aid lawyer was appointed after the time-limit for lodging the cassation appeal had expired, the administrative courts grant leave for submitting a cassation appeal out of time. Under the case-law of the Supreme Administrative Court the day on which the impediment for lodging the cassation appeal ceased to exist is defined as the day on which the lawyer has had a genuine possibility to prepare it. Thus, the seven-day time-limit begins to run only after the legal-aid lawyer has had sufficient time to study the file. In any event, the cassation appeal must be lodged within thirty days from the day on which the party was informed of the appointment of the legal-aid lawyer (see paragraph 18 above).

45. The Court is of the opinion that this jurisprudential approach is compatible with the Convention standards as regards ensuring fair access to the cassation procedure.

46. However, the Court observes that the applicant's access to the cassation procedure was limited not because of the shortness of time left for the legal-aid lawyer to act, but by the refusal of that lawyer to lodge the cassation appeal. The Court notes that the legal-aid lawyer informed the applicant about his refusal to lodge the cassation appeal on 1 July 2006, ten days after he had been assigned to the case.

Thus, the question that arises in the present case is whether as a result of that refusal the applicant was left with no other procedural possibilities to have the cassation appeal lodged.

The Court observes that it has already dealt with this question in the context of criminal as well as civil procedure. As far as the former is concerned, it was established that – under the established case-law of the Supreme Court – the time limit for lodging a cassation appeal should run *de novo* from the day when the applicant has been informed of the legal-aid lawyer's refusal to lodge a cassation appeal. This approach was found to satisfy Convention standards, provided that the applicant has been properly informed about his/her procedural rights at the time when the lawyer's refusal was communicated to him or her (*Kulikowski v. Poland*, no. 18353/03, § 69-71, ECHR 2009-... (extracts); *Antonicelli v. Poland*, no. 2815/05, § 44-45, 19 May 2009).

In the context of civil procedure the Court has found that the civil courts' approach to the calculation of the time-limit for submitting a cassation appeal is stricter. Thus, a legal-aid lawyer's refusal to prepare it does not trigger the running of the time-limit *de novo*. That approach was regarded by the Court as being incompatible with Convention standards, save for rather rare situations where the refusal of the legal-aid lawyer was notified to the applicant well before the deadline was due to expire (see *Smyk v. Poland*, no. 8958/04, §§ 63-65, 28 July 2009).

47. The Court observes that, with respect to the procedure before administrative courts, the existing case-law only offers a solution to the situation where a legal-aid lawyer is ready to prepare a cassation appeal, but the deadline for doing so has already expired (see paragraph 44 above). The Government were unable to indicate any domestic case-law addressing situations where, as in the applicant's case, the legal-aid lawyer refused to lodge a cassation appeal well after the original deadline had expired.

This produces a situation of legal uncertainty for legally-aided applicants. In the present case this uncertainty was also highlighted by the applicant's lawyer who, in his letter of 6 July 2006, stated that he could not be required to prepare a cassation appeal, given that he had been served with the judgment after the time-limit for its submission had already expired (see paragraph 11 above). In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is an important factor to be taken into account in assessing the State's conduct (see, among other authorities, *Beian v. Romania (no. 1)*, no. 30658/05, § 33, ECHR 2007-... (extracts); *Plechanow v. Poland*, no. 22279/04, § 103, 7 July 2009). The Court is of the view that this uncertainty is sufficient for a finding of a violation of the applicant's right of access to court on account of the absence of clear rules governing the consequences of the legal-aid lawyer's refusal occurring after the deadline for lodging a cassation appeal had already expired.

48. Hence, as long as the legislature does not address this problem by adopting such rules, or, failing that, as long as the case-law of the Supreme Administrative Court does not offer an adequate solution, the Court cannot accept that the existing procedural situation is compatible with the requirements of Article 6 of the Convention.

49. Having regard to the above considerations, the Court concludes that in the present case there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF ALLEGED UNFAIRNESS

50. The applicant complained that the administrative court had wrongly assessed the evidence and, as a result, had failed to establish the facts of the case correctly and had given an erroneous judgment.

51. The Court reiterates that, 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, like the establishment of facts, are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, § 28).

52. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

54. The applicant sought compensation for pecuniary damage in the amount of 1,145 euros (EUR) and non-pecuniary damage in the amount of 5,000 euros (EUR).

55. The Government submitted that in so far as the applicant's claims related to alleged pecuniary damage, she had failed to adduce any evidence to show that she had suffered any actual loss. As to non-pecuniary damage,

the Government submitted that the amount claimed by the applicant was excessive.

56. The Court is of the view that it has not been duly substantiated that the applicant sustained pecuniary damage as a result of the violation of her right of access to a court. However, the Court accepts that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 1,000 under this head.

B. Costs and expenses

57. The applicant, who was granted legal aid for the purposes of the proceedings before the Court, did not submit a claim for reimbursement of legal costs and expenses.

C. Default Interest

58. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaint concerning access to the Supreme Court and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge L. Mijović is annexed to this judgment.

N.B.
F.A.

CONCURRING OPINION OF JUDGE MIJOVIĆ

As emphasised in my previous concurring/dissenting opinions in six recent cases¹, and in the joint dissenting opinion in *Smyk v. Poland*, I see the problem of the refusal of lawyers appointed under legal-aid schemes to represent legally-aided persons on the ground that the claim has no reasonable prospects of success, as a general one, related not only to criminal but also to both civil and administrative proceedings. To avoid repetition, I refer to the detailed reasoning of those opinions.

1. *Kulikowski v. Poland*, no. 18353/03, ECHR 2009-... (extracts); *Antonicelli v. Poland*, no. 2815/05, 19 May 2009; *Arciński v. Poland*, no. 41373/04, 15 September 2009; *Zapadka v. Poland*, no. 2619/05, 15 December 2009; *Jan Zawadzki v. Poland*, no. 648/02, 6 July 2010 and *Bąkowska v. Poland*, no. 33539/02, 12 January 2010.