



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

FOURTH SECTION

CASE OF BOBROWSKI v. POLAND

(Application no. 64916/01)

JUDGMENT

STRASBOURG

17 June 2008

FINAL

01/12/2008

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 Bobrowski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 64916/01) 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, Mr Jerzy Bobrowski (“the applicant”), on 19 September 2000.

2. The applicant, who had been granted legal aid, was represented by Ms M. Filipowicz, a lawyer practising in Opole. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, *inter alia*, that the court’s unreasoned decisions to refuse to grant him legal aid in connection with the preparation of an appeal against a first-instance judgment infringed his right to a fair hearing.

4. On 10 October 2007 the President of the Fourth Section 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.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant owned and ran a company. On an unspecified date before 1998 the factory owned by the company burned down. Subsequently,

the applicant was involved in a number of proceedings in connection with serious financial difficulties which had been caused by the fire.

1. Civil proceedings against the State Insurance Company ("PZU")

6. On 19 August 1999 the Opole Regional Court in part dismissed and in part rejected the applicant's compensation claim against the State Insurance Company, in connection with an insurance contract. On 14 September 1999 the applicant filed an appeal against this judgment with that court.

7. On 21 September 1999 he requested the court to grant him full exemption from court fees. He referred to the fact that he had been partially exempted, by a decision of 30 September 1998, from the obligation to pay court fees. He submitted that his financial situation had further deteriorated since then. This request apparently remained unanswered.

8. On 25 November 1999 the Wrocław Court of Appeal dismissed his appeal.

9. On 1 February 2000 the applicant, represented by a privately hired lawyer, lodged with that court a cassation appeal to the Supreme Court. On 21 February 2000 the Wrocław Court of Appeal rejected the cassation appeal, finding that it failed to comply with the relevant formal requirements.

10. On 16 March 2000 the applicant requested that a legal-aid lawyer be assigned to the case for the purpose of preparing an appeal to the Supreme Court against that decision.

11. On 20 March 2000 the Wrocław Court of Appeal dismissed the request. This decision did not contain any grounds or reference to its legal basis. The applicant appealed. On 10 April 2000 the Wrocław Court of Appeal rejected his appeal, holding that no appeal lay against the contested decision. It was only possible to submit an appeal to the Supreme Court against a decision rejecting a cassation appeal.

12. On 25 April 2000 the applicant appealed against the decision of 10 April and reiterated his request that a legal-aid lawyer be assigned to represent him.

13. On 8 May 2000 the Wrocław Court of Appeal dismissed his appeal, pointing to the fact that the applicant had already hired a lawyer privately. The applicant appealed.

14. On 26 May 2000 the Wrocław Court of Appeal rejected the applicant's appeal, prepared and lodged by a lawyer, holding that no appeal was available in law against the contested decision.

2. *Civil proceedings against the BGŻ bank (“Bank Gospodarki Żywnościowej”)*

15. By a judgment of 7 April 2000, the Opole Regional Court dismissed the applicant’s claim against the BGŻ Bank by which he had sought that a bank enforcement title against him, arising from the fact that after the fire he had defaulted on a bank loan, be declared null and void.

16. On 6 June 2000 the applicant requested the court to exempt him fully from the obligation to pay court fees in the appellate proceedings, referring to the fact that he had been partially exempted, by a decision of 30 September 1998, from the obligation to pay them.

17. On 28 June 2000 the court, by a decision which did not contain grounds, granted the applicant partial exemption from court fees.

18. On 1 September 2000 the applicant requested the court to assign a legal-aid lawyer to the case, referring again to his very difficult financial situation.

19. By a decision of 4 September 2000 the court refused to assign a legal-aid lawyer to the case. This decision did not contain any grounds. On 19 September 2000 the applicant appealed against it.

20. By a decision of 26 September 2000 the Wrocław Court of Appeal rejected his appeal. This decision did not contain written grounds, apparently because no appeal was available in law against it.

21. By a judgment of 25 September 2000 the Wrocław Court of Appeal dismissed the applicant’s appeal against the first-instance judgment.

