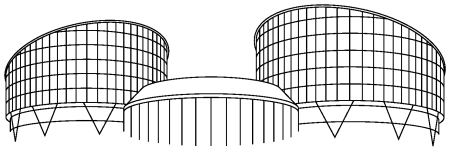

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SHAMOYAN v. ARMENIA

(Application no. 18499/08)

JUDGMENT

STRASBOURG

7 July 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shamoyan v. Armenia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,
Luis López Guerra,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 9 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 18499/08) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Ms Radif Shamoyan ("the applicant"), on 12 April 2008.

2. The applicant, who had been granted legal aid, was represented by Mr R. Ayvazyan, a non-practising lawyer. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant alleged, in particular, that she was denied access to the Court of Cassation due to the fact that her appeal on points of law was not lodged by an advocate holding a special licence to act before that court.

4. On 19 March 2010 the application was communicated to the Government.

5. The seat of judge in respect of Armenia being currently vacant, the President of the Court decided to appoint Judge Johannes Silvis to sit as an *ad hoc* judge (Rule 29 § 2 (a) of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1955 and lives in Armavir. She is disabled and is confined to a wheelchair. She depends on her disability pension as a means of subsistence.

7. On an unspecified date the applicant instituted proceedings against her neighbour, M., seeking to have dismantled a construction that the latter had built in 1987 inside the entrance of their multi-flat house for the purpose of insulating the building. In its place the applicant sought to install a wooden ramp for her wheelchair in order to facilitate her access to her flat, situated on the ground floor.

8. It appears that during the court proceedings the applicant, who was not represented by a lawyer, modified her claim and asked for the construction in question not to be dismantled but to be allocated to her so that she could install a wooden ramp in its place.

9. On 26 July 2007 the Armavir Regional Court dismissed the applicant's claim, finding that the applicant had failed to substantiate with any proof, such as an expert opinion, that it was necessary and possible to dismantle the construction and that it was technically possible to install a wooden ramp in its place.

10. On 1 August 2007 the applicant, still not represented, lodged an appeal.

11. On 13 September 2007 the Civil Court of Appeal dismissed the applicant's claim on appeal. The court found that the applicant's request to have the construction allocated to her was ill-founded since the construction had not been built by her and, moreover, belonged to the owner of the underlying plot of land. The court further referred to an opinion issued on 16 January 2007 by the Armavir Municipality, according to which it was technically preferable to build a wooden ramp from the balcony side of the applicant's flat rather than from the building's main entrance.

12. On 7 November 2007 the applicant, still unrepresented, lodged an appeal on points of law with the Court of Cassation.

13. By a letter of 12 November 2007 the Chief Registrar of the Court of Cassation returned the applicant's appeal, informing her that the appeal had not been admitted for examination as it had not been lodged by an advocate licensed to act before the Court of Cassation, pursuant to Article 223 of the Code of Civil Procedure (the CCP).

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure (in force from 1 January 1999)

14. The relevant provisions of the CCP, as in force at the material time, read as follows:

Article 223: Persons entitled to bring appeals on points of law

"2. Appeals on points of law against judgments of lower courts which have entered into force can be brought by (1) the parties to the proceedings; [and] (2) persons who were not parties to the proceedings but whose rights and obligations were affected by the judicial act deciding on the merits of the case."

3. Persons mentioned in the second paragraph of the present Article lodge their appeals on points of law through an advocate licensed to act before the Court of Cassation. "

Article 224: The court that examines appeals on points of law and the objective of its activity

"1. Appeals on points of law lodged against judgments of the first instance courts, the Commercial Court and the Court of Appeal which have entered into force ... are examined by the Civil Chamber of the Court of Cassation (hereafter, Court of Cassation).

2. The objective of the Court of Cassation's activity is to ensure the uniform application of the law and its correct interpretation, and to promote the development of the law."

15. Article 223 of the CCP, as amended on 28 November 2007 with effect from 1 January 2008, reads as follows:

Article 223: Persons entitled to bring appeals on points of law

"1. Appeals on points of law against the judgments of lower courts which have entered into force can be brought by (1) the parties to the proceedings through an advocate licensed to act before the Court of Cassation."

