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

FOURTH SECTION

CASE OF LASKOWSKA v. POLAND

(Application no. 77765/01)

JUDGMENT

STRASBOURG

13 March 2007

FINAL

13/06/2007

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 Laskowska v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 20 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 77765/01) 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 Lucyna Laskowska ("the applicant"), on 1 August 2000.

2. The applicant, who had been granted legal aid, was represented by Mr W. Hermeliński, and subsequently by Ms A. Metelska, lawyers practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that on account of the refusal to grant her legal aid she could not present her case effectively and had been deprived of access to the Supreme Court in breach of Article 6 § 1.

4. On 13 September 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. Written submissions were received from the Helsinki Foundation for Human Rights in Warsaw, which had been granted leave by the President to intervene as a third party (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lives in Czeladź.

7. She and her husband married in 1973. Their daughter was born in 1976. It appears that the applicant's husband abused alcohol and subjected her to psychological harassment over a long period of time. In the early 1980s that situation led to the applicant's nervous breakdown. She began receiving neurological treatment. In October 1993 she and her daughter left the matrimonial home. Nonetheless, the applicant's husband continued to harass her.

8. In November 1995 the applicant applied for a divorce order which was granted in March 1996. The divorce court found that the applicant's husband had been at fault in respect of the breakdown of their marriage.

9. In July 1996 the applicant began receiving psychiatric treatment. In January 1997 she was declared to have a "second degree of invalidity" and granted an invalidity pension on account of the state of her mental health. In March 1998 the applicant was declared entirely unfit for work.

10. On 26 February 1999 the applicant filed with the Będzin District Court a claim for maintenance in the amount of PLN 600 per month against her former husband. At that time she was in receipt of a gross monthly invalidity pension in the amount of PLN 388.82.

11. On 29 March 1999 the District Court gave judgment by default, allowing the applicant's claim in full.

12. Subsequently, the defendant filed an objection against the judgment by default. On 20 September 1999 the District Court quashed that judgment and ruled on the applicant's maintenance claim. It ordered the defendant to pay monthly maintenance in the amount of PLN 300 as of 1 April 1999.

13. On 25 October 1999 the applicant lodged an appeal against the first-instance judgment. She requested the District Court to exempt her from the court fees and to appoint a legal-aid lawyer in the appeal proceedings. She submitted that she was unable to represent herself during the proceedings due to stress related to her presence in the court. She further submitted that she could not afford a lawyer.

14. On 28 October 1999 the District Court dismissed her application for a legal-aid lawyer[1]. It considered that assistance of a legal-aid lawyer was necessary only in complex cases or where a party to the proceedings was incapable of defending his/her interests. However, in the present case those conditions had not been met. It further found that the content of the

1. As a party seeking maintenance, the applicant was statutorily exempted from payment of any court fees in the proceedings.

applicant's submissions to the court supported the finding that she was capable of effectively representing herself.

15. On 19 November 1999 the applicant filed an interlocutory appeal (*zażalenie*) against the decision of 28 October 1999. She referred to the stress caused by her participation in the proceedings. She further submitted that she was receiving psychiatric treatment, had been granted an invalidity pension on account of her mental health and was regularly taking various medicines. Those medicines significantly affected her memory, concentration and the ability to express her thoughts clearly. Furthermore, she submitted that she was not an educated person and that her friends had assisted her in preparation of the court's submissions. Thus, she considered that legal aid was necessary in order to enable her to defend her interests adequately in the proceedings.

16. On 7 December 1999 the Katowice Regional Court dismissed the interlocutory appeal. It endorsed the reasoning of the District Court. In addition, it held that the applicant had not submitted any proof to the effect that she had been receiving psychiatric treatment.

17. The applicant submits that the case-file of the maintenance proceedings included a medical certificate issued on 12 May 1999. That certificate attested that the applicant has been regularly treated in a psychiatric clinic since 1996.

