



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

FOURTH SECTION

CASE OF SUBICKA v. POLAND (No. 2)

(Applications nos. 34043/05 and 15792/06)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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 (no. 2),

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 31 May 2011,

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

PROCEDURE

1. The case originated in two applications (nos. 15792/06 and 34043/05) 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, Ms Iwona Subicka (“the applicant”), on 8 April 2005 and 23 August 2005, respectively.

2. The applicant, who had been granted legal aid, was represented by Mr 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 the proceedings had been unfair in that she had been denied effective access to a court. She referred to the fact that the lawyers appointed under the legal-aid scheme had failed to represent her interests effectively in that they had refused to lodge with the Supreme Administrative Court cassation appeals against judgments given by the regional administrative court.

4. On 25 September and 10 October 2007 the President of the Fourth Section decided to give notice of the applications to the Government.

5. Given that the present two applications concerned two sets of proceedings raising a similar subject-matter, the Court decided that the applications should be joined (see Rule 42 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954. She lives in Gdańsk-Zaspa.

A. Application no. 15792/06 - the first set of administrative proceedings

7. By a judgment of 22 February 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.

8. On 8 March 2006 the applicant was granted, by a decision of a registry official, the assistance of a legal-aid lawyer for the purposes of lodging a cassation appeal with the Supreme Administrative Court.

9. On 10 March 2006 the judgment of 22 February 2006, together with its written grounds, was served on the applicant. On 14 March 2006 the decision on the grant of legal aid was served on her.

10. On 12 April 2006 the registry of the court requested the Gdańsk Bar Association to assign a lawyer to her case.

11. On 20 April 2006 the Bar Association informed the court that Mr J.B. had been assigned to represent the applicant. On 25 April the Bar Association informed the applicant accordingly and requested her to grant him an authority to act.

12. By a letter of 5 May 2006 the lawyer informed the applicant that he had found no legal grounds on which he could draft a cassation appeal. On 8 May 2006 he informed the court thereof.

B. Application no. 34043/0 - the second and third sets of administrative proceedings

1. The second set of administrative proceedings

13. By a judgment of 11 February 2004 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.

14. This judgment, together with its written grounds, was served on the applicant on 5 March 2004. She was informed that the thirty-day time-limit for lodging a cassation appeal started to run on the date on which the

judgment together with its written grounds was served on the party. It was therefore to expire on 4 April 2004.

15. On 10 March 2004 the applicant was granted legal aid by a decision of a registry official. This decision was sent to the applicant shortly afterwards.

16. On 25 March 2004 the local Bar Association informed the court in writing that Ms B. K.–Z. had been assigned to represent the applicant. Shortly afterwards the applicant was served with a copy of this letter.

17. By a letter dated 30 March 2004 the lawyer informed the court that she saw no grounds on which to prepare a cassation appeal. She did not inform the applicant about her refusal.

18. The applicant contacted the lawyer by phone on 6 July 2005. She was informed about the lawyer's refusal to prepare a cassation appeal.

19. On 7 July 2005 the applicant complained to the Gdańsk Bar Association that the lawyer had failed to inform her about her refusal to prepare a cassation appeal against the judgment. She argued that the lawyer should have made reasonable efforts to inform her, as her legal-aid client, of her decision. She submitted that she had learnt about the refusal a long time after the expiry of the time-limit for the lodging of a cassation appeal and only because she herself had contacted the lawyer.

20. By a letter of 16 August 2005 the Gdańsk Bar Association informed the applicant that it had investigated her complaint. It stated that the lawyer had been assigned to represent the applicant on 17 March 2004. She had examined the case file and found no grounds on which to prepare a cassation appeal. She subsequently informed the court of her refusal. In these circumstances, there were no grounds for accepting that the lawyer's conduct had been negligent.

2. The third set of administrative proceedings

21. By two judgments of 25 May 2005 the Gdańsk Regional Administrative Court dismissed the applicant's appeal against the two second-instance administrative decisions by which she had been refused a monthly social assistance benefit. She requested to be granted legal aid.

22. By a decision of 4 July 2005 the registry of the court granted her request.

23. On 6 July 2005 the judgments, together with their written grounds, were served on the applicant. She was informed that the thirty-day time-limit for lodging cassation appeals started to run on the date on which the judgments together with their written grounds were served on the party.

