



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

FOURTH SECTION

CASE OF BAŁKOWSKA v. POLAND

(Application no. 33539/02)

JUDGMENT

STRASBOURG

12 January 2010

FINAL

22/11/2010

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

In the case of Bąkowska v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 33539/02) 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, Ms Emilia Bąkowska (“the applicant”), on 5 September 2002.

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

3. The applicant alleged, in particular, that he had been deprived of access to the Supreme Court.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Słupsk.

6. On 5 November 2000 the applicant filed a claim for payment against a housing co-operative of which she was a member. By a judgment of 27 February 2001 the Słupsk Regional Court dismissed the claim. The judgment was upheld on 7 September 2001 by the Gdańsk Court of Appeal. On 21 November 2001 the applicant was served with that judgment together with its written grounds.

7. On 10 December 2001 she filed a request with the Słupsk Regional Court to be granted a legal-aid lawyer for the purpose of lodging a cassation appeal. Her request was subsequently forwarded to the Gdańsk Court of Appeal as the Słupsk court lacked jurisdiction to deal with it. The request was allowed by a decision of 17 December 2001.

8. On 18 December 2001 the decision of 17 December 2001 was served on the local Bar Association. At the same time the Gdańsk Court of Appeal informed the Bar about the date on which the applicant had been served with the second-instance judgment.

On 3 January 2002 the Bar Association informed the applicant that a legal-aid lawyer had been assigned to her case. By a letter of 19 January 2002 to the court the lawyer refused to lodge a cassation appeal, finding no grounds to do so. The letter read:

“Having examined the file in detail, I have not found grounds for lodging a cassation appeal. The judgment given on 7 September 2001 by the Court of Appeal did not breach any provisions of substantive law. Nor were any provisions of procedural laws violated during the proceedings.

The findings of fact made by the courts show without any ambiguity that the applicant had never had the right to a co-operative apartment which could be assimilated to ownership. She had admitted, both before the first-instance and the appellate court, that at the time of the exchange of apartments she had been aware that her right was only assimilable to the rights arising out of a rental contract. (...) It had been open to her to take steps in order to have her right transformed into an ownership-like right, but she had not done so. Hence, the first instance court was right in finding that the defendant housing co-operative was not obliged to pay compensation to the applicant. The appellate court accepted these findings. In these circumstances, a cassation appeal would not offer any prospects of success.”

9. On 23 January 2002 the applicant requested the Gdańsk Court of Appeal to assign a new legal-aid lawyer to her case.

10. On 29 January 2002 the court informed the applicant that she should file a request with the Bar Association for a new lawyer to be appointed. On 4 February 2002 the applicant accordingly submitted her request to the local Bar Association.

11. By a letter of 19 February 2002 the Bar Association dismissed the request, having found that the applicant's previous legal-aid lawyer had been entitled to refuse to draft a cassation complaint.

12. On 4 March 2002 the applicant again requested the court to assign a legal-aid lawyer to the case. On 15 March 2002 the Gdańsk Court of Appeal informed the applicant that the refusal to lodge a cassation appeal could not justify assigning a new lawyer for the same purpose.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legal aid

13. Pursuant to Article 5 of the Code of Civil Procedure, a court should give all necessary procedural instructions to a party acting without a lawyer and, in particular, should indicate the consequences of that party's acts or failures to act.

14. 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.

15. Pursuant to Article 117 of the Code, persons exempted from 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.

B. The cassation appeal

16. At the material time a party to civil proceedings could lodge a cassation appeal with the Supreme Court against a final judicial decision of a second-instance court which terminated the proceedings.

17. 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.

C. Relevant provisions of the Bar Act

18. Article 1 of the Bar Act of 1982, as amended, reads, insofar as relevant:

“1. The Bar is established to provide legal assistance, co-operate in protecting a person's rights and freedoms as well as to formulate and apply the law.

2. The Bar is organized as a self-governing association.

3. An advocate whilst executing his/her professional duties is accountable only to the law.”

19. Article 3 of the Act provides as follows:

“The general tasks of the professional Bar Council are as follows:

- 1) creation of conditions for the statutory performance of the Bar's tasks,
- 2) representation of the Bar and protection of its rights,
- 3) supervision over the observance of the rules regulating the practice of the profession,
- 4) development of professional skills and training of advocates,
- 5) determination and promotion of professional ethics and ensuring their observance,
- 6) management (...) of the Bar's assets.”