B. The Advocacy Act (in force from 22 January 2005)

16. According to Article 6, an advocate is entitled to receive remuneration for his services. The amount and mode of payment for legal services are decided by a written contract concluded between the advocate and the client in accordance with the Civil Code. The State guarantees free legal assistance in criminal matters in cases and in accordance with the Code of Criminal Procedure, as well as in accordance with the Code of Civil Procedure in the following cases: (1) recovery of maintenance payments, (2) infliction of damage to health or compensation for damage caused as a result of the breadwinner's death. The Chamber of Advocates ensures free legal assistance, which is paid by the State.

17. According to Article 29.1 (which lost effect following the decision of the Constitutional Court of 8 October 2008), an advocate is granted a licence in order to carry out legal services in the Court of Cassation in cases and according to a procedure prescribed by law.

C. The Decision of the Constitutional Court of 8 October 2008 on the Conformity of Article 223 § 1 (1), Article 231 § 2 and Article 233 §§ 1 (3-6), 2 and 4 of the CCP, Article 29.1 of the Advocacy Act, Article 404 § 1 (1 and 3) of the Criminal Procedure Code and Article 13 § 6 of the Judicial Code with the Constitution, adopted on the basis of applications lodged by a number of individuals.

18. The Constitutional Court found, *inter alia*, Article 223 § 1 (1) of the CCP and Section 29.1 of the Advocacy Act incompatible with Articles 18 and 19 of the Constitution as they disproportionately restricted access to the Court of Cassation by making the possibility of obtaining judicial protection of rights conditional on an appellant's financial means. The Constitutional Court abolished the institute of advocates licensed to act before the Court of Cassation by finding unconstitutional the relevant provisions of the Civil and Criminal Procedure Codes and of the Advocacy Act.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

19. The applicant complained under Articles 6 § 1, 13 and 17 of the Convention that she was denied access to the Court of Cassation since she could not afford the services of an advocate licensed to act before the Court of Cassation in order to lodge an appeal on points of law. The Court considers that this complaint essentially raises an issue of access to court and should therefore be examined from the standpoint 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 ..."

A. Admissibility

20. The Government submitted that the applicant had failed to exhaust the domestic remedies available to her. In particular, they submitted that the applicant had failed to comply with the procedural rules by having herself lodged an appeal on points of law directly with the Court of Cassation. In

such circumstances, the Court of Cassation acted in accordance with the procedure and returned her appeal. The applicant was free to resubmit her appeal on points of law by subsequently applying to a licensed advocate after her initial appeal had been returned. Furthermore, the applicant had not substantiated that she had ever applied to a licensed advocate and that her request to lodge an appeal on points of law on her behalf had been refused because of her inability to pay the fee.

21. The applicant submitted that being disabled and confined to a wheelchair she had no possibility to find advocates holding a special licence, especially in view of the fact that they were not part of any State institution and their addresses were unknown. In any event, she was unable to pay the rather high fees for their services.

22. The Court reiterates that in order to comply with the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports of Judgments and Decisions* 1998-VIII).

23. The only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that special circumstances existed which absolved him or her from this requirement (see *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts) and *Melnik v. Ukraine*, no. 72286/01, § 67, 28 March 2006).

24. The Court observes that the applicant's primary contention was that her access to the Court of Cassation had been restricted because that court had refused to examine her appeal on points of law by referring to the requirement that such appeals could only be lodged by a licensed advocate, whom she was unable to address due to her difficult financial situation. The issue of exhaustion of domestic remedies is therefore closely linked to the merits of the applicant's complaint that she was deprived of her right of access to court because of the state of the law at the material time. Accordingly, the Court considers that the Government's objection should be joined to the merits of the applicant's complaint under Article 6 § 1.

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The applicant submitted that because of her inability to pay for the legal services of an advocate holding a special licence to act before the Court of Cassation, she was denied access to that court.

27. The Government submitted that the right of access to court is not absolute and that the domestic law provided for exceptions for persons who were unable to afford the services of an advocate. They pointed out in particular Article 6 of the Advocacy Act which stated, at the material time, that a person could receive free legal assistance upon the initiative of an advocate.

28. The Court reiterates that the "right to a court", of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports of Judgments and Decisions* 1996-V citing *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93; *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B and *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012).

29. The Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations" (see *Levages Prestations Services*, cited above, § 44; and *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32). However, the manner in which Article 6 § 1 is to be applied in relation to appellate or cassation courts depends upon the special features of the proceedings involved. Account must be taken of the entirety of the proceedings conducted in the domestic legal order and of the role of the appellate or cassation court therein (see *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 56, Series A no. 115 and the cases cited therein; *Tolstoy Miloslavsky v. the United Kingdom*, cited above, § 59).

