



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

FOURTH SECTION

CASE OF TABOR v. POLAND

(Application no. 12825/02)

JUDGMENT

STRASBOURG

27 June 2006

FINAL

27/09/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tabor v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 8 June 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 12825/02) 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 Józef Tabor (“the applicant”), on 11 January 2001.

2. The applicant, who had been granted legal aid, was represented by Mr Zbigniew Cichoń, a lawyer practising in Kraków. The Polish Government (“the Government”) were represented by their Agents, Mr Krzysztof Drzewicki and, subsequently, by Mr Jakub Wołosiewicz.

3. The applicant alleged that the court’s refusal to grant him legal assistance in connection with the preparation of a cassation appeal to the Supreme Court infringed his right to a fair hearing.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 24 January 2006 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. In July 1993 the applicant was employed at the refinery “T.” as director of a department. From 1993 to 1997 the conditions of his contract of employment were changed several times. On 30 September 1997 the refinery gave notice to terminate the applicant’s contract.

8. On 7 October 1997 the applicant lodged with the Katowice Regional Court a compensation claim against the refinery, in the amount of PLN 19,273, for unlawful termination of his contract. He also claimed reinstatement. By a decision of 3 December 1997 the Katowice Regional Court considered that it was not competent to examine his case and transmitted it to the Katowice District Labour Court.

9. By a judgment of 4 December 1998 the Katowice District Labour Court ordered the refinery to pay the applicant compensation of PLN 5,008.74 for unlawful termination of the employment contract. The compensation corresponded to 3 months’ remuneration. The court dismissed the remaining claims.

10. Both parties to the proceedings appealed against the first-instance judgment. By a judgment of 18 November 1999 the Katowice Regional Court dismissed their appeals.

11. On 26 November 1999 the applicant requested the Katowice Regional Court to grant legal aid for the purpose of instituting cassation proceedings. He referred to his difficult financial situation and to the fact that he had been unemployed from November 1997 to May 1999 due to the termination of his employment contract by the defendant company. He also submitted that from May 1999 he had been receiving a net salary of PLN 750 and submitted documents to show the period of his unemployment and his earnings. In December 1999 the applicant, having received no response from the Katowice Regional Court, lodged a cassation appeal himself.

12. By a decision of 17 January 2000 the Katowice Regional Court dismissed his request for legal aid for the purpose of instituting the cassation proceedings without giving written reasons for its decision.

13. On the same day, the Katowice Regional Court rejected the applicant’s cassation appeal on the ground that it had not been lodged by a lawyer, as required by the law.

14. The applicant lodged an appeal against these decisions with the Supreme Court. He also requested the grant of retrospective leave to lodge a cassation appeal out of time. He further asked that court to appoint a lawyer for him in order to assist him in the preparation of his appeal. The applicant argued that the Regional Court had failed to deal within the time-limit with his request for legal aid. This had forced the applicant to lodge the cassation appeal himself. The fact that the cassation appeal had been rejected, combined with the unmotivated refusal of legal aid, had made it impossible

to have his interests protected and his arguments properly presented to the cassation court.

15. By a decision of 25 May 2000 the Supreme Court dismissed his appeal against the decision rejecting the cassation appeal. The court observed that the applicable law clearly provided that a cassation appeal could only be lodged by a lawyer. The Supreme Court further refused to entertain the appeal in so far as it was related to the refusal of legal aid, observing that under the applicable legal provisions an appeal to the Supreme Court against an interlocutory decision of the Court of Appeal was only available against a decision to reject a cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal aid

16. Article 113 § 1 of the Code of Civil Procedure provides that a party to the proceedings may ask the court competent to deal with the case to grant him or her an exemption from court fees provided that he submits a declaration to the effect that the fees required would entail a substantial reduction in his and his family's standard of living.

17. Pursuant to Articles 117 of the Code, persons exempted from the court fees may request that legal aid be granted to them. The court will then request the relevant District Bar Association or the District Chamber of Legal Advisers to assign an advocate or a legal adviser to the claimant's case.

18. The Polish Code of Civil Procedure lays down the principle of mandatory assistance of an advocate in cassation proceedings. Article 393² § 1 of the Code of Civil Procedure, applicable at the relevant time, required that a cassation appeal be filed by an advocate or a legal adviser.