18. On 2 February 2000 the Katowice Regional Court, following a hearing, dismissed the applicant's appeal against the District Court's judgment of 20 September 1999. The court instructed the applicant that a cassation appeal was not provided for in the present case.

19. On 10 March 2000 the applicant requested the Regional Court to appoint a legal-aid lawyer with a view to filing a cassation appeal.

20. On 23 March 2000 the Regional Court informed the applicant that a cassation appeal in her case was not provided for by law and inquired whether she wanted to pursue her legal aid application. On 31 March 2000 the applicant replied in the affirmative.

21. On 14 April 2000 the Regional Court dismissed her application for legal aid. It considered that a cassation appeal in her case could not be lodged as a matter of law, and thus there was no need to provide her with legal assistance. On 2 May 2000 the applicant filed an interlocutory appeal against that decision.

22. On 1 June 2000 the Regional Court rejected her interlocutory appeal as inadmissible in law. Her further appeals were rejected on 6 July and 16 August 2000.

23. On 28 July 2000 the Regional Court informed the applicant that she had been previously advised that a cassation appeal in her case, which could only concern the amount of maintenance, was not available. She was further informed that in the case of a change of circumstances she could seek an increase of her maintenance.

24. On 29 August 2000 the applicant in person lodged a cassation appeal against the Katowice Regional Court's judgment of 2 February 2000. On 14 September 2000 the Regional Court rejected her cassation appeal. It considered that, pursuant to Article 393 § 2 of the Code of Civil Procedure, the cassation appeal in her case was not available as it concerned the amount of maintenance. It also found that the cassation appeal had not been lodged by a lawyer and within the statutory time-limit of one month from the date of the service of the second-instance judgment.

25. On 27 September 2000 the applicant filed with the Supreme Court an interlocutory appeal against the decision of 14 September 2000.

26. On 18 January 2001 the Supreme Court dismissed the applicant's interlocutory appeal. Firstly, it held that, contrary to the position of the Regional Court, the applicant's cassation appeal, which concerned the issue of her entitlement to maintenance, was allowed in accordance with the provisions of the Code of Civil Procedure as applicable at the relevant time. It found that the applicant's case did not concern the issue of the amount of maintenance, which was excluded from the Supreme Court's jurisdiction. However, the applicant's cassation appeal was inadmissible on two other statutory grounds invoked by the Regional Court, namely non-compliance with the applicable time-limit and compulsory legal representation in cassation appeal proceedings.

II. RELEVANT DOMESTIC LAW

A. Relevant constitutional provisions

27. Article 45 § 1 of the Constitution provides as follows:

> "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court."

B. Appointment of a legal-aid lawyer

28. At the relevant time, Article 117 § 1 of the Code of Civil Procedure ("CCP"), provided, in so far as relevant:

> "§ 1. A party [to the proceedings] exempted partly or entirely from court fees, may request that an advocate or a legal adviser be appointed for him/her. ... The court shall grant that request, if it considers that the participation of an advocate or a legal adviser in the case is necessary.
>
> ...
>
> § 2. The provision of the preceding paragraph is also applicable to a party who enjoys a statutory exemption from the court fees, provided that that party

demonstrates, by way of the declaration referred to in Article 113 § 1, that the fees of the advocate or legal adviser would entail a reduction in his/her and his/her family's standard of living.”

29. At the relevant time Article 111 § 1 (1) of the CCP provided that a party seeking maintenance was statutorily exempted from court fees.

30. Article 113 § 1 of the Code of Civil Procedure, in the version applicable at the material time, stipulated:

> “An individual may ask the court competent to deal with the case to grant him 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. Such a declaration shall contain details concerning his family, assets and income. It falls within the court's discretion to assess whether or not the declaration satisfies the requirements for granting the exemption requested.”

C. Compulsory legal representation in cassation appeal proceedings

31. The Code of Civil Procedure lays down the principle of mandatory assistance of a lawyer in cassation appeal proceedings. Article 393^2 § 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. Cassation appeals lodged by a litigant in person would be rejected.