22. On 31 October 2000 the applicant requested retrospective leave to submit, out of time, a request that written grounds be prepared for the second-instance judgment.

23. By a decision of 24 November 2000 the Wrocław Court of Appeal rejected his request without giving reasons.

On 7 December 2000 the applicant lodged with that court an appeal to the Supreme Court against that decision. On 5 January 2001 the Wrocław Court of Appeal rejected his appeal, holding that no appeal was available against the contested decision.

24. On 8 March 2001 the applicant, represented by a privately hired lawyer, lodged with the Supreme Court a cassation appeal against the second-instance judgment.

25. On 22 March 2001 the Supreme Court rejected the cassation appeal, holding that the applicant had failed to submit, within seven days from the date on which the second-instance judgment had been delivered in open court, a request for the written grounds of this judgment to be prepared. A failure to do so resulted in a cassation appeal being inadmissible.

3. Civil proceedings against a trustee in bankruptcy of “Westa” Insurance Company

26. On 24 May 1999 the Łódź Regional Court in part allowed and in part dismissed the applicant’s compensation claim against the trustee in bankruptcy of “Westa” Insurance Company.

27. On 9 November 1999 the Łódź Court of Appeal dismissed the applicant’s appeal.

28. The applicant lodged a cassation appeal with the Supreme Court. On 22 November 2001 the Supreme Court refused to entertain that appeal. It relied on a provision of the Code of Civil Procedure, as amended in May 2000, which allowed it to leave without examination manifestly ill-founded cassation appeals or appeals in cases where no serious legal issue arose, also when those appeals had been lodged prior to the amendments entering into force.

4. Proceedings in which the applicant challenged the acts of the court bailiff conducting the enforcement proceedings

29. On 25 July 2003 the Kędzierzyn-Koźle District Court dismissed the applicant’s complaint about allegedly unlawful actions of the court bailiff in the enforcement proceedings instituted against him by the BGŻ bank following the judgment given in the second set of proceedings, referred to above (see paragraphs 15 – 25 above).

30. On 11 April 2005 another complaint against the bailiff was dismissed by the same court, which was of the view that the actions complained of were lawful. On 5 May 2005 the same court rejected the applicant’s appeal against this decision, considering that no appeal was available in law.

31. In 2005 the applicant instituted civil proceedings against the bailiff, claiming compensation for damage caused by his allegedly unlawful acts in the enforcement proceedings. The proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal aid

32. 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 exemption from court fees provided that he submits a declaration to the effect that paying the fees required would entail a substantial reduction in his and his family’s standard of living.

33. Under Article 117 of the Code, persons exempted from court fees may request that legal aid be granted to them. The court shall allow the request if it considers that a lawyer's participation in the case is required. 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.

34. 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.

35. 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

36. Article 394 of the Code of Civil Procedure guarantees a party to the proceedings the 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 fees and, likewise, against a refusal of legal aid, when such decisions were given by a first-instance court.

37. 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 (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

38. 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING REFUSALS OF LEGAL AID IN THE SECOND SET OF THE PROCEEDINGS

39. The applicant complained that the court's refusal to grant him legal assistance in connection with the preparation of an appeal against the first-instance judgment given in the second set of civil proceedings described above had 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...”

A. Admissibility

40. 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 parties' submissions

41. The Government argued that under the applicable provisions of domestic law the grant of legal aid in civil proceedings was required only where a party could not plead his case effectively either because of the complexity of the proceedings or because legal representation was mandatory.

42. In the present case legal representation in the appellate proceedings had not been mandatory. The refusals given by the Opole Regional Court had not prevented the applicant from lodging an appeal against the first-instance judgment of 7 April 2000. He had not been hindered in submitting his arguments in support of his appeal to the second-instance court. It had not been difficult for a lay person to prepare an appeal as no complex formal requirements had been imposed by the applicable provisions of the procedural law. In any event, the applicant had ultimately been able to prepare and submit an appeal to the appellate court. As he had decided not to attend the only hearing held before the appellate court, he had himself jeopardised the prospects of success which his appeal might have offered.

