CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40140/98
by Krzysztof TUZIŃSKI
against Poland

The European Court of Human Rights (Second Section) sitting on 30 March 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr J. Makarczyk,
Mr P. Lorenzen,
Mrs M. Tsatsa-Nikolovska,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 25 August 1997 by Krzysztof TUZIŃSKI against Poland and registered on 9 March 1998 under file no. 40140/98;

Commented [Note1]: In small letters.

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1969, is a carpenter residing in Świecie.

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

Particular circumstances of the case

On 18 July 1990 the applicant, while serving in the army, was injured in a car accident. He was admitted to a military hospital and had an operation. After his discharge, on 20 September 1990 the applicant fell and his injury was renewed.

By a decision of 28 August 1992 the military medical panel declared that the applicant was permanently unfit for military service.

In 1993 the applicant began to receive military disability benefit.

On 23 April 1993 he lodged a civil action with the Regional Court in Bydgoszcz. He claimed that his second accident occurred during work which he had been carrying out on orders of his military superior. He submitted that in the military hospital he had not received adequate treatment. Before the first-instance court the applicant was represented by J.M., a lawyer officially assigned to the case within the framework of the system of free legal assistance.

By a decision of 2 February 1994 the Employment and Disability Medical Board assessed his disability as minor (of third degree), preventing him from carrying out any hard work in standing position.

On 8 August 1996 the Bydgoszcz Regional Court dismissed the applicant's claim. The Court found that in July 1990, during his military service, the applicant had a car accident and his leg was broken. He had been treated in Grudziądz Military Hospital from 18 July 1990 to 1 August 1990. An operation had been made and a special device had been put in his leg to join the broken bones. On the latter date he was discharged from the hospital and transferred to medical ward in his military unit. Doctors recommended that in ten weeks he should undergo a hospital check. During his stay in the ward the applicant disregarded medical recommendations, in particular he refused to use crutches, and repeatedly kept leaving the ward. On 20 September 1990, having left the ward, he had accompanied another private who had been ordered to mow a lawn at the local school. During the break in the work, the applicant had fallen and felt pain in his leg. On the same day he had been transferred to the Grudziądz hospital where the doctors decided that he should be operated on. A day before the operation the applicant, despite medical recommendations to the contrary, had drank alcohol, which made the operation impossible. His leg had been put in a plaster cast. Subsequently he had again been transferred to the ward in his unit and a recommendation had been made that he should report to a hospital later. He did not do so. The applicant had been discharged from the military service on 10 May 1991, retaining for a further three months the right to use military health services. He had failed to report to any military medical institution. In 1993 his disability had been assessed as minor and he was receiving military disability pension.

The court interviewed the applicant and heard evidence from, *inter alia*, one of the doctors who had treated him, two of his military superiors, and two other persons. The court had also considered as evidence, *inter alia*, the applicant's medical records, the report of a medical expert appointed by the court, the decision of the military medical panel of 28 August 1992 and the decision of the Employment and Disability Medical Board of 2 February 1994.

The court considered that, regard being had to the applicant's persistent failure to comply with the medical recommendations, his treatment could not have been effective. There were no indications of any medical negligence on the part of persons who had been treating him. Moreover, there was no evidence to support his argument that had had his second accident while working as ordered by his superiors. The court concluded that there was nothing to show that there had been any causal link between any orders of the applicant's military superiors and his second accident, or that there had been any medical negligence on the part of the military health services.

Subsequently the applicant's lawyer J.M. requested the Gdańsk Bar to designate a lawyer residing in the vicinity of the appellate court, the Gdańsk Court of Appeal, to represent the applicant in the proceedings before that Court. The Gdańsk Bar complied with his request and designated W.B. to represent the applicant.

The Court duly informed W.B. of the date of hearing and on 27 February 1997 he attended the hearing before that court. On the same day, the court dismissed the applicant's appeal.