20. Article 28 of the Act reads:

“1. An advocate may only refuse to provide legal assistance for important reasons of which he must notify the interested party. Any doubts as to whether to provide legal assistance or refuse to do so shall be resolved by the local Bar Council, and in situations where time is of the essence, by the Dean of that Council.

2. In cases where legal assistance is granted on the basis legal regulations concerning legal aid, only the entity appointing the advocate to represent the client may decide to relieve him or her from providing legal assistance.”

21. Under Article 21 § 3 of the Act, an advocate shall provide legal aid services in the jurisdiction of a court where he or she has their office.

22. Lawyers are bound to act in accordance with rules of professional and ethical conduct enacted by the Bar Association. They may be held accountable for professional misconduct or a breach of ethical principles in the proceedings before the bar disciplinary court.

23. Under Article 57 of the Body of Ethical Rules adopted by the National Bar Council on 10 October 1998, when an advocate, either privately hired by the client or appointed under the legal-aid scheme, considers that submission of an appeal in a case offers no reasonable prospect of success and the client disagrees with his or her view, the lawyer shall give notice of termination of the power of attorney, terminate the representation, or notify the refusal to the body which appointed him or her.

D. Resolution of the Supreme Court of 2000 (III CZP 14/00)

24. In 2000 the Supreme Court issued a resolution in reply to a legal question whether a legal-aid lawyer could refuse to lodge a cassation appeal. It replied to the question in the positive.

25. The court observed that issues involved in the grant of legal aid concerned not only the proper administration of justice, but also touched on

human rights, and the right of access to a court in particular. Nevertheless, there was no comprehensive and coherent regulation of legal aid available under Polish law.

26. The mere fact that it was necessary for a cassation appeal to be lodged by a qualified representative was not open to criticism. However, a certain conceptual confusion was to be noted in the provisions governing legal aid as a whole, mostly because the legislator had failed to harmonise the relevant provisions of civil and criminal procedure. In particular, the scope of legal-aid lawyers' obligations when legal representation was mandatory was not directly addressed by provisions of civil procedure.

27. As a result, the scope of legal-aid lawyers' obligations to provide a party to the proceedings with "legal aid" in civil proceedings was unclear. In particular, the provisions on lawyers' legal-aid obligations in connection with cassation proceedings before the Supreme Court lacked clarity. The application of the relevant provisions had given rise to serious difficulties of interpretation and discrepancies in the case-law of the Polish courts.

28. The court observed that the issue of the possible conflict between the opinion of a party granted legal aid and a lawyer assigned to represent him or her for the purpose of cassation proceedings had not been directly addressed by the applicable law. The notion of legal assistance could not be identified with a simple obligation of a lawyer to act in accordance with the client's wishes. The role of a legal-aid lawyer had rather to be understood as obliging him or her to provide legal advice to the party, including as to the prospects of success offered by a cassation appeal against a given judgment.

29. The constitutional role of the Supreme Court, the highest judicial authority, was also an argument in favour of the conclusion that a legal-aid lawyer was not compelled by the will of the party to have a cassation appeal lodged if such an appeal was bound to fail. In case of a disagreement between the party and the lawyer, it was open to the party to complain to the local Bar under Article 28 of the Bar Act. The Bar could then appoint a new lawyer who could lodge a cassation appeal, requesting at the same time to be granted leave to appeal out of time under Article 169 of the Code of Civil Procedure. It was true that the practice of the Supreme Court was not coherent in that in some cases it had rejected such requests and in others it had accepted them. However, it did not prevent the parties from having recourse to this course of action.

E. Retrospective leave to submit a cassation appeal out of time

30. Pursuant to Article 169 of the Code of Civil Procedure, a party to the proceedings may ask for retrospective leave to perform a procedural measure outside the prescribed time-limit; this measure shall be performed simultaneously with the lodging of the request.

31. Article 133 § 3 of the Code of Civil Procedure reads, in so far as relevant:

“If a legal representative ... has been appointed in a case, the court correspondence shall be served on [him or her].

32. However, in a number of decisions the civil courts have held that the running of the time-limit for lodging a cassation appeal is not affected in any way by a request for legal aid submitted by a hitherto non-represented party and its subsequent grant or refusal. That time-limit starts to run on the date when the party was served with the judgment of the appellate court together with its written grounds, also where the request for legal aid has subsequently been granted (the Supreme Court's decisions of 15 April 1997, II CZ 35/97; 18 April 1997, I PKN 120/97; 10 September 1998, II UZ 101/98; 6 July 1999, II UKN 332/99; 9 August 2000, I CKN 747/00; 23 March 2001, II UZ 17/01; 19 June 2001, I PZ 33/01; 27 September 2001, II UZ 51/01; 28 November 2001, II UZ 85/01, 15 December 2005, I UZ 33/05).