Moreover, he had ultimately hired a lawyer to prepare a cassation appeal to the Supreme Court after the appellate court had dismissed his action.

43. The Government emphasised that the case had concerned only pecuniary claims relating to the applicant's business activities. Hence, the issues involved in the present case before the Court must be distinguished from issues arising in cases concerning, for example, civil status or family relationships.

44. The applicant submitted that he had been refused legal aid for the purposes of the appellate proceedings and that these refusals had not contained any written grounds that would have justified them. The case had been very complex as it had arisen against the background of the fire which had destroyed his factory and subsequent serious difficulties which had affected the functioning of his company. Hence, the effective representation of the applicant's interests had necessitated professional legal assistance. Likewise, the formal requirements of the appeal had been difficult to meet for a lay person. The applicant was an engineer by profession so it was exceedingly difficult for him to develop sound legal arguments in support of his position. As a result of the unreasoned refusals of legal aid he had been deprived of a fair hearing in his case and his chances of successfully challenging the first-instance judgment had been irremediably lost.

2. The Court's assessment

45. 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). 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*, no. 68416/01, § 62, ECHR 2005-II).

46. 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 v. the United Kingdom*, no. 46311/99, § 50-51, ECHR 2002-III). It is important to ensure 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 (*Laskowska v. Poland*, no. 77765/01, § 54, 13 March 2007).

47. In discharging that obligation of fairness, 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).

48. The Court 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 and on the court's assessment whether professional legal representation in the case is required (see paragraphs 32-33 above). When examining whether the decisions on legal aid, seen as a whole, were in compliance with the fair hearing standards of the Convention, it is not the Court's task to substitute itself for the Polish courts, but to review whether those courts, when exercising their power of appreciation in respect of the assessment of evidence, acted in accordance with Article 6 § 1 (see, *mutatis mutandis*, *Kreuz v. Poland* no. 28249/95, § 64, ECHR 2001-VI).

49. In this context the Court observes that in its decision given at the beginning of the first set of the civil proceedings, in 1998, the Opole Regional Court held that the applicant's financial situation was such as to justify granting him a partial exemption from the costs of legal assistance (see paragraph 7 above). Subsequently, by a decision of 28 June 2000 the Opole Regional Court partly exempted the applicant from the obligation to pay the court fee for the purposes of the appellate proceedings (see paragraph 17 above). These findings indicate, in the Court's view, that the courts considered that the applicant's financial situation was such as to make it impossible for him to bear the costs of the proceedings in their entirety.

However, the Court notes that it has not been argued or shown by the Government that the decision of 28 June 2000, by which the applicant's request for full exemption in connection with the appeal proceedings was only partly allowed, contained written grounds. Subsequently, on 4 September 2000 the court refused to assign a legal-aid lawyer to the case for the purpose of the appellate proceedings. The Court observes that this decision did not contain written grounds either.

50. It is not for the Court to speculate on the reasons for which the domestic courts did not provide any grounds for these decisions which, taken together, ultimately made it impossible for the applicant to have his arguments submitted to the appellate court by qualified legal representation. However, in the absence of such grounds it is difficult for the Court to understand the reasons for which the Regional Court considered that in the circumstances of the case the grant of legal aid would not have been justified.

51. Having regard to the circumstances of the case seen as a whole, the Court considers that the principle of fairness required the court to give reasons for rejecting the applicant's requests concerning the granting of legal aid (see *Tabor v. Poland*, no. 12825/02, § 45, 27 June 2006; and *Biziuk v. Poland*, no. 15670/02, 15 January 2008, § 29, *mutatis mutandis*).

52. The Court is therefore of the view that there has been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING LACK OF ACCESS TO THE SUPREME COURT IN THE THIRD SET OF PROCEEDINGS

53. The applicant further complained under Article 6 of the Convention about the Supreme Court's refusal of 12 November 2001 to examine his cassation appeal (see paragraph 28 above). He submitted that the May 2000 amendment to the Code of Civil Procedure, which provided for the possibility to leave a cassation appeal without examination, had come into force after his cassation appeal against the judgment of 9 November 2000 had been lodged with the Supreme Court. As a result, he had been unfairly deprived of his right to have access to that court.