30. The Court further reiterates that the requirement that an appellant be represented by a qualified lawyer before the court of cassation, such as applicable in the present case, cannot, in itself, be seen as contrary to Article 6. This requirement is clearly compatible with the characteristics of the Supreme Court as a highest court examining appeals on points of law and it is a common feature of the legal systems in several member States of the Council of Europe (see, for instance, *Siałkowska v. Poland*, no. 8932/05, § 106, 22 March 2007; *Gillow v. the United Kingdom*, 24 November 1986, § 69, Series A no. 109).

31. The Court further notes that it is for the Contracting States to decide how they should comply with the fair hearing obligations arising under the Convention. However, the Court must satisfy itself that the method chosen by the domestic authorities in a particular case is compatible with the Convention (see *Siałkowska v. Poland*, cited above, § 107).

32. Turning to the circumstances of the present case, the Court notes that, according to the Armenian civil procedure law at the material time, only an advocate authorised to act before the Court of Cassation could lodge an appeal on points of law on behalf of the applicant. The Court further notes that the law did not envisage a possibility for the applicant to be granted legal aid, such possibility having been reserved by virtue of Article 6 of the Advocacy Act to criminal proceedings or civil proceedings concerning alimony payments, infliction of damage to health or loss of a breadwinner.

33. The Government contended that the applicant never applied to a licensed advocate and only assumed that she would not be able to meet the costs involved, while the advocates were entitled to provide *pro bono* legal services. Instead, she applied to the Court of Cassation directly and therefore failed to comply with the rules of procedure. The Court notes in this regard that the Government failed to provide any concrete examples of cases where licensed advocates had agreed to provide free legal assistance to persons willing to lodge an appeal on points of law. This argument therefore is of a purely speculative nature. The Court further notes that the essence of the applicant's complaint is that her appeal on points of law was not admitted by the Court of Cassation because of the procedural requirement that such appeals should be lodged by qualified advocates whose services she could not afford, given her difficult financial situation. In such circumstances, it cannot be considered that the applicant failed to meet the requirements of Article 35 § 1 of the Convention by not having lodged an appeal on points of law through a licensed advocate. The Government's objection, therefore, should be dismissed.

34. The Court reiterates that, although the Convention does not contain similar requirements concerning provision of legal aid in criminal proceedings and proceedings concerning the determination of "civil rights and obligations", Article 6 § 1 may compel the State to provide for the

assistance of a lawyer in civil proceedings when such assistance proves indispensable for an effective access to court because legal representation is rendered compulsory (see, *mutatis mutandis*, *Airey v. Ireland*, cited above, § 26).

35. Given the special nature of the Court of Cassation's role, which is limited to ensuring the uniform application of the law and its correct interpretation, the Court is ready to accept that the requirement that appeals on points of law be lodged by licensed advocates presumably pursued the legitimate aim of ensuring the quality of such appeals. The Court observes, however, that the absence of the possibility to be granted legal aid in order to comply with such a procedural requirement made the applicant's right of access to the Court of Cassation conditional on her financial situation.

36. In the light of the foregoing, the Court considers that the absence of the possibility to apply for legal aid, given the procedural requirement that appeals on points of law could only be lodged by advocates licensed to act before the Court of Cassation, placed a disproportionate restriction on the applicant's effective access to that court.

37. The Court's above reasoning is further reinforced by the fact that on 8 October 2008 the Constitutional Court of Armenia found Article 223 § 1 (1) of the CCP and Article 29.1 of the Advocacy Act (see paragraphs 15 and 17 above) unconstitutional. Notably, the Constitutional Court found, *inter alia*, that in the absence of a mechanism whereby advocates holding a special licence to act before the Court of Cassation would provide free legal assistance, the rule by which appeals on points of law could be lodged merely by licensed advocates was a disproportionate limitation upon the right of access to the Court of Cassation since it rendered access to that court in practice conditional on the financial situation of the appellants.

38. The Court finally notes that, as from 1 January 2009, the procedural requirement to lodge appeals on points of law through licensed advocates ceased to exist in Armenia. This fact, however, does not have any bearing on the present case.

39. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

40. The applicant further complained under Article 8 of the Convention and Article 1 of Protocol No. 1 that the domestic courts failed to grant her claim against her neighbour.

41. Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application

must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage. In particular, the applicant claimed that as a result of the refusal by the Court of Cassation to examine her appeal on points of law, she had been deprived of her property. The applicant also claimed compensation for non-pecuniary damage in the amount of EUR 250,000. She claimed in particular that as a result of the fact that no wooden ramp was installed to facilitate her access to her flat, her state of health had severely deteriorated.

44. The Government claimed that there was no causal link between the violation alleged and the pecuniary and non-pecuniary damage claimed.

45. 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, the Court accepts that the applicant has suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 3,600 under this head.

B. Costs and expenses

46. The applicant also claimed a total of AMD 1,361,370 (approximately EUR 2,700) for the costs and expenses incurred before the domestic courts and before the Court, including AMD 1,330,000 (approximately EUR 2,640) for legal representation, as stated in the contract for provision of legal services submitted by the applicant, and AMD 31,370 (approximately EUR 60) for postal and fax expenses.

47. The Government submitted that the applicant had failed to provide any documentary proof that the amounts claimed by the applicant had actually been paid to her lawyer.

48. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. The Court notes that it does not appear from the case file that the applicant had a legal representative in the domestic proceedings. It therefore rejects the relevant claim. The Court further notes that the applicant did not submit any invoice to substantiate her claims concerning expenses for legal representation before the Court. The applicant's claims in this regard are therefore unsubstantiated. In any event, the applicant was granted legal aid in the amount of EUR 850. At the same time, the Court considers it reasonable to award the applicant the sum of EUR 60 covering postal and fax expenses.

C. Default interest

49. The Court considers it appropriate that the default interest rate 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. *Joins* the Government's objection as to non-exhaustion of domestic remedies to the merits of the applicant's complaint under Article 6 § 1 of the Convention and *dismisses* it;

2. *Declares* the complaint concerning lack of access to the Court of Cassation admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Armenian drams at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 60 (sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Josep Casadevall
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Silvis;

(b) concurring opinion of Judge Motoc.

J.C.M.
J.S.P.

CONCURRING OPINION OF JUDGE SILVIS

1. The heart of the matter in this case is the combination of compulsory representation by a licensed lawyer before the Court of Cassation and the practical impossibility for the wheelchair-bound applicant of modest means to obtain legal aid for such representation. Having compulsory representation before the Court of Cassation on the one hand, and not having an adequate institutional framework, on the other, to ensure effective legal representation for entitled persons and a sufficient level of protection of their interests, that is what amounts to a violation of the right of access to a court.

2. However, finding a violation in this case does not imply that there would be anything wrong, as such, with limiting access to the Court of Cassation through compulsory representation by licensed lawyers. Parties to the Convention are perfectly free to introduce such restrictions as well as to abolish them, as Armenia did. In general Article 6 of the Convention does not guarantee an unconditional right to legal aid. In *Anghel v. Italy* (no. 5968/09, § 51, 25 June 2013) the Court stated:

> "There is no obligation under the Convention to make legal aid available for all disputes (contestations) in civil proceedings, as there is a clear distinction between the wording of Article 6 § 3 (c), which guarantees the right to free legal assistance on certain conditions in criminal proceedings, and of Article 6 § 1, which makes no reference to legal assistance (see *Del Sol v. France*, no. 46800/99, § 21, ECHR 2002-II). However, despite the absence of a similar clause for civil litigation, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable to effective access to court, either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case (see *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32)."

3. Whether a State Party to the Convention is obliged to grant legal aid to guarantee access to a court may depend on a number of aspects. In the classic case of *Airey v. Ireland* (9 October 1979, Series A no. 32) the applicant was "imprisoned" in a marriage for as long as legal aid was not granted and access to a court for the purpose of petitioning for a decree of judicial separation was *de facto* illusory. In contrast with that matter of great personal weight, the Court accepted in *A. v. United Kingdom* (no. 35373/97, § 99, ECHR 2002-X) that not granting legal aid in a defamation case did not amount to an illegitimate restriction of access to a court. Our Court is not in a position to decide in a case-by-case manner whether legal aid should be granted, but a domestic system should guarantee that serious requests are taken into consideration. In the Court's case-law it has been accepted that a lack of a prospect of success might be a reason for refusing legal aid. An interesting example is to be found in *Ritchie and Others v. the United Kingdom* ((dec), 6788/12, § 45, 13 November 2014), where the Scottish

Legal Aid Commission had not found it established that "a privately funded person of modest means would reasonably be advised to pursue this matter further". States Parties to the Convention are certainly allowed to make legal aid in civil matters dependent not only on conditions like a reasonable prospect of success, but also on indications like the level of urgency and significance of the interests at stake, as well as the requirement of a proportional personal contribution with due regard to the individual's financial situation. The unsurmountable problem of the applicant in the present case was the lack of any serious possibility in the domestic system of obtaining even due consideration of her right to legal aid in order to obtain access to the Court of Cassation.

