CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 12825/02
by Józef TABOR
against Poland

The European Court of Human Rights (Fourth Section), sitting on 28 May 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application introduced on 11 January 2001 and registered on 22 March 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Józef Tabor, is a Polish national, who was born in 1952 and lives in Kraków.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

a) In July 1993 the applicant was employed at the refinery "Trzebinia" as director of a department. From 1993 to 1997 his contract of employment was changed several times. On 30 September 1997 the refinery terminated the applicant's contract.

On 7 October 1997 the applicant lodged with the Katowice Regional Court a compensation claim against the refinery for allegedly unlawful termination of his contract. He also claimed a reinstatement at work. By a decision of 3 December of 1997 the Katowice Regional Court considered itself incompetent to examine the applicant's claims and transmitted the case to the Katowice District Labour Court.

By a judgment of 4 December 1998 the Katowice District Labour Court ordered the refinery to pay to the applicant compensation of 5,008,74 PLN for unlawful termination of the employment contract. The compensation corresponded to 3 months' remuneration. The court dismissed the remaining claims.

On 16 December 1998 the Katowice District Court issued an order making the judgment of 4 December 1998 immediately enforceable.

Both parties to the proceedings appealed against the first-instance judgment. By a judgment of 18 November 1999 the Katowice Regional Court dismissed their appeals.

On 26 November 1999 the applicant requested the Katowice Regional Court for free legal assistance in cassation proceedings, having regard to his financial situation and to the fact that he had been unemployed from November 1997 to May 1999. In December 1999 the applicant, having no response of the Katowice Regional Court, lodged a cassation appeal himself.

By a decision of 17 January 2000 the Katowice Regional Court dismissed his request for free legal assistance in cassation proceedings without giving written reasons for it.

On the same day, the Katowice Regional Court rejected the applicant's cassation appeal as not being lodged by a lawyer.

The applicant lodged an appeal against these decisions with the Supreme Court. He also requested that retrospective leave to lodge a cassation appeal out of time be granted to him. He further asked that court to appoint a lawyer for him in order to assist him in the preparation of this appeal. The applicant argued that the Regional Court had failed to deal within the time-limit with his request for legal assistance. This had forced the applicant to lodge the cassation appeal himself. The fact that the cassation appeal had been rejected, combined with the unmotivated refusal of legal assistance, had made it impossible to have his interests protected and arguments properly presented to the court.

By a decision of 25 May 2000 the Supreme Court dismissed his appeal against the decision rejecting the cassation on formal grounds, observing that the law clearly provided that the cassation appeal could only be lodged

by a lawyer. The Supreme Court further held that it was not competent to examine the complaint concerning legal aid.

b) On 13 January 2000 the applicant claimed further compensation of 16,000 PLN from the refinery for the alleged financial loss and damage to his health resulting from termination of his employment.

By a judgment of 26 April 2000 the Katowice Regional Court dismissed his claim as unsubstantiated. The court considered that the applicant had not proved that his health had suffered following the termination of the contract. The court further held that he had been receiving remuneration in compliance with the terms of his contract. Moreover, he had not proved that there had been a causal link between deterioration of his health and his work conditions.

The applicant appealed. Later on he supplemented his appeal, claiming that the proceedings before the first-instance court be declared null and void due to alleged procedural shortcomings. He also claimed an additional amount of PLN 20,000 for alleged discrimination concerning his remuneration.

By a judgment of 22 December 2000 the Katowice Court of Appeal dismissed his appeal.

On 27 December 2000 the applicant requested the Katowice Court of Appeal to have the written reasons for its judgment served on him. He also asked the Katowice Court of Appeal to appoint a lawyer to assist him in the preparation of his cassation appeal.

By a decision of 12 March 2001 the Katowice Court of Appeal dismissed his request for free legal assistance in cassation proceedings. The court considered that the applicant had failed to prove that he could not afford such assistance. The decision was served on the applicant on 15 March 2001. The applicant failed to submit further information concerning these proceedings.

B. Relevant domestic law

Article 393^2 § 1 of the Code of Civil Procedure stipulates that a cassation appeal must be filed by an advocate or the legal adviser.

Under Article 393^4 § 1 of the Code of Civil Procedure a cassation appeal must be lodged with the court that has given the relevant decision within one month from the date on which the decision was served on the party concerned.

COMPLAINTS

The applicant complains under Article 6 of the Convention that in both sets of the proceedings the courts incorrectly assessed the evidence, made erroneous findings of fact and wrongly applied labour law.

The applicant also complains that in the first set of the proceedings the courts refused to grant him legal assistance in the cassation proceedings while, according to Polish law, a casastion appeal must be drafted and signed by a lawyer.

THE LAW

1. The applicant complains under Article 6 of the Convention. In particular he submits, that: the courts had incorrectly assessed the evidence, made erroneous findings of fact and wrongly applied labour law in the proceedings concerning compensation and reinstatement at work.

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

The Court recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Court refers, on this point, to the established case-law of the Convention organs (cf. Schenk v. Switzerland, judgment of 12 July 1988, Series A no. 140, p. 25, § 45).

The Court has not, however, found any substantiated allegations in the applicant's submissions, which could lead it to conclude that the second set of proceedings complained of were unfair or that the courts reached their decision unfairly.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant also complains the courts refused to grant him legal assistance in the cassation proceedings whereas, according to Polish law, a casastion appeal must be filed by a lawyer.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint that the courts refused to grant him legal assistance in the cassation proceedings whereas, according to Polish law, a casastion appeal must be filed by a lawyer.

Declares inadmissible the remainder of the application.

Michael O'Boyle
Registrar

Nicolas Bratza
President