

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

FOURTH SECTION

DECISION

Application no. 40466/05
Zygmunt SZYMANOWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 3 April 2012 as a Committee composed of:
Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Zygmunt Szymanowski, is a Polish national who was born in 1939 and lives in Przemęt. The Polish Government ("the Government") are represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.
3. The applicant was born in 1939 and lives in Przemęt.
4. The applicant was involved in administrative proceedings concerning the determination of a price he was to pay for a purchase of a municipal apartment where he lived.

5. The first-instance decision was given, by way of a resolution of the municipal council, on 28 August 2003. The applicant challenged this resolution. On 26 November 2006 the municipality served on him its resolution by which it had dismissed his challenge.

6. On 31 December 2003 the applicant lodged an appeal against that decision with the Poznań Regional Administrative Court.

7. On 6 May 2004 that court rejected the applicant's appeal, having found that he had failed to submit it to the court within thirty-day time limit set by the provisions on the procedure before the administrative courts.

8. The applicant requested assistance of a legal-aid lawyer. His request was granted and on 5 November 2004 a legal-aid lawyer was assigned to the case. He obtained a power of attorney from the applicant on 16 November 2004. On 9 December 2004 the lawyer submitted a cassation appeal together with a request for retroactive leave to appeal out of time with the Poznań Regional Administrative Court.

9. On 27 January 2005 the Poznań Regional Administrative Court refused leave to appeal out of time. It noted that the legal-aid lawyer had been assigned to the case on 5 November 2004 when he had been served with the court's decision to that effect. He subsequently received a power of attorney from the applicant on 16 November 2004. The seven-day time-limit for requesting leave to appeal out of time had started to run, at the latest, on that date. Consequently, it had expired on 23 November 2004 whereas the lawyer had submitted the request on 9 December 2004. It had to be rejected for failure to comply with the time-limit.

10. The applicant's legal-aid lawyer appealed, submitting that he had not had an opportunity to study the case-file before 7 December 2004.

11. By a decision of 21 April 2005 the Supreme Administrative Court upheld the contested decision, sharing the conclusions of the first-instance court. It noted that the legal-aid lawyer had failed to adduce any circumstances to justify his submission that he could not study the case-file before 7 December 2004.

B. Relevant domestic law and practice

12. 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.

13. 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.

14. 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).

15. 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).

COMPLAINTS

16. The applicant complained that he had been denied access to the Supreme Administrative Court in breach of Article 6 § 1 of the Convention.

17. The applicant complained that the domestic authorities had wrongly assessed the evidence and, as a result, had failed to establish the facts of the case correctly. They had wrongly applied domestic law and had given erroneous judgments.

THE LAW

18. The applicant complained that he had been denied access to the Supreme Administrative Court in breach of Article 6 § 1 of the Convention, which in so far as relevant reads as follows:

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

19. 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.

20. 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.

21. The Court observes that it has already dealt with this question in the context of procedure before the administrative court. It observed that where a party to proceedings was represented by a lawyer, the procedural time-limits set by the Act on Procedure before Administrative Courts started to run on the date of the service of judicial decisions on the lawyer. In such situations no difficulties arose 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. The situation was significantly different where a party did not have legal representation before the Regional Administrative Court, as in the present case, and was granted legal aid only after the second-instance judgment has been given and served on him or her.

22. The Court observed that case-law of the Supreme Administrative Court provided that the time-limit for lodging a cassation appeal started to run from the date on which the judgment of the Regional Administrative Court was served on the non-represented party. The administrative courts had repeatedly held that a request for legal aid did not affect the running of the time-limit. However, they 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 might 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.

23. The Supreme Administrative Court has, on numerous occasions, addressed this problem. As a result, a body of case-law has been 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.

24. The Court noted that this jurisprudential approach resulted from the administrative courts' concern about the difficulties encountered by legally-aided parties. It was satisfied that that approach could be said to be compatible with the Convention standards as regards ensuring fair access to the cassation procedure (see also *Subicka v. Poland (no. 2)*, nos. 34043/05 and 15792/06, § 10, 21 June 2011). 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 14-15 above) 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.

25. Turning to the circumstances of the present case, the Court notes that it differs from the cases it examined hitherto in that the applicant failed to comply with the thirty-day time-limit for lodging an appeal with the Regional Administrative Court. As a result, that court refused to examine his appeal and gave no judicial decision on the merits of his case which the applicant could have contested in the cassation proceedings before the Supreme Administrative Court. Hence, the issue before the Supreme Administrative Court was not whether to grant leave to appeal out of time and, by that token, to make it possible for the applicant to have the merits of his cassation appeal examined and the substance of his civil rights and obligations within the meaning of Article 6 § 1 of the Convention determined in the context of his case. It was rather whether the applicant

should be allowed to have his case brought before the Regional Administrative Court, following his failure to comply with the procedural obligations set by the procedural law.

26. However, even assuming that the procedural guarantees of Article 6 § 1 of the Convention are applicable to the proceedings before the Supreme Administrative Court, the Court considers that the application is in any event inadmissible for the following reasons.

27. The Court notes that the Regional Administrative Court, in its decision of 10 July 2008, and subsequently the Supreme Administrative Court in its decision of 4 September 2008, had due regard to difficulties which could have arisen for legally-aided parties in the proceedings concerning lodging of cassation appeals. The Court is satisfied that the beginning of the time-limit for lodging of an appeal against the decision of the Poznań Regional Administrative Court given on 27 January 2005 was determined by the administrative courts in the manner most advantageous for the applicant and with due regard being had to the necessity of alleviating the situation of legally-aided parties arising from the difficulties to examine the case and prepare a cassation appeal within the time-limits set out by the applicable procedural law.

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

29. The applicant complained that the domestic authorities had wrongly assessed the evidence and, as a result, had failed to establish the facts of the case correctly and had given erroneous judgments.

30. The Court reiterates that, 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 *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *García Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, § 28).

31. It follows, even assuming that in the circumstances of the present case the applicant can be said to have exhausted the domestic remedies in respect of his complaint concerning the denial of access to court, that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President