

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

FOURTH SECTION

CASE OF CHOROBIK v. POLAND

(Application no. 45213/07)

JUDGMENT

STRASBOURG

3 May 2012

This judgment is final but it may be subject to editorial revision.



In the case of Chorobik v. Poland**,**

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

David Thór Björgvinsson, *President,*
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 11 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 45213/07) 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 Franciszek Chorobik ("the applicant"), on 8 October 2007.

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

3. On 28 June 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and lives in Sosnowiec.

5. By a judgment of 8 August 2006 the Kraków Regional Administrative Court dismissed the applicant's appeal against a second-instance administrative decision of 25 August 2005 by which the second-instance authority had refused to acknowledge that the applicant's ailment was of an occupational character.

6. This judgment was served on the applicant on 25 September 2006.

7. By a decision of 19 October 2006 the court granted legal aid to the applicant.

8. The local Bar Association assigned a lawyer to the case by a decision of 2 November 2006. This decision was served on the lawyer on 8 November 2006. On 13 November 2006 the applicant gave a power of attorney to the lawyer.

9. On 1 December 2006 the lawyer submitted a cassation appeal to the Regional Administrative Court.

10. On 29 December 2006 that court held that the time-limit for lodging a cassation appeal had expired on 25 October 2006, thirty days after the applicant had been served with the judgment. The court rejected the cassation appeal on the ground that under the applicable laws the fact that the party was not represented by a lawyer and requested for legal aid only after having been served with the judgment had no bearing on the running of the time-limit for submitting a cassation appeal. It also noted that the legal-aid lawyer had failed to submit a request for leave to appeal out of time together with the cassation appeal.

11. The applicant's lawyer appealed. He acknowledged that he had not submitted the request for leave to appeal out of time. However, he was of the view that this omission would not be relevant for the court's decision to accept the cassation appeal for examination.

12. On 13 April 2007 the Supreme Administrative Court upheld the contested decision and shared the legal view expressed by the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice concerning the procedure for lodging cassation appeals with the Supreme Administrative Court against judgments of the Regional Administrative Courts are stated in the Court's judgment in the case of *Subicka v. Poland*, no. 29342/06, §§ 12-21, 14 September 2010.

14. In particular, in its decision no. II FZ 651/07 of 18 January 2008 the Supreme Administrative Court 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 by a legally-aided applicant could be admitted for examination.

15. When legal aid has been granted and the time-limit for the submission of a cassation appeal has already expired, it is open to the legally-aided party to submit the appeal together with a request for leave to appeal out of time made under sections 86 and 87 of the Law on the Procedure before Administrative Courts (e.g. NSA FZ 754/04 of 31 January 2005 and NSA, I OZ 160/08 of 14 March 2008). In certain cases the courts stated that such a request should be submitted within seven days from the date on which the lawyer obtained a power of attorney from the party, which date is considered as the date on which the impediment to lodging an appeal ceased to exist (e.g. the Białystok Regional Administrative Court, II SAB Bk 27/07 of 10 April 2008), or from the date when the lawyer could obtain effective access to the case file (e.g. the Poznań Regional Administrative Court, IV SA/Po 865/06 of 13 November 2007).

16. In a number of its recent decisions the Supreme Administrative Court acknowledged the difficulties which legally-aided parties experienced

in connection with lodging their cassation appeals against judgments of the first-instance administrative courts. It expressed the view that they should not be penalised for the fact that their requests for legal aid were not processed speedily enough. It analysed relevant case-law of the administrative courts and noted that the manner in which the beginning of the time-limit for lodging cassation appeals was determined had led to divergent results. It held that it was necessary to determine the relevant time in a manner compatible with effective access to the highest administrative court and which ensured equal treatment for parties represented by lawyers appointed under the legal-aid scheme and by privately hired lawyers. The court held that the time-limit for a legally-aided party started to run only on the day when a legal-aid lawyer had a genuine possibility of lodging the cassation appeal and not when he or she was informed of having been assigned to the case. The court was of the view that the latter approach was far too rigorous and rendered the effective enjoyment of legal assistance granted under the legal-aid system illusory. In any event, the cassation appeal had to be lodged within thirty days from the day on which the party was informed of the appointment of the legal-aid lawyer (I FZ 569/06 of 8 December 2006; I FZ 667/06 of 15 January 2007; I FZ 30/09 of 2 March 2007; II FZ 177/08 of 25 June 2008; II OZ 513/08 of 27 May 2008; I OZ 376/08 of 13 June 2008; I FZ 30/09 of 2 March 2009; II OZ 1093/09 of 9 December 2009; I FZ 30/09 of 2 March 2009).

THE LAW

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

17. The applicant complained that he had been denied access to the Supreme Administrative Court because it had rejected his cassation appeal. He referred to Article 6 § 1 which, in so far as relevant, provides as follows"

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

A. Admissibility

18. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

19. The applicant complained that he had been denied access to the Supreme Administrative Court.

1. General observations

20. The Court has already had occasion to set out at length the relevant principles derived from its case-law in this area (*Siałkowska v. Poland*, no. 8932/05, §§ 99-107, 22 March 2007; *Smyk v. Poland*, no. 8958/04, §§ 54-59, 28 July 2009; *Zapadka v. Poland*, no. 2619/05, §§ 57-61, 15 December 2009). It adopts those principles for the purposes of the instant case.

21. The same question arises in the context of the present case as that examined by the Court in the cases referred to above, namely whether the applicant was deprived of access to the Supreme Administrative Court.