19. Under Article 393⁴ § 1 of the Code of Civil Procedure a cassation appeal had to be lodged with the court that had given the relevant decision within one month from the date on which the decision with its written grounds was served on the party concerned. Cassation appeals which were not lodged by an advocate or a legal adviser would be rejected.

B. Appeals against interlocutory decisions

20. Article 394 of the Code of Civil Procedure guarantees to a party to the proceedings a right to appeal against a decision of the first-instance court which terminates the proceedings. Such an interlocutory appeal (*zażalenie*) is also available against certain interlocutory decisions, specified in this provision. An appeal is available against a refusal of exemption from court fee and, likewise, against a refusal of legal aid, when such decisions were given by a first-instance court.

21. The Supreme Court held in a number of its decisions that no appeal to the Supreme Court is available against an interlocutory decision on legal aid given by a second-instance court. It observed that a decision on legal aid was expressly mentioned in a list of interlocutory decisions against which an appeal was specifically provided for under Article 394 of the Code of Civil Procedure, but only when they were given by the first-instance court. Furthermore, under this provision an appeal was available against decisions which terminated the proceedings in the case. However, the court noted that a refusal of legal aid could not be regarded as “terminating the proceedings in the case” within the meaning of this provision because this notion had to be reserved for decisions containing a certain element of assessment of the merits of a given claim. The decisions on legal aid issues did not contain such elements. As they did not fall into either of the two principal categories listed in Article 394, the only possible conclusion was that no appeal was available against them (II CZ 9/97, 21 February 1997, unpublished; I CZ 27/97, 4 April 1997, OSNC 1997, No. 9, item 120; I CZ 14/97, 8 April 1997, OSN 1997 No. 9, item 120).

C. Written grounds for interlocutory decisions

22. Pursuant to Article 357 of the Code of Civil Procedure, written grounds for interlocutory decisions shall be prepared by the court only if an appeal is available against such a decision.

D. Leave to appeal out of time

23. Pursuant to Article 169 of the Code, a party to the proceedings may ask for retrospective leave to appeal outside the prescribed time-limit; the appeal shall be submitted simultaneously with the lodging of such a request.

THE LAW

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

24. The applicant complains that the court’s refusal to grant him legal assistance in connection with the preparation of a cassation appeal to the Supreme Court infringed his right to a fair hearing, guaranteed by Article 6 § 1 of the Convention which, in so far as relevant, reads:

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

II. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

25. In their letter of 4 April 2006, the Government submitted that the applicant had failed to exhaust relevant domestic remedies.

26. They argued that it had been open to him to lodge an appeal with an appellate court against the Regional Court's refusal of legal aid. They argued that under Article 394 of the Code of Civil Procedure a refusal of legal aid was subject to an appeal to a second-instance court as it was expressly listed among interlocutory decisions in respect of which an appeal to a higher court was available. The applicant had brought such an appeal, but he had erred in lodging it with the Supreme Court. By lodging this appeal with a court which was not competent to examine it, he had failed to show requisite diligence in dealing with his case.

27. The applicant challenged the Government's arguments.

28. The Court recalls that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted under Rules 51 or 54, as the case may be (see *K. et T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII, and *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). In the present case, in their written observations at the admissibility stage, submitted on 4 September 2002, the Government submitted that "[by] reference to the criterion of exhaustion of available domestic remedies, the Government of Poland submit that the applicant appears to have exhausted all the remedies provided for by Polish law". In its decision on the admissibility of 24 January 2006, the Court declared the case admissible having regard, *inter alia*, to this submission of the Government.

29. The Court notes that the plea of inadmissibility based on the alleged non-exhaustion of domestic remedies put forward in their letter of 4 April 2006 was not made by the Government in their written submissions before the adoption of the decision of 24 January 2006. There are no exceptional circumstances which would have absolved the Government from the obligation to raise all their preliminary objections before the Court's decision as to the admissibility of the application (see *Prokopovich v. Russia*, no. 58255/00, § 29, 18 November 2004).

30. Consequently, the Court considers that the Government are estopped from raising the preliminary objections contained in their observations of 4 April 2006 at the present stage of the proceedings. The Government's objection must therefore be dismissed.

A. The parties' submissions

1. The Government's submissions

31. The Government stressed that the requirements of fairness were not necessarily the same in cases concerning the determination of civil rights and obligations as in cases concerning the determination of a criminal charge (*Dombo Beheer B.V. v. Netherlands* judgment of 27 October 1993, § 32). Article 6 § 1 provided a guarantee for persons seeking legal assistance for the purposes of civil proceedings before the national courts, although a less extensive one than in criminal cases. The question of legal assistance should however be seen as an element of the right of access to a court, rather than the right to a fair hearing. In this context, the means by which a State ensured effective access to civil courts fell within its margin of appreciation (*Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, § 26).