D. Cassation appeal in maintenance cases

32. Article 393 of the Code of Civil Procedure, in the version applicable until 30 June 2000, provided, in so far as relevant:

> “No cassation appeal may be lodged in cases:
>
> 1) ...
>
> 2) relating to maintenance, when it concerns its amount,
>
> ...”

Following the amendments to the Code which entered into force on 1 July 2000, no cassation appeal may be lodged with the Supreme Court in all cases relating to maintenance (Article 392^1 § 2 (1)).

E. Leave to appeal out of time

33. Pursuant to Article 168 § 1 of the CCP if a party to the proceedings did not perform a procedural measure (*czynność procesowa*) within the relevant time-limit through no fault of his/her own, the court shall grant leave to perform such measure outside the prescribed time-limit at the party's request. Article 169 § 3 of the CCP stipulated that the relevant

measure shall be performed simultaneously with lodging the request.

THE LAW

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

34. The applicant complained under Article 6 § 1 of the Convention that she had not been able to present her case effectively on account of the dismissal of her application for legal aid in the appeal proceedings. She alleged that the courts dismissing her application had failed to take into consideration her particular circumstances. Furthermore, she complained that the refusal of legal aid in cassation appeal proceedings had deprived her of access to the Supreme Court. Article 6 § 1 reads, in its relevant part, as follows:

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

35. The Government contested that argument.

A. Admissibility (exhaustion of domestic remedies)

36. The Government submitted that the applicant had not exhausted relevant domestic remedies, because she had failed to make an application for leave to file her cassation appeal out of time. The Supreme Court in its decision of 18 January 2001 had held that a cassation appeal had been available in the applicant's case under the applicable provisions of the Code of Civil Procedure. The Supreme Court nevertheless had found that the cassation appeal had been inadmissible on two statutory grounds, namely non-compliance with the applicable time-limit and compulsory legal representation in cassation appeal proceedings. The Government thus maintained that it could be assumed that if the applicant had lodged a cassation appeal prepared by a lawyer within the prescribed time-limit it would have been admissible.

37. Having regard to the Supreme Court's decision, the Government observed that the Regional Court in its decision of 14 April 2000 had erred in holding that a cassation appeal had not been available in the applicant's case. In their view, the Supreme Court's findings opened to the applicant a possibility of applying for leave to file her cassation appeal out of time pursuant to Article 168 of the Code of Civil Procedure, as she had met the conditions stipulated in that provision. However, the applicant had not availed herself of that possibility and thus failed to exhaust the relevant domestic remedy.

38. The applicant disagreed. She submitted that the possibility referred to by the Government was only theoretical, since pursuant to Article 169 of the Code of Civil Procedure, a party making an application for leave to appeal out of time had to simultaneously complete the required procedural measure. In the present case it would mean that at the time of making an application to lodge her cassation appeal out of time, the applicant should also have filed such appeal. However, a cassation appeal may only be lodged by a lawyer and the Regional Court refused to appoint a legal-aid lawyer to the applicant.

39. The Court has to determine whether the specific remedy invoked by the Government could be considered effective in the circumstances of the present case. It recalls that the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient.

40. The Court notes that the applicant sought to have her cassation appeal against the Regional Court's judgment examined by the Supreme Court. However, her numerous attempts were unsuccessful since the Regional Court refused to grant her legal aid to take a cassation appeal on the erroneous ground that the Supreme Court lacked jurisdiction in the case. The Government claimed that the applicant should have made an application for leave to appeal out of time under Article 168 of the Code of Civil Procedure. However, the Court considers that the applicant exhausted all ordinary remedies available to her in the civil procedure and that the remedy invoked by the Government goes beyond what would normally be required from an applicant. Furthermore, the Court does not find it established that an application for leave to appeal out of time would have been adequate and sufficient to enable the applicant to file her cassation appeal with the Supreme Court. Consequently, the Court finds that the applicant exhausted all available and effective domestic remedies. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

41. 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

1. *The applicant's submissions*

42. The applicant argued that Article 6 § 1 could sometimes compel the State to provide for the assistance of a lawyer when such assistance proved indispensable for an effective access to court. She maintained that she was not in a position to appoint a counsel of her own choosing, since she had

been declared unfit for work and granted an invalidity pension in the amount of PLN 388 per month.

