



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

FOURTH SECTION

CASE OF SIWIEC v. POLAND

(Application no. 28095/08)

JUDGMENT

STRASBOURG

3 July 2012

FINAL

03/10/2012

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

In the case of Siwiec v. Poland,

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 12 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 28095/08) 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 Witold Siwiec (“the applicant”), on 14 May 2008.

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

3. The applicant complained that he had been unable to present his civil case to the courts on an equitable basis *vis-à-vis* the opposite party.

4. On 11 October 2010 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 1960 and lives in Zabrze.

6. From 2000 until 2004 the applicant ran a business, a shoe shop, with his wife.

7. In October 2004 he started serving a prison sentence.

8. On 4 September 2006 he lodged a civil action against his wife with the Łuków District Court, claiming that she should transfer the lease of the shop to him, together with the merchandise which had been left there at the time of his arrest. He also claimed compensation for damage which he had

allegedly sustained as a result of her having unlawfully taken over the business after his arrest, in the amount of 2,000 Polish zlotys (PLN) per month since October 2004.

9. He further requested exemption from court fees. In the statement of claim he informed the court that his opportunity to represent himself properly had been curtailed by the fact that he was serving a prison sentence.

10. The proceedings were conducted under the procedural provisions of the Code of Civil Procedure pertaining to commercial disputes, providing, in particular, for certain restrictions as regards time-limits for proposing evidence to be examined by the first-instance court (*prekluzja dowodowa*).

11. On 20 December 2006 the Lublin Regional Court exempted the applicant from the obligation to pay court fees in the amount of PLN 5,850 but maintained his obligation to pay other court fees as they arose in the future. The court noted that the applicant was poor and did not have any savings which would secure his procedural interests in the proceedings.

12. On 22 February 2007 the applicant requested that witness C.O., the owner of the shop, be heard by the court to testify on the lease.

13. On 7 May 2007 the court issued a decision dismissing the applicant's request for the witness C.O. to be heard. The court reiterated that according to Article 479¹² § 1 of the Code of Civil Procedure the applicant's request had to be refused, as he had failed to submit it with his statement of claim. The court further noted that the requested evidence was of no importance for the case. The decision was sent to the applicant. It was served on him on 30 May 2007.

14. A date for the hearing was scheduled for 11 June 2007.

15. By a letter of 31 May 2007 the applicant requested the court to arrange for him to be brought to the hearing from Biała Podlaska Prison, where he was detained at that time. He also reiterated that witness C.O. should be questioned and requested that K.M. and A.M. also be heard by the court as witnesses. The applicant failed to submit copies of his request to the court as required by Article 128 § 1 of the Code of Civil Procedure (see paragraph 28 below).

16. On 11 June 2007 the court requested the applicant to complete his request by submitting copies of it with a view to having them served on the defendant. The applicant failed to comply with the court's request.

17. A hearing in the case was held on the same day. It lasted five minutes. The defendant stated only that she did not accept the applicant's claim. The applicant was neither present nor represented.

18. The court gave a judgment on 25 June 2007. It dismissed the applicant's claim, finding no grounds on which to accept that he had suffered any damage or that the defendant had been acting unlawfully.

19. In the written reasons for that judgment the court referred to Article 479¹² § 1 of the Code of Civil Procedure (see paragraph 27 below)

and held that the applicant's request for C.O. to be heard as a witness had been submitted too late. It should have been submitted with the statement of claim. The court did not refer to the applicant's request to be brought to the hearing held on 11 June 2007.

20. The applicant appealed. He argued that the first-instance court had assessed the evidence wrongly and reached untenable conclusions. He further submitted that he was serving a prison sentence and that it was therefore very difficult for him to effectively defend his interests in the proceedings. He requested exemption from all court fees and for a legal-aid lawyer to be assigned to represent him before the appellate court.

21. By a decision of 1 October 2007 the Lublin Regional Court refused to grant legal aid to the applicant, finding that he was able to present his own case to the court. The court was of the view that the fact that his claim had been dismissed was not tantamount to a finding that the applicant was unable to argue his case. The court exempted him from the obligation to pay court fees in the amount of PLN 6,750 and dismissed the remainder of his request. It noted that the applicant remained in prison and that his financial situation had not improved since the previous decision on court fees had been given (see paragraph 10 above).

22. The applicant appealed against this decision in so far as it related to the refusal of legal aid. He submitted that the fact that he was relatively articulate did not suffice for a finding that he was able to prepare and present legal arguments to the appellate court in a sufficiently competent manner. He reiterated that he was serving a prison sentence, which made it difficult for him to act effectively in defence of his interests in the proceedings.