22. The Court observes that it has already dealt with this question in the context of criminal as well as civil procedure before the Polish courts.

23. As far as criminal procedure is concerned, it was established that - under the established case-law of the Supreme Court – the time-limit for lodging a cassation appeal should run *de novo* from the day when the applicant has been informed of the legal-aid lawyer's refusal to lodge a cassation appeal (the Supreme Court, decision II KZ 16/08 of 20 February 2002). This approach was found to satisfy Convention standards, provided that the applicant has been properly informed about his/her procedural rights at the time when the lawyer's refusal was communicated to him or her (*Kulikowski v. Poland*, no. 18353/03, § 69-71, ECHR 2009-... (extracts); *Antonicelli v. Poland*, no. 2815/05, § 44-45, 19 May 2009). Subsequently, in 2008 the Supreme Court also stated that the strand of the case-law based on that approach was correct as providing adequate guarantees to the defendant by indicating in an unequivocal way the date on which the time-limit started to run.

24. In the context of civil procedure the Court has found that the civil courts' approach to the calculation of the time-limit for submitting a cassation appeal was stricter. Thus, a legal-aid lawyer's refusal to prepare the appeal did not trigger the running of the time-limit *de novo*. That approach was regarded by the Court as being incompatible with Convention standards, save for rather rare situations where the refusal of the legal-aid lawyer was notified to the applicant well before the deadline was due to expire (see *Smyk v. Poland*, referred to above, §§ 63-65).

25. In so far as procedure before the administrative courts is concerned, the Court first observes that where a party to proceedings is represented by a lawyer, the procedural time-limits set by the Act on Procedure before Administrative Courts start to run on the date of the service of judicial decisions on the lawyer. In such situations no difficulties arise in connection

with establishing the date on which the thirty-day time-limit for lodging a cassation appeal, applicable at the material time, would expire.

26. The situation is significantly different where a party does not have legal representation before the Regional Administrative Court, as in the present case, and is granted legal aid only after the second-instance judgment has been given and served on him or her.

27. The case-law of the Supreme Administrative Court provides that the time-limit for lodging a cassation appeal starts to run from the date on which the judgment of the Regional Administrative Court has been served on the non-represented party. The administrative courts have repeatedly held that his or her request for legal aid does not affect the running of the time-limit. They have also acknowledged that a party who was subsequently granted legal aid was put in a difficult position, because at the time of service the time-limit had already started to run. A lawyer subsequently assigned to the case had therefore less time to examine the case and decide, still within the time-limit, whether a cassation appeal offered prospects of success and to prepare an appeal. This may lead to a situation where lawyers subsequently assigned to the case only learned about their appointments after the time-limit for lodging the cassation appeal had expired.

28. The Supreme Administrative Court has, on numerous occasions, addressed this problem. As a result, a body of case-law has developed to the effect that in situations where a legal-aid lawyer has been appointed after the time-limit for lodging a cassation appeal had expired and he or she is willing to prepare it, the administrative courts could grant leave for submitting a cassation appeal out of time. Under the case-law of the Supreme Administrative Court the day on which the impediment for lodging the cassation appeal ceased to exist is defined as the day on which the lawyer has had a genuine possibility to prepare it. Thus, the seven-day time-limit begins to run only after the legal-aid lawyer has had sufficient time to study the file.

2. Application of these considerations to the circumstances of the case

29. Turning to the circumstances of the present case, the Court observes that the judgment of 8 August 2006 was served on the applicant on 25 September 2006. Accordingly, the thirty-day time-limit for lodging a cassation appeal was to expire on 25 October 2006. On 8 November 2006 the legal-aid lawyer was informed that he had been assigned to the case. On 13 November the applicant gave him the power of attorney. However, on 1 December 2006 the Kraków Administrative Court rejected the cassation appeal lodged by that lawyer, finding that the time-limit had expired thirty days after the first-instance judgment had been served on the applicant, that the cassation appeal had therefore been lodged out of time and that the legal-aid lawyer had failed to request leave to appeal out of time. This

decision was later upheld by the Supreme Administrative Court which shared the legal view expressed by the Regional Court.

30. The Court is of the view, in line with its case-law referred to above and also in line with the many judgments of the Polish administrative courts summarised above (see paragraphs 14-16) that the determination of the time-limit for legally aided parties should be made in a manner compatible with effective access to the highest administrative court and which ensured equal treatment for parties represented by lawyers appointed under legal aid scheme and by privately hired lawyers.

31. Furthermore, the Court is satisfied that under the established case-law of the administrative courts it was possible for a legally-aided party to obtain access to the Supreme Administrative Court even after the expiry of the time-limit for lodging of a cassation appeal (see paragraphs 15-16 above).

32. The Court observes that in the present case the legal-aid lawyer had failed to submit a cassation appeal together with a request for leave to appeal out of time. The Regional Administrative Court and, subsequently, the Supreme Administrative Court refused to admit the cassation appeal, referring to this failure. The Court notes that the lawyer had thereby failed to have recourse to the only measure which under the case-law of the administrative courts made it possible for them to accept a cassation appeal submitted to the court after the expiry of the relevant time.

33. It cannot therefore be said that the courts did not have due regard to the necessity of alleviating the situation of legally-aided parties arising from the difficulties to submit a cassation appeal within the time-limits set out by the applicable procedural laws.

34. The Court therefore concludes, having regard to the circumstances of the case seen as a whole, that in the particular circumstances of the present case there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 3 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President