2. The Government's submissions

43. The Government submitted that the requirements of fairness were not necessarily the same in civil and criminal cases (*Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, § 32). Nevertheless, Article 6 § 1 provides some guarantees for persons seeking legal assistance in civil cases, albeit less extensive ones than in criminal cases. The Government argued that the question of legal assistance should 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 employed by the State to ensure effective access to civil courts fell within its margin of appreciation (*Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, § 26).

44. The Government maintained that provision of legal aid in civil cases was required only in situations where a person could not plead his/her case effectively or when the law made legal representation compulsory. However, even in such cases the provision of legal aid was not mandatory in all kinds of civil proceedings. Consequently, the Government submitted that the present case concerning a dispute over the entitlement to maintenance had to be distinguished from other cases related to determination of civil status and family relationships. Furthermore, unlike Article 6 § 3 (c) which expressly provided for legal assistance in criminal cases, the Convention did not guarantee such a right in civil cases. Consequently, the State was not obliged to ensure legal assistance in every civil case.

45. The Government submitted that Polish law required compulsory legal representation in cassation appeal proceedings. However, in the present case the court's refusal to grant the applicant legal aid had not prevented her from lodging a cassation appeal since she could have appointed a counsel of her own choosing for that purpose. The fact that the applicant had not seized that possibility could not, in the Government's view, be held against them. Thus, they considered that there had been no violation of Article 6 § 1 of the Convention.

3. The third-party's submissions

46. The third party (the Polish Helsinki Foundation for Human Rights) made a number of general observations concerning the legal framework regulating the legal aid scheme in Poland and the relevant practice, based on their report on *Access to Legal Aid in Poland*. That report identified a number of restrictions on access to legal aid by indigent persons and called for the introduction of significant changes in the scheme. It revealed, *inter alia*, that legal aid was granted only in 0.17-0.18 % of non-criminal cases.

47. The Foundation submitted that in certain civil cases provision of

assistance by a legal-aid lawyer could be crucial for ensuring the effective right of access to a court. It argued that maintenance proceedings could serve as a perfect example of proceedings where careful examination of the applications for legal aid was essential. Firstly, maintenance often provided a key financial support for single parents and their children. Secondly, the State recognised the precarious situation of those individuals by having exempted them *ex lege* from court fees in maintenance proceedings. Thirdly, refusal to provide legal assistance by the court in such proceedings could result in depriving a person concerned of access to a court.

48. The Foundation submitted that litigants applying for legal aid had to be ensured a procedure which offered them adequate guarantees to protect them from arbitrariness and that it was thus incumbent on the State to establish such procedures. In respect of the Polish legal-aid scheme those guarantees appeared to be insufficient, having regard to the fact that legal aid applications were decided solely by the courts.

49. The Foundation concluded that access to justice should not be impaired by high legal costs. Indigent persons should be able to exercise their rights effectively and could not be deprived of their right of access to a court simply because they could not afford to pay legal costs. This applied, in particular, to those indigent persons who were vulnerable or could not represent themselves effectively in court proceedings.

4. *The Court's assessment*

(a) General principles

50. There is no automatic right under the Convention for legal aid or legal representation to be available for an applicant who is involved in proceedings which determine his or her civil rights. The Court recalls that 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; *Tabor v. Poland*, no. 12825/02, § 39, 27 June 2006). Nonetheless, Article 6 may be engaged under two interrelated aspects (see, *P., C. and S. v. the United Kingdom*, no. 56547/00, § 88, ECHR 2002-VI).