54. Insofar as it can be understood that the applicant complains about the lack of access to a court, the Court recalls that the right to a court, embodied in Article 6 of the Convention, is not absolute and may be subject to limitations. However, the limitations applied cannot restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see, *inter alia*, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, ECHR 2001-VIII). 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).

55. The Court first observes that the applicant's case was examined on the merits at two levels of jurisdiction with full competence to examine the facts and law. It further observes that the applicant's right of access to a court was subject to certain limitations in so far as no cassation appeal was available against the second-instance judgment. It also notes that this limitation became effective as from 5 February 2005, when the applicant's case was pending before the Court of Appeal. The Court notes, however, that the solution adopted in the instant case by the Polish legislator followed a generally recognised principle which provides for the immediate application of new procedural provisions, save where expressly provided to the contrary. Furthermore, the amendments to the Code of Civil Procedure served the aim of accelerating proceedings by excluding the examination of

appeals in cases of lesser importance (see *Zmaliński v. Poland*, (dec.) no. 52039/99, 10 October 2001).

56. In the light of the foregoing, the Court considers that the limitation pursued a legitimate aim and cannot in the circumstances of the case be considered disproportionate.

57. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING LACK OF ACCESS TO THE SUPREME COURT IN THE FIRST SET OF PROCEEDINGS

58. The applicant complained that he had been deprived of access to the Supreme Court because the court refused to grant him legal aid for the purposes of lodging an appeal against a decision rejecting his cassation appeal against the judgment of 25 November 1999 lodged by a privately hired lawyer (see paragraphs 6-14 above).

59. The Court observes that the applicant, after he had lodged an appeal against a first-instance judgment of 19 August 1999, requested the court to grant him full exemption from court fees. This request apparently remained unanswered. The appellate court subsequently dismissed his appeal. Subsequently, the applicant, represented by a privately hired lawyer, lodged with that court a cassation appeal to the Supreme Court against the second-instance judgment given on 25 November 1999. However, the appellate court rejected the cassation appeal prepared by the lawyer, considering that it failed to comply with the relevant legal requirements. Subsequently, the applicant requested that a legal-aid lawyer be assigned to the case for the purpose of drafting an appeal to the Supreme Court against this procedural decision. The court dismissed his request. The applicant reiterated his request to obtain legal aid which was ultimately dismissed, the court indicating that the applicant had already hired a lawyer. The Court considers that the mere fact that the cassation appeal lodged by a privately hired lawyer was rejected by the court for failure to comply with the applicable formal requirements did not hinder the very essence of the applicant's right of access to a court.

60. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE OUTCOME OF THE PROCEEDINGS

61. The applicant called into question the outcome of all the sets of domestic proceedings conducted in his cases, claiming that the courts had incorrectly assessed certain evidence and the circumstances of the cases. As a result, he had been ruined, in particular by the acts of the court bailiff. The applicant complained that all his efforts to show that the bailiff's acts had been unlawful had failed.

62. According to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

63. In the present case, the Court does not discern any indication in the case file that the courts lacked impartiality or that the proceedings were otherwise unfair. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

V. 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."

65. The applicant sought compensation for costs and expenses and pecuniary and non-pecuniary damage in the amount of 7,939,111 Polish zlotys.

66. 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 applicant had failed to indicate the amount linked to the violation of Article 6 § 1 in respect of which the Court could ultimately find a violation. They did not make any submissions concerning costs and expenses.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. 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.

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

C. Default interest

69. 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* admissible the complaint concerning the unreasoned refusals to grant legal aid given in the second set of proceedings and the remainder of the application inadmissible;
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, 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 plus any tax that may be chargeable;
 - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses, less EUR 850 (eight hundred and fifty euros) received by way of legal aid from the Council of Europe, plus any tax that may be chargeable to the applicant;
 - (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 17 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President