23. On 30 October 2007 the Lublin Court of Appeal dismissed his appeal against the refusal to grant legal aid, essentially sharing the views of the first-instance court. It further noted that the fact that the applicant was serving a prison sentence did not of itself justify assigning a lawyer to the case, because it was not necessary for the applicant to appear in person before the court.

24. On 18 December 2007 the Lublin Court of Appeal dismissed the applicant's appeal against the first-instance judgment, essentially sharing the conclusions of the first-instance court. The court accepted that the case concerned a commercial dispute and was therefore governed by the more strict regulations of the Code of Civil Procedure. In the written grounds for the judgment the court relied on the parties' statements of claims and on the defendant's statements made before the court.

25. This judgment was served on the applicant on 29 January 2008.

26. On 6 February 2008 the Lublin Court of Appeal granted the applicant legal aid for the purposes of preparing a cassation appeal. On 11 February 2008 the Lublin Bar Association assigned M. K. to the case.

27. By a written legal opinion dated 25 February 2008 the lawyer informed the applicant that he was refusing to prepare a cassation appeal in the case. He was of the view that there were no legal grounds on which such an appeal could be prepared. This opinion was served on the applicant shortly afterwards.

II. RELEVANT DOMESTIC LAW

28. Article 479¹² § 1 of the Code of Civil Procedure provides that in civil commercial cases a plaintiff is obliged to present all his or her legal arguments and relevant evidence in a statement of claim, on pain of losing the right to submit arguments and relevant evidence later on in the proceedings, unless it can be demonstrated that it was impossible to raise the arguments and indicate that evidence earlier, in the statement of claim.

29. Article 128 § 1 of the Code of Civil Procedure provides that a party to civil proceedings should submit multiple copies of his or her pleadings for the purposes of their service on the court and the parties to the proceedings.

30. The relevant provisions of civil law and the case-law of the domestic courts concerning cassation appeals have been extensively summarised in the judgments in the cases of *Siałkowska v. Poland*, no. 8932/05, 22 March 2007; *Staroszczyk v. Poland*, no. 59519/00, 22 March 2007; and *Bąkowska v. Poland*, no. 33539/02, 12 January 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE APPLICANT'S ABSENCE BEFORE THE COURTS

31. The applicant complained that he had been unable to present his civil case to the courts on an equitable basis *vis-à-vis* the opposite party. He referred in this respect to 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 ...”

A. Admissibility

32. The Government submitted that the applicant could not claim to be a victim of a breach of the Convention, because during the hearing held on 11 June 2007 his wife had not raised the issue of either the applicant's absence at that hearing or of C.O. not having been summoned as a witness.

33. The applicant disagreed.

34. The Court fails to see how and why the fact that the opposite party did not raise the procedural complaints raised by the applicant before the Court should have any bearing on the applicant's victim status. This objection by the Government should therefore be dismissed.

35. The Government further argued that the applicant had not exhausted all the available remedies provided for by Polish law. In his appeal against the first-instance judgment of 25 June 2007 he failed to complain about the refusal to bring him before the first-instance court for the purposes of the hearing held on 11 June 2007 and about that court's refusal to summon C.O. as a witness.

36. The Court considers that this objection is closely linked to the substance of the applicant's complaint, and that its examination should therefore be joined to the merits.

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

B. Merits

1. The parties' submissions

38. The Government argued that the proceedings in the applicant's case had been conducted in accordance with the provisions of the Code of Civil Procedure applicable in commercial cases. The objective of this special procedural regime was to conduct the proceedings speedily. The Code imposed on the parties an obligation to submit the evidence in their statement of claim on pain of losing the opportunity to submit that evidence later on (see paragraph 28 above). This provision served the purpose of ensuring the timely availability of the evidence, and was designed to discipline the parties. The applicant, who had requested to have C.O. heard as a witness in his letter of 22 February 2007, six months after lodging his statement of claim with the court, had failed to respect this obligation. The court, when dismissing that request by a decision of 7 May 2007, had regard to this failure. The court had further noted that the evidence requested by the applicant was of no importance for the case.

39. The Government further submitted that the applicant had reiterated his request on 31 May 2007. He had also requested to be brought to the hearing from prison. However, he had failed to submit this request with the requisite number of copies, to be served on the court and the parties. He had thereby failed to respect the obligation formulated in Article 128 § 1 of the Code of Civil Procedure, according to which pleadings had to be submitted in a sufficient number of copies for the purposes of serving them on the court and the other parties to the proceedings (see paragraph 29 above).