51. Firstly, Article 6 § 1 of the Convention embodies the right of access to a court for the determination of civil rights and obligations (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36). Failure to provide an applicant with the assistance of a lawyer may breach this provision where such assistance is indispensable for effective access to court, either because legal representation is rendered compulsory as is the case in certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or the type of case (see *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32,

pp. 14-16, §§ 26-28, where the applicant was unable to obtain the assistance of a lawyer in judicial separation proceedings). Factors identified as relevant in *Airey* in determining whether the applicant would have been able to present her case properly and satisfactorily without the assistance of a lawyer included the complexity of the procedure, the necessity to address complicated points of law or to establish facts, involving expert evidence and the examination of witnesses, and the fact that the subject matter of the marital dispute entailed an emotional involvement that was scarcely compatible with the degree of objectivity required by advocacy in court. In such circumstances, the Court found it unrealistic to suppose that the applicant could effectively conduct her own case, despite the assistance afforded by the judge to parties acting in person (see, *P., C. and S.,* cited above, § 89). However, as the *Airey* case itself made clear (pp. 12-16, §§ 24 and 26), Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants a right of effective access to a court (*McVicar v. the United Kingdom*, no. 46311/99, § 45, ECHR 2002-III).

52. The Court recalls that the right of access to a court is not absolute and may be subject to legitimate restrictions. Where an individual's access is limited either by operation of law or in fact, the restriction will not be incompatible with Article 6 where the limitation did not impair the very essence of the right and where it pursued a legitimate aim, and there was a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, pp. 24-25, § 57). It may therefore be acceptable to impose conditions on the granting 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*, no. 68416/01, § 62, ECHR 2005-II). Thus, although the pursuit of proceedings as a litigant in person may on occasion not be an easy matter, the limited public funds available for civil actions renders a procedure of selection a necessary feature of the system of administration of justice, and the manner in which it functions in particular cases may be shown not to have been arbitrary or disproportionate, or to have impinged on the essence of the right of access to a court (see *Del Sol*, cited above, § 26). It may be the case that other factors concerning the administration of justice (such as the necessity for expedition or the rights of others) also play a limiting role as regards the provision of assistance in a particular case, although such restriction would also have to satisfy the tests set out above (see *P., C. and S.,* cited above, § 90).

53. Article 6 § 1 does not compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a Contracting State which sets up an appeal system is required to ensure that persons within its jurisdiction enjoy before appellate courts the fundamental guarantees in Article 6, regard being had to the fact that the manner of application of that provision to such

courts depends on the special features of the proceedings involved and that account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see, for instance, *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports* 1997-VIII, p. 2955, § 33 and *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 62, 26 July 2005).

54. Secondly, the key principle governing the application of Article 6 is fairness. In cases where an applicant appears in court notwithstanding lack of assistance by a lawyer and manages to conduct his or her case in spite of all the difficulties, the question may nonetheless arise as to whether this procedure was fair (see *McVicar*, cited above, §§ 50-51). There is the importance of ensuring the appearance of the fair administration of justice and a party in civil proceedings must be able to participate effectively, *inter alia*, by being able to put forward the matters in support of his or her claims. Here, as in other aspects of Article 6, the seriousness of what is at stake for the applicant will be of relevance to assessing the adequacy and fairness of the procedures (see *P., C. and S.,* cited above, § 91). However, it is not incumbent on the State to seek through the use of public funds to ensure total equality of arms between the assisted person and the opposing party, as long as each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* the adversary (see *Steel and Morris*, cited above, § 62).

(b) Application of the above principles

55. The Court will first examine whether the applicant's right of access to a court was respected in the cassation appeal proceedings before the Supreme Court in connection with the refusal to provide her with legal assistance in those proceedings.

56. It firstly notes that Polish law requires that a party to civil proceedings be represented by a lawyer 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 paragraph 31 above).

57. The Court recalls that the requirement that an appellant be represented by a 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 the 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* 1996-VI, pp. 2148-49, §§ 24 and 28 and *Tabor*, cited above, § 42). 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).