33. The Supreme Court has repeatedly held that a request for leave to appeal out of time was the only method by which a cassation appeal submitted after the expiry of the time-limit could be admitted for examination (21 April 1997, II CZ 38/97; 27 September 2001, II UZ 51/01). In a further series of decisions the Supreme Court considered that it would be unfair for the legally-aided party to be penalised for the fact that legal-aid applications could not be processed quickly enough to make it possible for a cassation appeal to be lodged within thirty days counted from the day of service of the judgment on the party. A request to appeal out of time should therefore be submitted within seven days from the date on which the lawyer could obtain effective access to the case file or had an effective possibility of drafting an appeal (4 March 2005, II UZ 72/04; 27 June 2000, I CZ 62/00), or from the date when the lawyer was informed that he had been assigned to the case by the local bar association (11 October 2001, IV CZ 163/01; 17 November 1998, II UZ 122/98; 11 October 2001, IV CZ 163/01).

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 been denied access to the Supreme Court.

Article 6 § 1 reads, in so far as relevant:

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

A. Admissibility

35. The Government submitted that the applicant had failed to exhaust relevant domestic remedies. She should have brought a civil action for compensation against the legal-aid lawyer. They were of the view that a civil action was an effective remedy where a lawyer, either legal aid or privately hired, was negligent in carrying out his or her duties regarding legal representation in judicial proceedings. They also referred to a complaint to the local Bar Association under Article 28 of the Bar Act.

The applicant did not address this issue.

36. The Court observes that the remedies referred to by the Government were merely of a retrospective character. They could only, and if the applicant had been successful, have resulted either in the courts granting damages or in the Bar Association finding the lawyer at fault. Such retrospective measures alone were not sufficient to ensure effective access to a court competent to determine the applicant's civil rights and obligations. The Court therefore rejects the Government's objection.

37. The Court further 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' arguments

38. The applicant submitted that her interests had not been properly safeguarded by the legal-aid lawyer. In particular, the lawyer's refusal to lodge a cassation appeal had been served on the applicant after the expiry of the time-limit for lodging it.

39. The Government argued that the applicant's case had been examined at two levels of jurisdiction. Neither the Convention nor domestic law guaranteed a right to have a civil case heard at three levels of jurisdiction. The right to a court was not absolute and could therefore be subject to certain limitations, in so far as they did not impair the very essence of that right. In particular, the criteria of admissibility of appeals to be lodged with the highest courts could be strict and the procedure more formal than that before the lower courts, without the requirements of Article 6 of the Convention being breached thereby. The mere fact that it was necessary for

a cassation appeal to be lodged by a qualified representative was not open to criticism.

40. The Government further submitted that in principle the grant of legal aid did not affect the running of the thirty-day time-limit for lodging a cassation appeal with the Supreme Court. However, the case-law of the Polish civil courts indicated that retrospective leave to appeal out of time could be granted where legal aid for the purposes of lodging a cassation appeal had been given, but the legal-aid lawyer could not comply with all the relevant formalities within that time-limit.

41. They further referred to the resolution of the Supreme Court given in September 2000. That court had held that a lawyer assigned to a case under a legal-aid scheme was entitled to refuse to lodge a cassation appeal in civil proceedings, if he or she was of the view that this remedy offered no reasonable prospects of success. The Government stressed that the notion of legal aid was not to be understood as providing legal representation in proceedings in all cases. It also comprised the provision of legal advice on the prospects of success offered by a given legal remedy in the particular context of each case. The lawyers' tasks could not be perceived as following their clients' instructions and wishes uncritically and lodging remedies against their better judgment. Nor was it the role of the State to compel lawyers to do so. Hence, the lawyer's refusal had served the purpose of securing the proper administration of justice by the Supreme Court, including ensuring that the case load of that court would not be unreasonably increased by unmeritorious cassation appeals.

