CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 19795/02
by Jan WIĄCEK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 17 January 2006 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 21 April 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jan Wiącek, is a Polish national who was born in 1950 and lives in Nowa Słupia, Poland.

A. The circumstances of the case

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

The applicant was a party to civil proceedings concerning a claim for division of marital co-ownership.

On 6 September 2000 a hearing took place before the Ostrowiec Świętokrzyski District Court (*Sąd Rejonowy*). The judge heard the applicant and dictated his replies to the court clerk, who was taking minutes of the hearing. As the judge's instructions to the clerk differed considerably from what the applicant was saying and as the judge repeatedly interrupted the applicant in his statements, the applicant expressed his objections. However, this was to no avail. Eventually the applicant said:

> "I should reply, not the court".

The judge became angry and warned the applicant that a fine could be imposed on him.

The records of the hearing first relate the applicant's statements concerning the subject matter of the case. Then it reads as follows:

> "The presiding judge warned the [applicant] not to make any comments to the court and warned him that a fine would be imposed on him if he continued to do so.
>
> Thereupon the [applicant] says: "If it is necessary, I will pay".
>
> The court holds that a fine of PLN 500 be imposed on the [applicant]. "

A. Proceedings concerning the imposition of the fine on the applicant.

On 12 September 2000 the applicant appealed to the Ostrowiec Świętokrzyski Regional Court (*Sąd Okręgowy*) against the imposition of the fine. On 12 October 2000 the Ostrowiec Świętokrzyski District Court (*Sąd Rejonowy*), invoking the Act of 20 June 1985, rejected the applicant's appeal, considering that the domestic law did not provide for a possibility to appeal against such a decision. On 9 November 2000 the applicant lodged an interim appeal against this decision. On 10 November 2000 the District Court rejected the applicant's appeal as lodged outside the prescribed time limit. On 29 November 2000 the applicant applied for leave to file an appeal out of time. His motion was dismissed on 24 April 2001.

B. Proceedings concerning rectification of minutes of the hearing.

On 14 September 2000 the applicant lodged a request with the Ostrowiec Świętokrzyski District Court to rectify the minutes of the hearing of 6 September 2000. He submitted that during that hearing he had said, reacting to the court's interruptions and interference with the contents of his statements:

"I should reply, not the court."

This statement had not been recorded in the minutes of the hearing. Consequently, the actual circumstances in which the presiding judge decided to impose a fine on the applicant were not reflected in the minutes, as required by Article 158 § 1 of the Code of Civil Procedure.

On 13 October 2000 the court refused to rectify the minutes. The court considered it to be sufficient that the court's reaction to the applicant's conduct was reflected in the minutes of the hearing, and that therefore the minutes were exact.

On 9 November 2000 the applicant appealed against this decision. He reiterated that the minutes of the hearing did not reflect the actual conduct of the hearing in that his statement was not noted. As a result, they contained the presiding judge's warning about the imposition of a fine, but no information as to the reason which had prompted this reaction on the part of the judge. The applicant stated that this was illogical. He further stressed that he had not said anything that could have been construed as either insulting to the court, or not linked to the subject-matter of the civil case. The court's failure to dictate the parties' statements so that the minutes reflected exactly what was said amounted to a procedural breach, which could negatively affect the substantive outcome of the case.

On 22 December 2000 the Ostrowiec Świętokrzyski District Court dismissed his appeal. The court reiterated the reasons invoked in the first-instance decision of 13 October 2000. It was further stated that according to the case-law of the Supreme Court, the court was not obliged to include in the minutes of a hearing all the statements of the parties, in particular those which were not related to the subject-matter of the proceedings.

C. Events that took place after the case was communicated

On 7 February 2003 the Ostrowiec Świętokrzyski District Court of its own motion gave a decision and quashed its decision of 12 October 2000. The court held that on 1 October 2001 the new act on the legal structure of the courts entered into force. According to Section 50 of the new act it was possible to file an appeal against a decision imposing a fine for contempt of court. The court considered that the change of law was of such importance that it justified quashing the decision of 12 October 2000 even though it had been delivered under the 1985 Act.

On 22 July 2003 the Ostrowiec Świetokrzyski District Court ordered the return to the applicant of the fine paid by him. On 23 July 2003, 500 PLN was transferred to the applicant's bank account.