32. Further, the Government argued that legal aid was required to ensure the right of access to a court in civil cases only in situations in which a person could not plead his case effectively by himself or when the law made legal representation compulsory. But even in such cases legal aid was not required in connection with all kinds of civil proceedings. For this reason, the right enunciated in the Court's judgments concerning civil cases could not be comparable in scope to that guaranteed under Article 6 § 3 (c). This also followed from the fact that the rights guaranteed by Article 6 § 1 had to be determined by reference to the particular facts and circumstances of an individual case. In consequence, the Government asserted that the problems involved in the present case, concerning a claim for reinstatement at work and compensation for unlawful termination of a contract, required to be distinguished from other, more complex cases, for example, regulating civil status and family relationships.

33. Thus, in the opinion of the Government, the applicant's argument that the refusal to grant him legal aid in the cassation proceedings did not comply with the requirements of a fair trial within the meaning of Article 6 § 1 of the Convention was ill-founded. Unlike Article 6 § 3 (c) of the Convention, which expressly provides for legal aid in criminal cases, the Convention does not guarantee such a right in civil cases. In consequence, the State is not obliged to ensure legal assistance in every civil case (*R.D. v. Poland*, nos. 29692/96 and 34612/97, § 44, 18 December 2001).

34. The Government admitted that Polish law made legal representation in cassation proceedings compulsory. The courts considering each case had a right to assess whether legal aid was really necessary, having regard to the circumstances of the case. In the present case, the refusal had not prevented the applicant from lodging a cassation appeal because he could have appointed a lawyer of his choice and could have had such an appeal "filed and signed by an advocate", as required by law. The fact that the applicant

had not seized that opportunity could not, in the Government's view, be held against the national authorities.

2. *The applicant's submissions*

35. The applicant disagreed. He stressed that under domestic law a cassation appeal had been available in his case and that he had intended to pursue all legal remedies that were open to him. He admitted that he had not appointed a lawyer of his choice but explained that he had not had sufficient means to pay legal fees. It was because of his lack of financial resources that he had requested the Katowice Regional Court to grant him legal aid for the purpose of pursuing the cassation proceedings. In his motion to the court which he had submitted on 26 November 1999 he had explained in detail his financial situation and drawn particular attention to the fact that he had been unemployed from November 1997 to May 1999.

36. The applicant further argued that the Katowice Regional Court had refused to grant him legal aid for the purpose of the cassation proceedings without invoking any reasons for its decision; in particular it had not shown that the applicant was capable of bearing the costs of legal representation. The applicant argued that this decision had therefore been arbitrary.

37. The applicant further averred that the Regional Court's decision had been issued on 17 January 2000, a month after the prescribed time-limit for lodging a cassation appeal had expired. That had left him without any chance to seek legal assistance of his choice so as to allow him to lodge a cassation appeal in time.

38. In conclusion, the applicant submitted that the conduct of the Regional Court lacked diligence, which was all the more intolerable as the cassation procedure had been set up to remedy procedural shortcomings committed by lower courts.

B. The Court's assessment

39. The Court points out at the outset 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 on certain conditions in criminal proceedings, and of Article 6 § 1, which makes no reference to legal assistance (*Del Sol v. France*, no. 46800/99, § 20, ECHR 2002-II). However, the Court recalls that the Convention is intended to guarantee practical and effective rights. This is particularly so of the right of access to court in view of the prominent place held in a democratic society by the right to a fair trial (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, § 24). It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court (*ibid.*; see also among other examples *Steel and Morris v. the United Kingdom*, no. 68416/01, § 59, ECHR 2005-...).

40. The right of access to court is not, however, absolute and may be subject to restrictions, provided that these pursue a legitimate aim and are proportionate. It may therefore be acceptable to impose conditions on the grant of legal aid based, *inter alia*, on the financial situation of the litigant or his or her prospects of success in the proceedings (*Steel and Morris v. the United Kingdom*, cited above, § 62).