24. On 25 July 2005 the registry of the court requested the Gdańsk Bar Association to assign a lawyer to the case.

25. By a letter of 28 July 2005 the Bar Association informed the court in writing that Mr K. M. had been assigned to represent the applicant for the

purposes of the cassation proceedings. A copy of this letter was also sent to the applicant.

26. By a legal opinion of 10 August 2005 the lawyer informed the court that he had found no grounds on which to prepare a cassation appeal against the judgments of 25 May 2005. The same opinion was sent on the same date to the applicant and to the Regional Bar Association.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. The relevant domestic law and practice concerning the procedure for lodging cassation appeals with the Supreme Administrative Court against judgments of the Regional Administrative Courts are stated in the Court's judgment in the case of *Subicka v. Poland*, no. 29342/06, §§ 12-21, 14 September 2010.

28. In particular, 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.

29. 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).

30. 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 the relevant time in a manner compatible with effective access to the highest administrative court and which ensured equal treatment 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 and 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).

THE LAW

I. JOINDER OF THE APPLICATIONS

31. Given their common factual and legal background, the Court decides that these two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

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

32. The applicant complained that as a result of the legal-aid lawyers' refusals to prepare and lodge cassation appeals 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

33. The Government argued, firstly, that the application was incompatible *ratione personae* with the provisions of the Convention. Legal-aid lawyers had been assigned to her cases with a view to examining the prospects of success of a cassation appeal against the judgments of the Regional Administrative Court. Any disagreements that might have arisen between the applicant and the lawyers could not incur the liability of the State. The lawyers were members of an independent and self-governing professional association which adopted its own rules of conduct and

disciplinary regulations. It followed from the independence of the legal profession that the conduct of legal representation was essentially a matter between the represented party and his or her counsel, whether appointed under the legal-aid scheme or privately financed.

34. 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 in the context of administrative proceedings and ensuring the efficient functioning of the system in practice.

35. 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 lawyers' alleged negligence. She should also have brought a civil action for compensation against the lawyers concerned. The Government were of the view that such an action was an effective remedy where the lawyer, either appointed under the legal-aid scheme or privately hired, was negligent in carrying out his or her duties regarding legal representation. It had also been open to the applicant to request leave to lodge a cassation appeal with the Supreme Administrative Court out of time.

36. The applicant 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 giving rise to an action for damages before a civil court. Hence, the lawyers' refusals could not be seen as a valid ground for either a complaint about their conduct, either to be pursued in disciplinary proceedings or giving rise to civil liability on the lawyers' part. In any event, the opinions prepared by legal-aid lawyers in the present case had been detailed enough. It could not therefore be said that they had failed in their duty to properly examine the applicant's cases.

37. In so far as the Government referred to the compensatory remedies and argued that the application was incompatible *ratione personae* with the provisions of the Convention, the Court reiterates that it has already examined and rejected such arguments in previous cases (e.g. *Siałkowska v. Poland*, no. 8932/05, § 59, 22 March 2007; *Subicka v. Poland*, referred to above, § 28, 14 September 2010). It accordingly dismisses these objections.

38. In so far as the Government argued that it had been open to the applicant to request leave to appeal out of time, the Court considers that such objection 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.

39. 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*

40. 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. 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.

41. 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 with its written grounds 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 after the expiry of the thirty-day time-limit, he or she could only ask for retrospective leave to appeal out of time. As the applicable provision of the Act on the Procedure Before Administrative Courts provided for a seven-day time-limit for taking procedural steps out of time, the time-limit for the actual preparation of a cassation appeal was then effectively shortened to only seven days. Moreover, it was left to the court's discretion to grant leave or refuse it. That procedural framework was burdensome and, importantly, also unclear.

42. The applicant submitted that the domestic law should instead create a universally binding regulatory framework governing the provision of legal-aid services in the context of 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. Such a possibility existed in Polish law in respect of constitutional complaints and should also be applied to cassation proceedings.

43. The applicant referred to the Court's finding of a violation of the Convention in the case of *Siałkowska v. Poland*, no. 8932/05, 22 March 2007. 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 the requisite clarity. The same lack of clarity characterised the provision of legal aid in proceedings before the administrative courts. In the present cases, the applicant had not been able to comply with the requirements for preparing and lodging cassation appeals within the time-frame provided for in law.