42. The Government submitted that the applicant had failed to act diligently. She had received the judgment of the appellate court on 21 November 2001 and it was from that date that the thirty-day time-limit had started to run. However, she had submitted her request for legal aid almost three weeks later, on 10 December 2001. Moreover, she had submitted it to the wrong court and her request had had to be forwarded to the Gdańsk Court of Appeal. Her request had been processed very quickly as it had taken the latter court only three days to grant her legal aid. Subsequently, the Gdansk Bar Association assigned the case to a lawyer within five days. The lawyer had examined the applicant's case within sixteen days and had given a reasoned legal opinion on the prospects of success of a cassation appeal.

43. The Government concluded that the applicant's case had been processed with all requisite diligence.

2. The Court's assessment

a. The principles established by the Court's case-law

44. The Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the

guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their “civil rights and obligations” (see, among many other authorities, *Levages Prestations Services v. France*, 23 October 1996, *Reports* 1996-V, pp. 1544-45, § 44, and *Poitrimol v. France*, judgment of 23 November 1993, Series A no. 277-A, § 13-15). The manner in which this provision applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order and the court of cassation's role in them. Given the special nature of the court of cassation's role, which is limited to reviewing whether the law has been correctly applied, the Court is able to accept that the procedure followed in such courts may be more formal (see *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 41, ECHR 2002-VII).

45. A requirement that an appellant be represented by a qualified lawyer before the court of cassation, such as in the present case, cannot in itself be seen as contrary to Article 6. This requirement is clearly compatible with the characteristics of the Supreme Court as a highest court examining appeals on points of law and it is a common feature of the legal systems in several member States of the Council of Europe (see *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, § 69; *Vacher v. France*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2148-49, §§ 24 and 28; *Tabor v. Poland*, no. 12825/02, § 42, 27 June 2006; *Staroszczyk v. Poland*, no. 59519/00, § 129, 22 March 2007; *Siałkowska v. Poland*, no. 8932/05, § 106, 22 March 2007).

46. It is for the Contracting States to decide how they should comply with the fair hearing obligations arising under the Convention. However, the Court must satisfy itself that the method chosen by the domestic authorities in a particular case is compatible with the Convention. In discharging its obligation to provide parties to proceedings with legal aid when it is provided by domestic law, 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 (see *Del Sol v. France*, no. 46800/99, § 21, ECHR 2002-II; *Staroszczyk v. Poland*, cited above, § 130, *Siałkowska v. Poland*, cited above, § 107, *Smyk v. Poland*, no. 8958/04, § 4, 28 July 2009; *Arciński v. Poland*, no. 41373/04, § 34, 15 September 2009 and *R.D. v. Poland*, nos. 29692/96 and 34612/97, § 44, 18 December 2001, *mutatis mutandis*).

47. The Court has already held that the mere fact that a legal-aid lawyer can refuse to represent a party in proceedings before the highest court cannot be said to be, of itself, tantamount to a denial of legal assistance which is incompatible with the State's obligations under Article 6 of the Convention (*Siałkowska v. Poland*, cited above, § 113; *Antonicelli*

v. Poland, no. 2815/05, § 38, 19 May 2009, *Kulikowski v. Poland*, no. 18353/03, § 63, 19 May 2009). However, an adequate institutional framework should be in place so as to ensure effective legal representation for entitled persons and a sufficient level of protection of their interests. In particular, the existence of regulations concerning the time-frame within which the lawyer should inform the party of a refusal to prepare a cassation appeal has been considered crucial for the assessment of whether the party's interests have been properly safeguarded (*Sialkowska v. Poland*, cited above, § 114-115).

48. The Court further reiterates that admissibility conditions for appeals are necessary to ensure legal certainty and the proper administration of justice and litigants should normally expect those rules to be applied. However, a particularly strict interpretation of a procedural rule may deprive an applicant of the right of access to a court (see *Běleš and others v. Czech Republic*, no. 47273/99, § 60, 12 November 2002; *Zvolský and Zvolská v. Czech Republic*, no. 46129/99, 12 November 2002; *Kemp and Others v. Luxembourg*, no. 17140/05, § 42, 24 April 2008, *mutatis mutandis*)

b. Application of the principles to the facts of the case

49. Turning to the circumstances of the present case, the Court first observes that where a party to civil proceedings is represented by a lawyer, the procedural time-limits set by the Code of Civil Procedure start to run on the date of the service of judicial decisions on the lawyer (see paragraph 31 above; see also *Smyk v. Poland*, cited above, § 63).

50. Where a party does not have legal representation, as in the present case, and is granted legal aid only after the second-instance judgment has been given, the case-law of the Supreme Court provides that the time-limit for lodging a cassation appeal starts to run from the date on which the judgment of the appellate court has been served on that party (see paragraph 32 above).