In addition, the compatibility of the limitations permitted under domestic law with the right of access to a court set forth in Article 6 § 1 of the Convention depends on the special features of the proceedings in issue, and it is necessary to take into account the whole of the trial conducted according to the rules of the domestic legal system and the role played in that trial by the highest court, since the conditions of admissibility of an appeal on points of law may be more rigorous than those for an ordinary appeal (*Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, p. 15, § 26). It is for the Contracting States to decide how they should comply with the obligations arising under the Convention. The Court must satisfy itself that the method chosen by the domestic authorities in a particular case is compatible with the Convention.

41. In this connection, the Court observes, firstly, that the Polish law of civil procedure requires that a party to civil proceedings be assisted by an advocate or legal counsel in the preparation of his or her cassation appeal against a judgment given by a second-instance court, and that an appeal drawn up by the party, without legal representation, will be rejected by the court (see §§ 20 – 21 above).

42. The Court is of the view that the requirement that an appellant be represented by a qualified lawyer before the court of cassation cannot in itself be seen as contrary to Article 6, such a requirement being clearly compatible with the characteristics of the Supreme Court as a highest court examining appeals on points of law. This requirement cannot be regarded as imposing on the domestic courts an unqualified obligation to grant free legal assistance to a person wishing to institute cassation proceedings. However, while the manner in which Article 6 is to be applied to courts of appeal or of cassation depends on the special features of the proceedings in question, there can be no doubt that a State which does institute such courts is required to ensure that persons amenable to the law shall enjoy before them the fundamental guarantees of fair hearing contained in that Article (see, for instance, *Vacher v. France*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2148-49, §§ 24 and 28).

43. In discharging that obligation, the State must, moreover, display diligence so as to secure to those persons the genuine and effective enjoyment of the rights guaranteed under Article 6 (*R.D. v. Poland*, nos. 29692/96 and 34612/97, § 44, 18 December 2001).

44. The Court notes in this connection that in the present case the Katowice Regional Court refused to grant legal assistance to the applicant for the purposes of legal representation in the cassation proceedings without invoking any reasons for it. The Court is aware that that under the

applicable provisions of procedural law the court was not obliged to give any reasons for such a refusal.

45. However, in the absence of written grounds for this decision, it is difficult for the Court to understand the reasons for which the Regional Court considered that the grant of legal aid was not justified in the circumstances of the case. It further notes that a decision on legal aid is, under the applicable domestic law, dependent on the financial situation of the party and its ability to pay the costs of litigation (see § 16 above). It observes in this connection that the case concerned the applicant's compensation claim against his former employer for the unlawful termination of his employment. The applicant also claimed reinstatement in his employment. The applicant argued before the Regional Court in support of his requests that he had been unemployed from November 1997 until May 1999. The Court considers that the principle of fairness required the court to give reasons for rejecting the applicant's request.

46. Lastly, the Court observes that the Katowice Regional Court's decision refusing the applicant legal aid was issued on 17 January 2000. The Court emphasises that this was one month after the prescribed time-limit for lodging a cassation appeal had expired. That left the applicant, for obvious reasons, without any realistic opportunity of seeking legal assistance of his choice for the lodging of a cassation appeal, it being recalled that professional legal representation was obligatory, and of bringing his case to the Supreme Court. The Court is therefore of the view that the manner in which the relevant court handled the applicant's request for legal aid was not compatible with the requirement of diligence.

47. Accordingly, having regard to the circumstances of the case seen as a whole, the Court is of the view that there has been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant sought compensation for pecuniary and non-pecuniary damage in the amount of PLN 956,728.

50. The Government submitted that in so far as the applicant's claims related to alleged pecuniary damage, he had failed to adduce any evidence to show that he had suffered any actual loss. As to non-pecuniary damage, the Government submitted that the amount claimed by the applicant was excessive.

51. The Court is of the view that the applicant's claim for pecuniary damage has not been duly substantiated. 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 2,000 under this head.

B. Costs and expenses

52. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought PLN 20,000 for costs and expenses incurred in the proceedings before the Court.

53. The Government considered that the sum was excessive. They asked the Court to make an award, if any, only in so far as the costs and expenses concerned had been actually and necessarily incurred and were reasonable as to quantum.

54. The Court considers it reasonable to award the applicant EUR 1,000 for costs and expenses involved in the proceedings before it, less EUR 685 received by way of legal aid from the Council of Europe.

C. Default interest

55. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses, less EUR 685 (six hundred and eighty-five euros) received by way of legal aid from the Council of Europe;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President