

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

FOURTH SECTION

CASE OF SZUBERT v. POLAND

(Application no. 22183/06)

JUDGMENT

STRASBOURG

5 July 2012

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



In the case of Szubert v. Poland,

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

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 14 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 22183/06) 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 Tadeusz Szubert ("the applicant"), on 25 May 2006.

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

3. On 29 November 2010 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Płock.

6. On 30 May 2004 the applicant was arrested. Two days later, on 1 June 2004 the Gostynin District Court decided to remand him in custody.

7. By a judgment of 27 June 2005 the Płock Regional Court found the applicant guilty of manslaughter and other offences and sentenced him to 25 years' imprisonment. On 3 November 2005 the Warsaw Court of Appeal upheld the first-instance judgment.

8. On an unspecified later date 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.

9. In a letter of 6 February 2006 the applicant's legal-aid lawyer informed the Warsaw Court of Appeal that she had found no grounds on which to lodge a cassation appeal.

10. By a letter of 7 February 2006 the Registry of the Warsaw Court of Appeal forwarded the legal-aid lawyer's statement to the applicant. The letter read as follows:

> "The Registry of the Warsaw Court of Appeal ... forwards, enclosed, a copy of a letter of your legal-aid lawyer, for your information. Please be informed that the time-limit for lodging a cassation appeal expires on 13 February 2006."

11. This Warsaw Court's of Appeal letter, together with the legal-aid lawyer's letter of 6 February 2006, were served on the applicant on an unspecified date after 7 February 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice concerning the procedure for lodging cassation appeals in criminal cases 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, and *Antonicelli v. Poland*, no. 2815/05, §§ 14-22, 19 May 2009.

13. 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 (II KZ 16/08) and in a number of similar decisions given in 2008.

14. In its decision of 25 March 1998 the Supreme Court stated that the refusal of a legal-aid lawyer to lodge a cassation appeal did not constitute a valid ground for granting retrospective leave to lodge such an appeal by another lawyer out of time (V KZ 12/98). It confirmed this ruling in a further decision of 1 December 1999. The Supreme Court observed that the court could only assign a new legal-aid lawyer to the case if it were shown that the first lawyer had been negligent in his or her task of assessing whether a cassation appeal had any prospects of success. If this were not the case, a court was not obliged to assign a new legal-aid lawyer to represent

the convicted person and its refusal was not subject to appeal (III KZ 139/99). The Supreme Court reiterated its position in a number of other decisions (e.g. II KZ 11/02, II KZ 36/02).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF DENIAL OF ACCESS TO THE SUPREME COURT

15. 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. This complaint falls to be examined under Article 6 § 1 taken together with Article 6 § 3 (c) of the Convention. Those provisions, in so far as relevant, read as follows:

> "1. 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

16. The Government argued that the applicant had failed to avail himself of the applicable domestic remedies.

He should have hired a lawyer of his own choice with a view to submitting a cassation appeal on his behalf. It was also open to him to request that another legal-aid lawyer be assigned to the case. Had the time-limit for lodging the appeal already expired by the time the request had been granted, it would have been open to the applicant to request retrospective leave to appeal out of time.

17. The Court recalls that the Government has already relied on the same arguments in the case of *Dombrowski v. Poland* (no. 9566/10, judgment of 18 October 2011). In this case, the Court rejected the Government's objection, considering that in order to comply with the exhaustion requirement set out in Article 35 § 1 of the Convention the applicant should not have been required to embark on further attempts to obtain legal assistance or to seek retrospective leave to lodge a cassation appeal out of time (see §§ 17-20 and §§ 26-28). The Court adopts these

findings and conclusions for the purposes of the instant case. Accordingly, it rejects the Government's objection based on non-exhaustion of domestic remedies.

18. 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

19. 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.

20. 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, § 52, and *Bobek v. Poland*, no. 68761/01, § 55, 17 July 2007).

21. Furthermore, the Court has already had occasion to set out at length the relevant principles derived from its case-law in the area of effective access to the Supreme Court in the context of criminal proceedings (*Kulikowski v. Poland*, no. 18353/03, *Antonicelli v. Poland*, no. 2815/05, 19 May 2009; *Arciński v. Poland*, no. 41373/04, 15 September 2009).

22. In the present case the court informed the applicant about the legal-aid lawyer's refusal by a letter of 7 February 2006. In the court's letter accompanying that refusal the applicant was informed that the time-limit for lodging a cassation in his case would expire on 13 February 2006, while in the light of the Supreme Court's case-law (see § 13) it began to run anew on the date on which this letter was served on the applicant, to expire only thirty days later. The failure to provide the applicant with correct information in this respect, 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.

23. The Court observes that the procedural framework governing the availability 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 the fairness requirement, 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; *Jan Zawadzki v. Poland*, no. 648/02, § 16, 6 July 2010). 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".

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Alleged unfairness of the proceedings

25. The applicant complained, relying on Article 6 of the Convention, that his criminal trial had been unfair in that the courts had wrongly assessed evidence and erred in establishing the facts, as a result of which he had been wrongfully convicted.

26. 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).

27. 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.

B. Alleged violation of Article 5 § 4 of the Convention

28. The applicant complained that he had not been served with the detention order of 1 June 2004, as a result of which he had been deprived of a possibility to appeal against it, in breach of Article 5 § 4 of the Convention.

29. However, the Court notes that the applicant failed to provide any evidence to support his complaint. 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

30. 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

31. The applicant claimed 200,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

32. The Government submitted that the claims should be rejected as exorbitant and inconsistent with the Court's established case-law.

33. 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 awards the applicant EUR 2,000 in respect of non-pecuniary damage (see *Dombrowski v. Poland*, cited above, § 35).

B. Costs and expenses

34. The applicant did not make any claim for costs and expenses.

C. Default interest

35. 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 complaint concerning the denial of access to the Supreme Court admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State 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;

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

Done in English, and notified in writing on 5 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President