



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

FOURTH SECTION

CASE OF JAN ZAWADZKI v. POLAND

(Application no. 648/02)

JUDGMENT

STRASBOURG

6 July 2010

FINAL

06/10/2010

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

In the case of Jan Zawadzki 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 15 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 648/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Jan Zawadzki (“the applicant”), on 24 August 2001.

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

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

4. On 13 July 2009 the President of the Fourth Section decided to give notice of this complaint to the Government. Under Article 29 § 3 of the Convention it was decided to examine the admissibility and merits of the case at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Hajnówka.

6. On 23 August 2000 the Bielsko Podlaskie District Court convicted the applicant of theft and sentenced him to 2 years' imprisonment. On 12 December 2000 the Białystok Regional Court upheld the first-instance judgment.

7. On 12 January 2001 the court granted the applicant's request to assign a legal-aid lawyer to the case for the purposes of filing a cassation appeal with the Supreme Court.

8. In a letter to the applicant dated 7 February 2001 the Białystok Regional Court informed him that the legal-aid lawyer had found no grounds on which to prepare a cassation appeal. The applicant was not informed of the further procedural steps available to him to lodge a cassation appeal.

9. In reply to the applicant's subsequent three queries as to what his procedural situation was and whether there was any possibility for him to pursue the cassation proceedings, in particular by having his own draft of a cassation appeal signed by another legal-aid lawyer, on 19 February, 23 and 29 May 2001 the Regional Court stated that it was not for the court to oblige a legal-aid lawyer to prepare a cassation appeal if he or she had refused to do so and that it was impossible for a lawyer to sign a cassation appeal drafted by the defendant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

10. The relevant domestic law and practice concerning the procedure for lodging cassation appeals with the Supreme Court against judgments of the appellate courts are stated in the Court's judgments in the cases of *Kulikowski v. Poland*, no. 18353/03, §§ 19-27, ECHR 2009-... (extracts) and *Antonicelli v. Poland*, no. 2815/05, §§ 14-22, 19 May 2009).

11. In particular, on 26 February 2002 the Supreme Court examined a situation where a legal-aid lawyer had refused to represent a convicted person for the purposes of cassation proceedings, finding that a cassation appeal would offer no prospects of success. It held that in such a situation the appellate court was obliged to instruct the defendant that the time-limit for lodging a cassation appeal started to run only on the date on which the defendant was served with the lawyer's refusal and not on the earlier date when the judgment of the appellate court was served on the defendant himself. It stated that it was not open to doubt that a defendant faced with a legal-aid lawyer's refusal had the right to take other measures to seek legal assistance necessary for effective lodging of a cassation appeal (III KZ 87/01). The Supreme Court reiterated its position in a decision of 6 May 2008 and in a number of similar decisions given in 2008. It observed that there had been certain discrepancies in the judicial practice as to the manner in which the time-limit in such situations was calculated, but the strand of the case-law launched by the decision given in February 2002 was both dominant and correct, and also accepted by doctrine as providing to defendants adequate procedural guarantees of access to the Supreme Court within a reasonable time frame (II KZ 16/08).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 IN CONJUNCTION WITH ARTICLE 6 § 3 (c) OF THE CONVENTION

12. The applicant complained that as a result of the legal-aid lawyer's refusal to draft a cassation appeal he had been denied effective access to the Supreme Court. He relied on Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention. Those provisions, in so far as relevant, read:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

3. Everyone charged with a criminal offence has the following minimum rights: ...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;”

A. Admissibility

13. 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

14. The applicant submitted that he had been granted legal aid for the purposes of lodging a cassation appeal. However, he had been ultimately deprived of access to the Supreme Court because that lawyer refused to prepare a cassation appeal in his case and he was left in uncertainty as to his legal position. The Government did not submit their comments.

15. The Court first notes that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial in criminal proceedings as set forth in paragraph 1 of the same Article. Accordingly, the applicant's complaint will be examined under these provisions taken together (see, among other authorities, *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 755, § 52, and *Bobek v. Poland*, no. 68761/01, § 55, 17 July 2007).

Furthermore, the Court has already had occasion to set out at length the relevant principles derived from its case-law in this area (*Kulikowski v. Poland*, no. 18353/03, ECHR 2009-... (extracts); *Antonicelli v. Poland*,

no. 2815/05, 19 May 2009; *Arciński v. Poland*, no. 41373/04, 15 September 2009). It adopts those principles for the purposes of the instant case.

16. In the present case the applicant was served with the lawyer's refusal on an unspecified date after 7 February 2001. The court's note accompanying that refusal did not contain any information concerning his procedural rights. The failure to clarify the applicant's legal situation, given that at that time he was not represented by a lawyer, meant that he had no way of knowing when the time-limit for lodging a cassation appeal started to run and what steps, if any, he had at his disposal to pursue the cassation proceedings, for instance by trying to find another lawyer who might be persuaded to file a cassation appeal on his behalf.

The Court notes in this connection that the procedural framework governing the making available of legal aid for a cassation appeal in criminal cases, as described above, is within the control of the appellate courts. When notified of a legal-aid lawyer's refusal to prepare a cassation appeal, it is entirely appropriate and consistent with fairness requirements, that an appeal court indicate to an appellant what further procedural options are available to him or her (see *Kulikowski v. Poland*, cited above, § 70; *Antonicelli v. Poland*, cited above, § 45). However, in the instant case this requirement was not complied with, with the result that the applicant's right of access to the Supreme Court was not secured in a "concrete and effective manner".

17. Accordingly, having regard to the above deficiency, there has been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

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

18. The applicant complained, relying on Article 6 of the Convention, that the proceedings had been unfair in that the courts had wrongly assessed evidence, erred in establishing the facts of the case and incorrectly applied applicable domestic law.

19. However, the Court reiterates that, according to Article 19 of the Convention, its 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, with further references).

20. In the present case, even assuming that the requirement of exhaustion of domestic remedies was satisfied, the Court notes that the applicant did not allege any particular failure to respect his right to a fair hearing on the part of the relevant courts. Indeed, his complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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.”

22. The applicant requested the Court to award him just satisfaction and requested the Court to quantify the proper amount. He did not make any claim for reimbursement of costs and expenses.

23. 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 1,000 under this head.

24. 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 applicant's complaint concerning lack of access to a court and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in conjunction with Article 6 § 3 (c);
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 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 July 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 concurring opinion of Judge Mijović is annexed to this judgment.

N.B.
T.L.E.

CONCURRING OPINION OF JUDGE MIJOVIĆ

As was emphasised in my previous concurring opinions in three recent cases (*Kulikowski v. Poland*, n°18353/03, 18 August 2009, *Antonicelli v. Poland*, n°2815/05, 18 August 2009 and *Arciński v. Poland*, 41373/04, 15 September 2009), as well as in the joint dissenting opinion in *Smyk v. Poland*, n°8958/04, 28 July 2009, I see the problem of the refusal of lawyers appointed under a legal-aid scheme 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 proceedings¹. For the purposes of the instant case, I would simply refer to the detailed reasoning of those opinions.

1. There are a significant number of such cases pending before the European Court of Human Rights