B. Relevant domestic law

1. The acts on legal structure of the courts.

Section 43 § 1 of the Act of 20 June 1985 ("the 1985 Act") on the legal structure of the courts (*Prawo o ustroju sądów powszechnych*), provides *inter alia* that the court may impose a disciplinary penalty, a fine or a prison sentence, on a person who, at a court session, behaves in an abusive manner or disturbs the public order.

Under Section 44 § 1 of the Act, no appeal is available against a decision to impose such a penalty.

On 1 October 2001 the new act on the legal structure of the courts entered into force. According to Section 50 of the new act it is possible to file an appeal against a decision to impose a penalty for contempt of court.

On 3 July 2002 the Constitutional Court gave judgment (No. SK 31/01) and declared unconstitutional Section 44 § 1 of the 1985 Act. It found that this provision was not in compliance with article 78 (right to appeal) and article 176 § 1 (right to two court instances) of the Constitution.

2. Code of Civil Procedure.

Article 380 of the Code of Civil Procedure provides:

> "The second-instance court shall, upon a motion by a party, examine all those rulings of the court of first-instance which were not subject to interlocutory appeal but which had an effect on the determination of the case."

3. Provisions relating to the constitutional complaint

Article 79 § 1 of the Constitution provides as follows:

> "In accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Court for a judgment on the conformity with the Constitution of a statute or another normative act on the basis of which a court or an administrative authority has issued a final decision on his freedoms or rights or on his obligations specified in the Constitution."

Article 190 of the Constitution, insofar as relevant provides as follows:

> "1. Judgments of the Constitutional Court shall be universally binding and final.
>
> 2. Judgments of the Constitutional Court, ... shall be published without delay.

3. A judgment of the Constitutional Court shall take effect from the day of its publication; however, the Constitutional Court may specify another date for the end of the binding force of a normative act. Such time-limit may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. ...

4. A judgment of the Constitutional Court on the non-conformity with the Constitution, an international agreement or statute, of a normative act on the basis of which a final and enforceable judicial decision or a final administrative decision ... was given, shall be a basis for re-opening of the proceedings, or for quashing the decision ... in a manner and on principles specified in provisions applicable to the given proceedings."

COMPLAINT

1. The applicant complains under Article 6 of the Convention about the unfairness of the civil proceedings in his case.

2. The applicant further alleges that the imposition of fine for contempt of court was in his case entirely unjustified and therefore in violation of Article 10 and 7 of the Convention.

THE LAW

1. The applicant complains under Article 6 of the Convention about the unfairness of the civil proceedings in his case.

That provision reads in so far as relevant:

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

The Government maintained that the applicant had failed to exhaust domestic remedies as required under Article 35 of the Convention. They pointed that under Article 380 of the Code of Civil Procedure the applicant could have requested the court of second instance to examine all those rulings of the court of first-instance which had an effect on the determination of the case. They claimed that in the present case the applicant had failed to request the court of second instance to examine the situation when the minutes of the hearing had not allegedly reflected the actual statements made by the applicant during the hearing. The Government maintained that the proceedings in question constituted a *sui generis* type of proceedings aimed at securing the unimpeded functioning of the courts and safeguarding of the authority of the judiciary. Consequently, in their opinion Article 6 was applicable in the present case.

The applicant disagreed with the Government's submissions.

The Court firstly notes that sanctions for contempt of court derive from the inherent power of courts to ensure the proper and orderly conduct of their own proceedings. Such sanctions may usually be deemed to be of a disciplinary nature. However, a serious penalty, like imprisonment or a heavy fine, for contempt of court could transform the proceedings into the determination of a criminal charge, which might attract the guarantees of Article 6 of the Convention (cf. *Ravnsborg v. Sweden*, judgment of 23 March 1994, Series A no. 283-B, p. 30, § 34, *Putz v. Austria*, judgment of 22 February 1996, *Reports* 1996-I, p. 324, § 33).

The applicability of Article 6 in the instant case is therefore open to doubt. However, the Court does not consider it necessary to examine this issue because, even assuming that Article 6 is applicable, the complaint is in any event inadmissible for the following reasons.

In this respect the Court reiterates that Article 35 § 1 obliges the applicant to try available remedies that relate to the breach alleged by him. The States must have a chance to put matters right through their own legal system before having to answer before an international body for their acts. In that way Article 35 § 1 obliges the applicant to try available remedies that relate to the breach alleged by him (see, *Zynger v. Poland* (dec.), no. 66096/01, 7 May 2002, unreported; *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002, unreported).

The Court further observes that the applicant has not contested the availability of the remedy relied on by the Government.