44. The Government reiterated 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 leading 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.

45. The Government further submitted that in both the instant cases the regional court had granted legal aid to the applicant. The lawyers had subsequently examined the cases and given detailed and well-reasoned legal opinions explaining why, in their view, there were no legal grounds on which to prepare cassation appeals against the judgments of the regional court. There had been no indication that the lawyers had been negligent in their handling of the applicant's cases. They had informed the court, the Bar Association and the applicant of the reasons for their refusals. Hence, the State had properly discharged its obligation to provide legal aid to the applicant.

46. 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 lawyers' refusals to appeal had served the purpose of securing the proper administration of justice by the Supreme Administrative Court.

47. The Government further argued that after the lawyers' refusals the applicant could have lodged cassation appeals with requests for leave to submit the appeals out of time, provided for by section 87 of the Law on the Procedure before Administrative Courts. 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 be granted.

48. They finally argued that in any event the proceedings before the Supreme Administrative Court instituted by a cassation appeal were of an extraordinary character. Hence, the restrictions on the right of access to that court as applied in the applicant's cases had served a legitimate aim and had not been disproportionate.

2. The Court's assessment

(a) General observations

49. 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, and *Subicka v. Poland*, referred to above, § 40). It adopts those principles for the purposes of the instant case.

50. The same question arises in the context of the present case as that examined by the Court in the cases referred to above, namely whether as a result of refusals to prepare cassation appeals against the judgments of the Gdańsk Regional Administrative Court the applicant was deprived of access to the Supreme Administrative Court.

51. The Court observes that it has already dealt with this question in the context of criminal as well as civil procedure before the Polish courts.

52. As far as criminal procedure 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 (the Supreme Court, decision II KZ 16/08 of 20 February 2002). 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). Subsequently, in 2008 the Supreme Court also stated that the strand of the case-law based on that approach was correct as providing adequate guarantees to the defendant by indicating in an unequivocal way the date on which the time-limit started to run.

53. 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 was stricter. Thus, a legal-aid lawyer's refusal to prepare it did 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*, referred to above, §§ 63-65).

54. In so far as procedure before the administrative courts is concerned, the Court first observes that where a party to 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. 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.

55. 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.

56. 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. The administrative courts have repeatedly held that his or her request for legal aid does not affect the running of the time-limit (see Relevant domestic law above). However, they have acknowledged that a party who was subsequently granted legal aid was put in a difficult position, because at the time of service the time-limit had 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 where lawyers subsequently assigned to the case only learned about their appointments after the time-limit for lodging the cassation appeal had expired.

57. 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 has been appointed after the time-limit for lodging a cassation appeal had expired and he or she is willing to prepare it, the administrative courts could 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.

58. The Court further observes that a cassation appeal must, in any event be lodged, together with a request for retrospective leave to appeal out of time, within thirty days from the day on which the party was informed of a legal-aid lawyer's assignment to the case (see Relevant domestic law above). The Court is of the opinion that this jurisprudential approach resulted from the administrative courts' concern about the difficulties encountered by legally-aided parties and can be said to be compatible with Convention standards as regards ensuring fair access to the cassation procedure. However, this approach does not address situations where a lawyer refuses to seek retrospective leave to lodge a cassation appeal after the expiry of the time-limit (see *Subicka v. Poland*, referred to above, §§ 47048).

(b) Application of these considerations to the circumstances of the case

(i) The first set of proceedings

59. Turning to the circumstances of the present case, the Court observes that the judgment of 22 February 2006 was served on the applicant on 10 March 2006. Accordingly, the thirty-day time-limit for lodging a

cassation appeal was to expire on 10 April 2006. On 25 April 2006 the applicant was informed about the assignment of a legal-aid lawyer to her case. Hence, the thirty-day time limit for lodging a request for leave to lodge a cassation appeal out of time started to run on that date. On 5 May 2006 that lawyer informed the applicant of his refusal to prepare a cassation appeal.