On 19 June 1997 the applicant's lawyer J.M. requested a reinstatement in proceedings and requested that the judgment of 27 February 1997 with written grounds be served on him. He submitted that W.B. had failed to inform both him and the applicant about the outcome of the proceedings. He also failed to request that written grounds of the judgment be drafted and served on him which made it impossible for the applicant to lodge a cassation appeal with the Supreme Court. W.B. had only requested that the judgment be served on him. The applicant had learned that the Court of Appeal had found against him when he had come to the court in connection with other proceedings, long after the expiry of the time-limit for the lodging of the cassation appeal. In reply to the applicant's subsequent query about the outcome of the case, W.B. had informed him that he had lodged a request for the written judgment to be served on him. This information had later proved untrue. Therefore the applicant had been deprived of a possibility of lodging the cassation appeal. The lawyer concluded that the applicant could have legitimately expected that he would be informed of the outcome of the proceedings and consulted about further steps to be taken in order to protect his interests. Thus he should be reinstated in the proceedings in order to be able to lodge an appeal in cassation against the judgment of 27 February 1997 as he had been deprived of this possibility without any fault on his part.

On 17 September 1997 the Gdańsk Court of Appeal dismissed the applicant's request for the reinstatement in proceedings. The Court also refused to draft the written grounds for the judgment. The Court considered that the acts of a lawyer appointed to represent a party before a civil court within the framework of a legal aid system aid were to be deemed to be the acts of the party. Thus, any failure on the part of the officially appointed lawyer to comply with the procedural requirements entailed negative consequences directly for the

party to the proceedings. It fell to the Bar, and in particular to the lawyers appointed by it to represent the parties, to organise their work in a manner which would ensure effective representation of parties before civil courts. Even the fact that the lawyers concerned resided in different towns could not discharge the Bar and themselves from their obligation to do so. Therefore, the court concluded, there were no grounds on which to grant the applicant's request for the reinstatement in the proceedings.

Relevant domestic law

1. Assistance of an officially appointed lawyer

Pursuant to Article 113 of the Code of Civil Procedure, a person may request the court to grant him or her exemption from court fees if he submits a declaration that he cannot afford to pay court fees without a substantial reduction in his and his family's standard of living. Such a declaration shall contain details of the family situation, assets and income of the person concerned. A decision whether the financial situation of the person as set out in the declaration justifies granting exemption is left to the court's discretion.

Under Article 117 of the Code, a party to the proceedings who obtained exemption from court fees is entitled to request the court to assign an advocate or a legal counsel to represent him or her in the proceedings. The court shall grant such request if it considers that it is justified, having regard to the circumstances of the case. The court shall subsequently request the local Chamber of Advocates or the Chamber of Legal Counsels to appoint a lawyer to represent the party before the court. If a person so appointed is obliged to perform a judicial act before another court in connection with the proceedings, the Chamber of Advocates or the Chamber of Legal Counsels shall, if it considers it necessary, on the request of the lawyer appointed to the case, designate another advocate or counsel practising within the jurisdiction of that court.

2. Cassation appeal

Following amendments made to the Code of Civil Procedure by the Law on Amendments to the Code of Civil Procedure of 1 March 1996, a party can lodge a cassation appeal with the Supreme Court against a final judicial decision of a second-instance court which has terminated the civil proceedings.

Pursuant to Article 393 of the Code, a cassation appeal may be lodged on the ground that the courts have committed errors of law in that they have incorrectly interpreted or wrongly applied substantive laws; or on the ground of such flagrant breach of procedural provisions as could have seriously affected the outcome of the proceedings.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the proceedings were unfair in that he could not put forward his arguments before the Supreme Court due to the failure of one of the lawyers officially appointed in his case to take relevant procedural measures. Thus, his interests were not properly presented and protected by the officially

appointed lawyer. He also complains that they were unfair in that the Court of Appeal, in its decision of 17 September 1997, gave countenance to W.B.'s failure to act diligently in his representation before the Court of Appeal, disregarding entirely the fact that the applicant could not be held responsible for this.