Examining the instant case, the Court notes that nothing prevented the applicant from making use of that remedy. Under Article 380 of the Code of Civil Procedure at the same time as lodging his appeal he could have asked the court to examine the first-instance decisions relating to the circumstances of the event in question. However, the applicant had failed to do so.

Having regard to the criteria laid down in its case-law, the Court holds that the Government's objection should be allowed. It follows that this part of the application is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

2. The applicant further alleged that the imposition of a fine for contempt of court was in his case entirely unjustified and therefore in violation of Article 10 and 7 of the Convention.

Article 10 reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 7 provides:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

The Government claimed that the applicant had failed to exhaust domestic remedies as required by Polish law. They pointed to the fact that, the applicant had failed to challenge the compatibility with the Constitution of those provisions of the 1985 Act which made it impossible for him to appeal against a court's decision imposing a fine. They drew the Court's attention to a judgment No. SK 31/01 given by the Constitutional Court on 3 July 2002, by which that Court ruled that the provisions which made it impossible to appeal against a court's decision imposing a fine were in breach of the Constitution.

The Government further agreed that the imposition of the fine constituted an interference with the applicant's right to freedom of expression. However, in their additional observations, they submitted that as the fine had been returned to the applicant he could no longer claim to be a victim of an interference with his right of freedom of expression.

The applicant replied that the constitutional complaint to which he allegedly should have had recourse had not been a remedy which he could have tried in the circumstances of the present case. He claimed that he made use of all the available remedies. In particular on 7 February 2003 the Ostrowiec Świetokrzyski District Court gave a decision and quashed the decision of 12 October 2000. Lastly, he submitted that there had been an interference with his right to freedom of expression.

The Court recalls that a penalty imposed on an individual can, of itself, constitute an interference with an applicant's right to freedom of expression (see, for example *Skałka v. Poland*, no. 43425/98, § 30, 27 May 2003). The Court further observes that in the present case the decision to impose a fine on the applicant constituted an interference with his freedom of expression. In particular, as the applicant's statement had not been noted in the minutes of the hearing.

The Court notes that following the entry into force of the new act on the legal structure of the courts, the decision concerning the imposition of a fine on the applicant was quashed and the Ostrowiec Świętokrzyski District Court returned the amount paid to the applicant. Therefore, the question arises whether the applicant may still claim to be a victim within the meaning of Article 34 of the Convention. Nevertheless, the Court considers that it is not necessary to examine the Government's objections to the applicant's victim status since it finds this complaint to be inadmissible for the following reasons.

Under Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted.

The Court observes that, with effect from 17 October 1997, Poland introduced the possibility of lodging individual constitutional complaints. A constitutional complaint may be lodged to challenge the constitutionality of a statute or other normative act which constituted the legal grounds for the final individual decision whereby a court or an administrative authority determined individual rights and obligations (see Article 79 § 1 of the Constitution).

The Court further reiterates that it has already dealt with the question of the effectiveness of the constitutional complaint (see, *Szott-Medyńska v. Poland*, no. 47414/99, 9 October 2003; *Pachla v. Poland*, no 8812/02, 8 November 2005; *Wypych v. Poland* no. 2428/05, 25 October 2005). The Court examined the characteristics of the Polish constitutional complaint and in particular found that the constitutional complaint is an effective remedy for the purposes of Article 35 § 1 of the Convention in situations where the alleged violation of the Convention resulted from the direct application of a legal provision challenged by the complainant as unconstitutional.

In the instant case, a fine for contempt of court was imposed on the applicant according to Section 45 § 1 of the 1985 act. Under Section 44 § 1 of that act no appeal was available against a decision to impose such a penalty. The Court notes that the applicant had the possibility to lodge a constitutional complaint with the Constitutional Court. It was open for him to question the constitutionality of Section 44 § 1 of the 1985 act and to argue that this provision was in breach of Articles 78 (right to appeal) and Article 176 § 1 (right to two court instances) of the Constitution. Consequently, a constitutional complaint filed by the applicant in the present case could have been considered an effective remedy within the meaning of the Convention.

In conclusion, the Court finds that by failing to lodge a constitutional complaint against Section 44 § 1 of the act on the legal structure of the courts of 1985, the applicant failed to exhaust the remedy provided for by Polish law. Thus, the Government's objection that the constitutional

complaint was not employed by the applicant in the instant case is well-founded.

It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible

Michael O'BOYLE
Registrar

Nicolas BRATZA
President