60. The Court is of the view that, in order for the legal framework regulating the lodging of cassation appeals to be compatible with the Convention standards, the case-law of the Supreme Administrative Court summarised above should also be applicable to situations where after a legal-aid lawyer's refusal to prepare a cassation appeal the party wishes to have recourse to the services of another lawyer. In this connection, the Court notes that on 5 May 2005 the applicant still had twenty days within which to avail herself of the possibility of seeking leave to appeal out of time by way of a privately hired lawyer. It cannot therefore be said that she was put in a position where her effective access to a court was restricted in breach of Article 6 § 1 of the Convention (see *Smyk v. Poland*, referred to above, § 63-64).

61. The Court accordingly upholds the Government's preliminary objection.

62. There was therefore no breach of this provision in respect of the first set of proceedings.

(ii) The second set of proceedings

63. The Court notes that the judgment of 11 February 2006 was served on the applicant on 5 March 2006. The time-limit for lodging a cassation appeal was therefore to expire on 5 April 2006. On 25 March 2006 the court was informed about the assignment of a legal-aid lawyer to her case. It is not in dispute between the parties that the applicant was informed thereof shortly afterwards. It was open to the applicant within thirty days from the latter date to seek leave to appeal out of time.

64. However, the Court notes that the applicable domestic regulations do not make it obligatory for legal-aid lawyers to inform legally-aided parties of their refusal to prepare cassation appeals. In the present case, the legal-aid lawyer informed the court of her refusal, but failed to do the same in respect of the applicant. As a result, the applicant was ultimately informed of the refusal on 6 July 2006, long after she could have sought leave to appeal out of time.

65. The applicant was thereby deprived of the possibility of bringing her case to the Supreme Court, either with the assistance of a legally-aid lawyer or by a privately hired lawyer.

66. The Court accordingly dismisses the Government's preliminary objection.

67. There has therefore been a violation of Article 6 § 1 of the Convention.

(iii) The third set of proceedings

68. The judgments given by the Gdańsk Regional Administrative Court on 25 May 2005 were served on the applicant on 6 July 2005. The applicant was informed of the legal-aid lawyer's assignment to her case by a letter of 28 July 2005. It was this date which marked the beginning of the thirty-day period within which a motion for leave to appeal out of time could be filed. The court and the applicant were informed of the lawyer's refusal on 10 August 2005.

69. The Court notes that on that latter date the applicant still had eighteen days within which to avail herself of the possibility of seeking leave to appeal out of time, as referred to above (see paragraph 60; compare and contrast with *Siałkowska*, referred to above, §§ 114-117, where the applicant had only three days left, *mutatis mutandis*).

70. It cannot therefore be said that she was put in a position where her effective access to a court was restricted in breach of Article 6 § 1 of the Convention. The Court therefore upholds the Government's preliminary objection.

71. There was therefore no violation of this provision.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

72. The applicant complained that the administrative courts had wrongly assessed the evidence and, as a result, had failed to establish the facts of the case correctly and had given erroneous judgments.

73. 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 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).

74. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant sought compensation for pecuniary damage in the amount of 442 euros (EUR) and non-pecuniary damage in the amount of 5,000 euros (EUR).

77. 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.

78. 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

79. 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

80. 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

1. *Decides* unanimously to join the applications;
2. *Joins* unanimously *to the merits* the Government's preliminary objection concerning exhaustion of domestic remedies by way of seeking leave to appeal out of time;
3. *Declares* unanimously admissible the applicant's complaint concerning access to the Supreme Administrative Court and the remainder of the application inadmissible;
4. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention in respect of the first and third sets of administrative proceedings and *upholds* the Government's above-mentioned preliminary objection;
5. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of the second set of administrative proceedings and *dismisses* the Government's above-mentioned preliminary objection;
6. *Holds* unanimously
 - (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;
7. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 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 separate opinion of Judge Mijović is annexed to this judgment.

N.B.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE MIJOVIĆ

As emphasised in my previous concurring/dissenting opinions in eight recent cases,¹ 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 the general one, related not only to criminal, but both civil and administrative proceedings. That is the reason I voted against the majority's decision to hold that there has been no violation of Article 6 § 1 of the Convention in respect of the first and third sets of administrative proceedings in this applicant's case.

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, *Subicka v. Poland*, no. 29342/06, 14 September 2010, *Bąkowska v. Poland*, no. 33539/02, 12 January 2010, *Słowik v. Poland*, no. 31477/05, 12 April 2011.