58. The Court observes that on 14 April 2000 the Regional Court refused the applicant's request to appoint a legal-aid lawyer in cassation appeal proceedings on the grounds that such appeal was not available in her case. Subsequently, the applicant filed her cassation appeal without being represented by a counsel. On 14 September 2000 the Regional Court rejected it on the grounds of lack of the Supreme Court's jurisdiction in the case and, additionally, for failure to comply with two statutory requirements (time-limit of one month from the date of the service of the second-instance judgment and compulsory legal representation). The Supreme Court in its decision of 18 January 2001 held that it had jurisdiction to hear the case, but nevertheless the cassation appeal had still been inadmissible for failure to comply with the above-mentioned statutory requirements.

59. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports* 1998-I, p. 290, § 33). This applies in particular to the interpretation by courts of rules of a procedural nature such as the prescribed manner and prescribed time for lodging appeals (see *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 43). The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention. Furthermore, the Court recalls that the rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal are aimed at ensuring the proper administration of justice and compliance, in particular, with the principle of legal certainty. That being so, the rules in question, or the manner in which they are applied, should not prevent litigants from using an available remedy (see *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41787/98 and 41509/98, §§ 33 and 36, ECHR 2000-I and *Běleš and Others v. the Czech Republic*, no. 47273/99, § 49, ECHR 2002-IX).

60. The Court finds that the Regional Court's refusal to provide the applicant with the assistance of a lawyer was based on the erroneous premise that a cassation appeal was not available in the applicant's case. The Regional Court's error was subsequently acknowledged by the Supreme

Court and admitted by the Government. The Court further observes that the Regional Court did not examine the merits of the applicant's request for legal aid. Having regard to the foregoing, the applicant cannot be blamed, as the Government suggested, for not having appointed a counsel of her own choosing to represent her in cassation appeal proceedings. In any event, that possibility seems to be rather hypothetical given the financial standing of the applicant.

61. The Court finds that in those circumstances the applicant was made to bear the consequences of the Regional Court's error in that her cassation appeal was rejected as inadmissible. It is evident that the applicant cannot be held responsible for that error. Accordingly, the Court finds that the applicant was deprived of the effective access to the Supreme Court on account of the flawed interpretation of domestic law by the Regional Court (see, *mutatis mutandis, Leoni v. Italy*, no. 43269/98, §§ 24-27, 26 October 2000 and *Platakou v. Greece*, no. 38460/97, §§ 39 and 44, ECHR 2001-I).

62. Having regard to the foregoing, the Court considers that it is not necessary to examine whether the refusal to provide the applicant with the assistance of a lawyer in the appeal proceedings before the Regional Court amounted to a breach of Article 6 § 1.

63. In conclusion, the Court finds that the denial of legal aid to the applicant in the cassation appeal proceedings and the ensuing rejection of her cassation appeal infringed the very essence of the applicant's right of access to a court. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 100,000 Polish zlotys (PLN) in respect of the non-pecuniary damage she has suffered. She further sought an award of PLN 27,000 under the head of pecuniary damage as compensation for the court's judgment decreasing the amount of her maintenance.

66. As regards the claim for pecuniary damage, the Government argued that the applicant had not shown that there was a direct causal link between that damage and the case. In respect of the claim for non-pecuniary damage, they submitted that it was exorbitant and should be rejected. The

Government further submitted that should the Court establish that there was a violation of Article 6 § 1, it should rule that a finding of a violation constituted in itself sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the applicant suffered non-pecuniary damage, such as stress and frustration involved in her futile efforts to have her cassation appeal heard by the court, which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

68. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

69. The Government argued that any award under this head should be limited to those costs and expenses that had been actually and necessarily incurred and were reasonable as to quantum.

70. The Court considers it reasonable to award the applicant EUR 2,000 for costs and expenses involved in the proceedings before it, less EUR 850 received by way of legal aid from the Council of Europe. The Court thus awards EUR 1,150 for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in

respect of non-pecuniary damage and EUR 1,150 (one thousand one hundred fifty euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(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;

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

Done in English, and notified in writing on 13 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President