51. The Court observes that a party who is subsequently granted legal aid is thereby put in a difficult position because at the time of service the time-limit has already started to run. The Polish courts, including the Supreme Court, have repeatedly held that his or her request for legal aid does not affect the running of the time-limit. A legal-aid lawyer subsequently assigned to the case has therefore less time to examine the case and decide, still within the time-limit, whether a cassation appeal offers prospects of success and to prepare it.

52. The Court further notes that the applicable domestic regulations do not specify the time-frame within which the applicant should be informed about the refusal to prepare a cassation appeal (see *Sialkowska*, cited above, § 114, *Smyk v. Poland*, cited above, § 60). The Court has already found that the way in which those regulations were applied in practice were capable of

leaving legally-aided parties with no realistic opportunity of having their cases brought to the Supreme Court within the time-limit provided for by law (*Siałkowska v. Poland*, cited above, no. 8932/05, §§ 11 - 155). In the present case the second-instance judgment, together with its written grounds, was served on the applicant on 21 November 2001. It was on that date that the thirty-day time-limit for lodging the cassation appeal started to run.

53. However, the Court observes that subsequently the applicant submitted her request for legal aid on 10 December 2001, almost three weeks later. It has not been shown or even argued that this delay had been justified by any special circumstances for which the applicant could not be held responsible, or that she could not have been aware of the time-limit within which a cassation appeal had had to be submitted to the court. The time-limit was to expire on 21 December 2001. The court, having received her request, examined it speedily and granted her request on 17 December 2001.

54. Having regard to the delay with which the applicant availed herself of her procedural right, the Court is of the view that she failed to display diligence which should normally be expected from a party to civil proceedings (see *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, pp. 14-15, § 33).

55. The Court therefore concludes that in the particular circumstances of the present case there has been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

56. The applicant also complained, in her letter submitted to the Court on 8 December 2008, that the circumstances of the case had given rise to violations of Articles 8, 13 and 14 of the Convention as well as of Article 1 of Protocol No. 1 to the Convention. The Court notes that the final decision in the case was given on 15 March 2002. It follows that this aspect of the application has been introduced outside the six-month time-limit prescribed by Article 35 § 1 and must be rejected, pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously admissible the complaint concerning access to the Supreme Court and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 12 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Bonello and the dissenting opinion of Judge Mijović are annexed to this judgment.

N.B.
T.L.E.

SEPARATE OPINION OF JUDGE BONELLO

I have so far voted to find a violation by Poland in cases in which the applicants lost their right to lodge a cassation appeal because their legal aid lawyer refused to do so.

The majority reasons that if the applicants had sufficient time, after the refusal of the legal aid lawyer, in which to engage a private lawyer, then there was no violation of the applicants' fair trial rights, and they only have themselves to blame. I find this reasoning almost cynical. After the state has certified an applicant to be indigent and entitled to legal aid *because he or she cannot afford a private lawyer*, then it is the applicant's fault that he or she did not proceed to engage and pay a private lawyer. As Queen Marie Antoinette famously said of the poor “If they cannot afford bread, why don't they eat cake?”

I have elaborated on this in my dissenting opinions in *Kulikowski v. Poland*, 8958/04, 19 May 2009, and *Smyk v. Poland*, 18353/03, 28 July 2009.

The present case is one of a considerable number of similar Polish cases. The majority has not been sympathetic to my different reasoning. In the future, in cases which raise these issues, I will be reluctantly joining the majority, solely in the interest of avoiding fragmentation in decision making, and those of collegiality and judicial certainty.

DISSENTING OPINION OF JUDGE MIJOVIĆ

As emphasised in my previous concurring opinions in four recent cases,¹ and in the joint dissenting opinion in *Smyk v. Poland*, I see the problem of the refusal of lawyers appointed under legal-aid schemes to represent legally-aided persons on the ground that the claim has no reasonable prospects of success as the general one, related not only to criminal, but also to both civil and administrative proceedings². To avoid repetition, I refer to the detailed reasoning underpinning those opinions, which reasoning serves to explain my decision to vote against the majority's finding in this case.

¹*Kulikowski v. Poland*, n°18353/03, 18 August 2009, *Antonicelli v. Poland*, n°2815/05, 18 August 2009, *Arciński v. Poland*, 41373/04, 15 September 2009 and *Zapadka v. Poland*, n°2615/05, 15 December 2009)

² There are more than 100 such cases pending before the European Court of Human Rights