The applicant further complains under Article 6 of the Convention that the proceedings were unfair in that the courts wrongly assessed the evidence and, as a result, found against him, whereas his action should have been allowed.

The applicant further relies on Articles 2 and 13 of the Convention.

THE LAW

1. The applicant complains under Article 6 of the Convention that the proceedings were unfair in that he could not put forward his arguments before the Supreme Court due to the failure of one of the lawyers officially appointed in his case to take relevant procedural measures. He also complains that they were unfair in that the Court of Appeal, in its decision of 17 September 1997, gave countenance to the lawyer's failure to act diligently.

Article 6 § 1 of the Convention, insofar as relevant, reads:

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

The Court recalls that, according to Article 19 of the Convention, it is competent to receive petitions from any person claiming to be a victim of a violation by one of the Contracting Parties of the rights set out in the Convention. The responsibility of the Contracting Parties is incurred by the actions of their organs. A lawyer, even if he or she is officially appointed to a case, cannot be considered as an organ of a State. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal aid scheme or be privately financed, and, as such, cannot, other than in special circumstances, incur the State's liability under the Convention (see, *mutatis mutandis*, the Artico v. Italy judgment of 30 May 1980, Series A no. 37, p. 18, para. 36; the Daud v. Portugal judgment of 21 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 749, § 38; European Commission of Human Rights, No. 9022/80, Dec. 13.7.1983, D.R. 33, p. 21; No. 27266/95, Dec. 21.10.1996, D.R. 87-B, p. 100).

The Court first observes that the special guarantees required with regard to the defence rights in criminal proceedings are not applicable in the same way in civil proceedings such as in the present case. The Court further notes that the officially appointed lawyer failed to inform the applicant of the outcome of the proceedings before the Gdańsk Court of Appeal, to consult him as to steps to be taken in connection with the further appeal proceedings, and to take the procedural measures necessary for lodging a cassation appeal. However, such failure to act with due diligence does not engage the direct responsibility of the State.

It follows that this complaint is incompatible *ratione personae* with the Convention. Accordingly, it must be dismissed pursuant to Article 35 § 3 of the Convention.

2. The applicant further complains under Article 6 of the Convention that the proceedings were unfair in that the courts wrongly assessed the evidence, reached erroneous conclusions and, as a result, found against him.

Under Article 35 of the Convention the Court "may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

However, the Court does not consider it necessary to decide whether the applicant has exhausted domestic remedies as required by Article 35 § 1 of the Convention because, even assuming that the domestic remedies have been exhausted, this part of the application should in any event be declared inadmissible for the following reasons:

According to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties in 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 the Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45 and 46; the Garcia Ruiz v. Spain judgment of 21 January 1999, § 28, to be published in the Court's official *Reports*).

The Court notes that the first-instance court heard five witnesses and interviewed the applicant. The court further had regard to the documentary evidence. The applicant was represented by lawyers before both the Regional Court and the Court of Appeal. It is not alleged that they were prevented in any way from advancing arguments in support of his claims, which they considered relevant to the case. Neither is it alleged that W.B. was not diligent in stating the applicant's case before the Court of Appeal. There is no indication that the courts arbitrarily interpreted evidence or reached conclusions as to the facts, which would be unreasonable. In the light of the foregoing considerations, the Court considers that the applicant had the benefit of adversarial proceedings in compliance with the requirements of Article 6 § 1 of the Convention.

This part of the application is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. The applicant further invokes Article 13 of the Convention. The Court, having regard to its above conclusion under Article 6 § 1 of the Convention, does not find it necessary to examine the complaint under Article 13. The requirements of Article 13 are less strict than, and are absorbed by, those of Article 6 § 1 (the Sporrong and Lőnnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 31, § 88). Accordingly, no separate issue arises under Article 13 of the Convention.

4. Insofar as the applicant relies on Article 2 of the Convention in connection with the judicial proceedings before the civil courts, the Court observes that no danger to life or limb is alleged and that the events complained of did not expose the applicant to any such danger. Accordingly, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President