40. Subsequently, the applicant had failed to comply with the court's request of 11 June 2007 for copies of his request of 31 May 2007. He had thereby failed to respect his obligation to cooperate with the court. His request could not be processed because of his failure to respect his procedural obligations. In any event, the court had already refused to hear C.O.

41. As to the applicant's absence from the hearing held on 11 June 2007, the Government averred that the applicable provisions of the Code of Civil Procedure provided that a party's failure to attend a hearing should not prevent the court from taking evidence, unless the court considered the attendance necessary. Furthermore, a person serving a prison sentence could be brought to a courtroom in a civil case only when the court considered it necessary, that is only when the facts of the case could be established by questioning the parties.

42. The Government further submitted that the applicant should have requested legal aid at the outset of the proceedings, but he had failed to do so.

43. They concluded that there had been no breach of the Convention in the present case.

44. The applicant complained of a breach of the equality-of-arms principle in that the domestic courts examining his civil claim had not granted him leave to appear at the one and only hearing held before the first-instance court, and had refused to question witnesses he had suggested. He had also been refused legal aid for the appellate proceedings. He had thereby been deprived of the opportunity to argue his case effectively.

2. *The Court's assessment*

45. The Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see, among other authorities, *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II, and *Wierzbicki v. Poland*, no. 24541/94, § 39, 18 June 2002).

46. Legal assistance in civil cases is not mandatory either, although, in certain circumstances, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for effective access to court (see *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32, p. 14-16).

47. Thus the questions of personal presence, the form of the proceedings (oral or written) and legal representation should be analysed in the broader context of the “fair trial” guarantee of Article 6. The Court should establish whether the applicant, a party to the civil proceedings, had been given a reasonable opportunity to have knowledge of and comment on the observations made or evidence adduced by the other party and to present his case under conditions that did not place him at a substantial disadvantage *vis-à-vis* his opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000; *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274; and *Rasmussen v. Poland*, no. 38886/05, § 29, 28 April 2009; *mutatis mutandis*).

48. The Court has already examined a number of cases concerning civil proceedings where applicants serving prison sentences have not been brought before the first-instance court. Given the obvious difficulties involved in transporting convicted people from one location to another, the Court accepted in principle that in cases where a claim is not based on the plaintiff’s personal experience representation of the detainee by an advocate would not be in breach of the principle of equality of arms (see, for example, *Shilbergs v. Russia*, no. 20075/03, § 106, 17 December 2009).

49. However, in such cases the Court considered that the nature of the civil dispute was the core element to be taken into consideration in the assessment of the cases. It has already found that civil cases concerning compensation claims arising from alleged ill-treatment of applicants in prison settings were of such a nature as to justify the plaintiff’s personal presence before the first-instance courts (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007). The nature of the dispute was also decisive in the case of *Sokur v. Russia* (no. 23243/03, § 38, 15 October 2009) where the Court held that even if the applicant had appointed a representative it would not have compensated for his personal absence from the court since his claims for compensation for damage resulting from his unlawful detention and conviction “were, to a major extent, based on his personal experience”. In the same vein, in a case concerning a civil action brought by a convicted person in respect of the conditions of his detention the Court held that the plaintiff’s personal presence should have been secured, as his testimony describing the conditions of his detention, of which only the applicant himself had first-hand knowledge, would have constituted an indispensable part of the plaintiff’s presentation of the case (see *Shilbergs*, cited above, § 111).

50. Turning to the circumstances of the present case, the Court observes that the civil case brought by the applicant concerned a commercial dispute between the applicant and his wife in the context of a shop which they had leased and run prior to the applicant's arrest. That dispute was governed by the provisions on commercial procedure. The applicant submitted his statement of claim to the court in September 2006. Subsequently, in February 2007 he requested that witness C.O. be questioned. The court refused his request, referring to Article 479¹² of the Code of Civil Procedure and holding that it was belated as the applicant had failed to submit it at the time of filing his statement of claim.

51. The Court accepts in principle that in certain types of civil proceedings the parties can be obliged to act in such a manner as to shorten the period necessary for the taking of evidence, and that in commercial proceedings such procedural arrangements can be justified by the need to gather necessary evidence and reach a judicial decision on the merits of a case as quickly as possible.

It is not in dispute that in the present case the applicant failed to observe his obligation stipulated in the applicable provisions of the Code. Moreover, the Court observes that in its decision of 7 May 2007 the first-instance court noted that the testimony of C.O. was of no importance to the case.

