



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

FOURTH SECTION

CASE OF SŁOWIK v. POLAND

(Application no. 31477/05)

JUDGMENT

STRASBOURG

12 April 2011

FINAL

12/07/2011

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

In the case of Słowik v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 31477/05) 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, Mr Andrzej Słowik (“the applicant”), on 16 August 2005.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained, in particular, that he had been deprived of access to the Supreme Court.

4. On 9 July 2009 the President of the Fourth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969. He is currently serving a prison sentence in Strzelce Opolskie prison.

6. In January 2002 the applicant was detained on suspicion of murder and membership of a criminal gang.

7. On 21 June 2004 the Gliwice Regional Court convicted the applicant of murder and sentenced him to fifteen years' imprisonment. The applicant appealed.

8. On 25 November 2004 the Katowice Court of Appeal in part quashed and in part upheld the first-instance judgment.

9. On 18 January 2005 the applicant was served with written grounds for that judgment. The court informed him that it was open to him to lodge a cassation appeal against it with the Supreme Court.

10. By a decision of 16 February 2005 the court allowed the applicant's request for legal aid.

11. In a letter to the Court of Appeal dated 3 March 2005 the legal-aid lawyer informed the court that she had found no grounds on which to prepare a cassation appeal. A copy of that letter was served on the applicant on 14 March 2005.

12. By a letter of 13 April 2005 the court informed the applicant about the legal-aid lawyer's refusal to prepare and lodge a cassation appeal with the Supreme Court. By the same letter the court informed the applicant that as he had already been granted legal aid, no grounds existed on which to grant him assistance by another legal aid lawyer.

The court further informed the applicant that the thirty-day time-limit for lodging a cassation appeal would start to run anew on the day on which the applicant was served with that letter.

13. On 6 June 2005 the Katowice Court of Appeal refused to entertain a cassation appeal filed by the applicant himself as it did not comply with the applicable formal requirements.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice concerning the procedure for lodging cassation appeals with the Supreme Court against judgments of the appellate courts are stated in the Court's judgments in the cases of *Kulikowski v. Poland*, no. 18353/03, §§ 19-27, ECHR 2009-... (extracts) and *Antonicelli v. Poland*, no. 2815/05, §§ 14-22, 19 May 2009).

15. In particular, on 26 February 2002 the Supreme Court examined a 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 the right to take other measures to seek legal assistance necessary for effective lodging of a cassation appeal (III KZ 87/01). 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 originating 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 IN CONJUNCTION WITH ARTICLE 6 § 3 (c) OF THE CONVENTION

16. The applicant complained that as a result of the legal-aid lawyer's refusal to draft a cassation appeal he had been denied effective access to the Supreme Court. He relied on Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention. Those provisions, in so far as relevant, read:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

3. Everyone charged with a criminal offence has the following minimum rights: ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;”

A. Admissibility

17. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The Government argued that the Katowice Court of Appeal had informed the applicant about his legal-aid lawyer's refusal and held that the time-limit for lodging a cassation appeal would start to run anew, starting on the date on which the refusal had been served on the applicant. They reiterated that the mere fact that a legal aid lawyer could refuse to represent a defendant in proceedings before the highest court could not be said to be, of itself, tantamount to a denial of legal assistance which would have been incompatible with the State's obligations under Article 6 of the Convention.

Furthermore, in case of a lawyer's refusal to draft a cassation appeal, the State Parties were not obliged to provide assistance by successive legal-aid lawyers.

19. The applicant disagreed.

20. The Court first notes that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial in criminal proceedings as set forth in paragraph 1 of the same Article. Accordingly, the applicant's complaint will be examined under these provisions taken together (see, among other authorities, *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 755, § 52, and *Bobek v. Poland*, no. 68761/01, § 55, 17 July 2007).

21. 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; *Antonicelli v. Poland*, no. 2815/05, § 30-37, 19 May 2009; *Jan Zawadzki v. Poland*, no. 648/02, § 15-16, 6 July 2010). It adopts those principles for the purposes of the instant case.

22. In the present case the applicant was served with the lawyer's refusal on 14 March 2005. The Court notes in this connection that the procedural framework governing the making available of legal aid for a cassation appeal in criminal cases is within the control of the appellate courts. When notified of a legal-aid lawyer's refusal to prepare a cassation appeal, it is entirely appropriate and consistent with fairness requirements, that an appeal court indicate to an appellant what further procedural options are available to him or her (see *Kulikowski v. Poland*, cited above, § 70; *Antonicelli v. Poland*, cited above, § 45).

In the present case, the court's note accompanying that refusal contained detailed information concerning his procedural rights. In particular, the Court of Appeal informed the applicant, in compliance with the case-law of the Supreme Court (see paragraph 15 above), that on the date of the service of that refusal the thirty-day time-limit for lodging a cassation appeal started to run anew. Hence, the Court is of the view that the court took appropriate steps to inform the applicant of his procedural situation.

23. The Court is aware that at the same time the court informed the applicant that after the first legal-aid lawyer's refusal to prepare a cassation appeal a second legal-aid lawyer would not be assigned to the case. However, the Court has already held that Article 6 of the Convention does not confer on the State an obligation to ensure assistance by successive legal-aid lawyers for the purposes of pursuing legal remedies which have already been found not to offer reasonable prospects of success. In the present case the first lawyer appointed under the legal-aid scheme found no legal grounds on which to prepare a cassation appeal. In the absence of indications of negligence or arbitrariness on the lawyer's part in discharging her duties, the State can be said to have complied with its obligations to

provide effective legal aid to the applicant in connection with the cassation proceedings (*Kulikowski v. Poland*, cited above, § 68).

24. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was not put in a position in which he was left without adequate legal representation such as to impair his effective access to a court in breach of the Convention.

25. There has accordingly been no violation of this provision.

II. OTHER VIOLATIONS OF THE CONVENTION

26. The applicant complained, relying on Article 6 of the Convention, that the proceedings had been unfair in that the courts had wrongly assessed evidence, erred in establishing the facts of the case and incorrectly applied the domestic law.

27. However, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, 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 are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

28. In the present case, even assuming that the requirement of exhaustion of domestic remedies was satisfied, the Court notes that the applicant did not allege any particular failure to respect his right to a fair hearing on the part of the relevant courts. Indeed, his complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

29. Lastly, the applicant complained under Article 3 that his detention amounted to inhuman treatment, and under Article 6 § 2 that his detention violated the principle of the presumption of innocence.

30. Having examined all the material in its possession and regardless of other possible grounds of inadmissibility, the Court finds nothing in the case file which might disclose any appearance of a violation of the provisions relied on.

31. 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.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning access to the Supreme Court admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been no violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

Done in English, and notified in writing on 12 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

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

N.B.
T.L.E

DISSENTING OPINION OF JUDGE MIJOVIĆ

As emphasised in my previous concurring/dissenting opinions in seven 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 a legally-aided person on the ground that the claim has no reasonable prospects of success, as a general one, which affects not only criminal but also civil and administrative proceedings. To avoid repetition, I refer to the detailed reasoning set out in those opinions.

1. *Kulikowski v. Poland*, *Antonicelli v. Poland*, *Arcinski v. Poland*, *Zapadka v. Poland*, *Zawadzki v. Poland*, *Subicka v. Poland* and *Bakowska v. Poland*