52. It is further noted that the applicant subsequently requested that the evidence of two further witnesses be taken. He also requested the court to enable him to be brought to the hearing on the merits of the case from the prison where he was serving his sentence at that time. However, he failed to submit copies of this request to the court with a view to their service on the opposing party, as required by the applicable provisions of procedural law. The Court accepts that a requirement to submit pleadings to a court in a number of copies sufficient for service on the opposite party is reasonable and serves the purpose of the proper organisation of the proceedings. The applicant failed to observe this obligation.

53. The Court is therefore of the view that he failed thereby to display the diligence which should normally be expected from a party to civil proceedings (see *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, pp. 14-15, § 33, and *Romaniak v. Poland*, no. 53284/99, § 59, 24 October 2006, *mutatis mutandis*).

54. The Court further observes that it was not argued or shown that the court had questioned any witnesses proposed by the opposing party to the civil proceedings. In such circumstances the Court is prepared to accept that the applicant's personal presence at the hearing scheduled for 11 June 2007 was not strictly necessary.

55. It is further noted that in his appeal against the first-instance judgment and in his request for legal aid the applicant stated that he was serving a prison sentence and referred to his difficulty in effectively defending his interests.

However, the appellate court was of the view that legal aid was unnecessary as the applicant was able to present his own case to the court. In this connection, the Court reiterates that there is no obligation under the Convention to make legal aid available for disputes (*contestations*) in civil proceedings, as there is a clear distinction between the wording of Article 6 § 3 (c), which guarantees the right to free legal assistance under certain conditions in criminal proceedings, and of Article 6 § 1, which makes no reference to legal assistance (see *Del Sol v. France*, no. 46800/99, § 20, ECHR 2002-II, and *Tabor v. Poland*, no 12825/02, § 39, 27 June 2006). Moreover, it was not argued that the applicant had been prevented in any way from requesting to be granted legal aid at the outset of the proceedings. He chose to do so only after he had become aware that the first-instance court had dismissed his claim.

56. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was given an adequate opportunity to present his case to the courts.

57. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF ACCESS TO A COURT

58. The applicant complained that the legal-aid lawyer had refused to prepare a cassation appeal in his case. He relied on Article 6 § 1 of the Convention.

59. The Court has already had occasion to set out at length the relevant principles derived from its case-law in this area (see *Staroszczyk v. Poland*, §§ 121-129; *Siałkowska v. Poland*, §§ 101-07; and *Bąkowska v. Poland*, §§ 44-48; cited above; *Smyk v. Poland*, no. 8958/04, §§ 54-59, 28 July 2009; and *Zapadka v. Poland*, no. 2619/05, §§ 57-61, 15 December 2009). It adopts those principles for the purposes of the instant case.

60. In those cases, the Court has examined the situation of legally aided parties faced with refusals by their lawyers to prepare cassation appeals 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 such an appeal should run *de novo* from the day on which the applicant is informed of the legal-aid lawyer's refusal to lodge an 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 (see *Kulikowski v. Poland*, no. 18353/03, § 69-71, ECHR 2009-... (extracts), and *Antonicelli v. Poland*, no. 2815/05, § 44-45, 19 May 2009).

61. 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, service on the party of notification that a legal-aid lawyer has refused to prepare an appeal does not trigger the running of the time-limit *de novo*. That approach was regarded by the Court as incompatible with Convention standards, save for situations where the refusal of the legal-aid lawyer to prepare an appeal has been notified to the applicant well before the time-limit was due to expire (see *Smyk*, cited above, §§ 63-65).

62. Turning to the circumstances of the present case, the Court first notes that the legal-aid lawyer's refusal was prepared in writing. He explained why an appeal would not have offered reasonable prospects of success. The Court further observes that the second-instance judgment was served on the applicant's legal-aid lawyer between 12 and 24 February 2007. At the material time, under the applicable provisions of the Code of Civil procedure, the sixty-day time-limit started to run on the date of service of the appellate court judgment on the lawyer. The lawyer informed the applicant that he was refusing to prepare an appeal in a written legal opinion dated 25 February 2007. On that date, the time-limit for lodging the appeal was to expire in, at the earliest, six weeks. It cannot therefore be said that the applicant was left with so little time to have an appeal prepared in his case as to be deprived of a realistic opportunity to have his case brought to, and argued before, the appeal court (compare and contrast with *Siałkowska*, cited above, §§ 11-155, where the applicant had only three days left).

63. 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 to the extent that his access to court was impaired in breach of Article 6 § 1 of the Convention.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's presence before the courts admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 3 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Bjorgvinsson
President