CONCURRING OPINION OF JUDGE MOTOC

1. This judgment is important because it concerns a sensitive aspect of Article 6 of the Convention, namely the effective right to a fair trial for vulnerable individuals and least well-off litigants.

2. The issue of legal aid in civil proceedings was unambiguously decided by the Court in the case of *Airey v. Ireland* (9 October 1979, Series A no. 32), where the Court dismissed the Government's argument that the right of access to a tribunal did not place any positive obligation on the States, particularly obligations with implications of an economic nature.

3. This question becomes highly serious where the national system actually requires representation by a lawyer. This applies to Ms Shamoyan's case and to the system in Armenia at the material time, but also to other legal systems, such as that in Belgium, as addressed in the case of *Aerts v. Belgium* (30 July 1998, *Reports of Judgments and Decisions* 1998-V, pp. 1964-1965), and Poland, as in the cases of *Staroszczyk v. Poland* (no. 59519/00, 22 March 2007) and *Tabor v. Poland* (no. 12825/02, 27 June 2006).

4. The most sensitive question subsequently adjudicated by the Court was the selection of cases deemed sufficiently meritorious for consideration. Although the circumstances in the case of *Steel and Morris v. the United Kingdom* (no. 68416/01, ECHR 2005-II) were favourable to the applicants in view of the amounts at stake in the case and the complicated nature of the relevant legislation, in other cases the circumstances have operated to the detriment of the victims.

5. The question of the established procedure for deciding who should have access to this system has already been analysed in *Aerts v. Belgium*. In that case the Court found a violation of Article 6 § 1 (§ 60); similar bodies had determined the question whether the applicant's request had been "well-founded" "at the present time", that is to say whether it was founded on the Court's judgment in that case. The Belgian legislature amended the Law on legal assistance and adopted a different wording to the effect that only "manifestly ill-founded requests will be rejected".

6. The French system for analysing applications for which legal aid has been requested was examined in the case of *Del Sol v. France* (no. 46800/99, ECHR 2002-II). In that judgment the Court noted, firstly, that the reason relied on by the Legal Aid Office and the President of the Court of Cassation for refusing the applicant's application for legal aid – namely the lack of an arguable ground of appeal on points of law – was expressly contemplated in Law No. 91-647 of 10 July 1991 and was undoubtedly intended to meet the legitimate concern that public money should only be made available to applicants for legal aid whose appeals to the Court of Cassation have a reasonable prospect of success. As the European Commission of Human Rights pointed out, it is self-evident that a

legal aid system can only operate effectively by establishing machinery to select which cases should be legally aided (see, for example, the Commission's decisions of 10 July 1980 in the case of *X v. the United Kingdom*, no. 8158/78, Decisions and Reports 21, p. 95, and of 10 January 1991 in the case of *Garcia v. France*, no. 14119/88, unreported).

7. In the case of *Del Sol*, the Court considered that "the scheme set up by the French legislature offers individuals substantial guarantees to protect them from arbitrariness. The Legal Aid Office of the Court of Cassation is presided over by a judge of that court and also includes its senior registrar, two members chosen by the Court of Cassation, two civil servants, two members of the *Conseil d'Etat* and Court of Cassation Bar and a member appointed by the general public (section 16 of the Law of 10 July 1991 cited above). Moreover, an appeal lies to the President of the Court of Cassation against refusals of legal aid (section 23 of the Law). In addition, the applicant was able to put forward her case both at first instance and on appeal".

8. In their separate opinion in the case of *Del Sol*, Judges Tulkens and Loucaïdes observed that although the judgment accepted that a legal aid system could only operate effectively if machinery was in place to enable a selection to be made of those cases qualifying for it (§ 23 of the judgment), it was not immediately apparent that such a scheme may result in inequality between litigants. However, that was clearly the position in the case at hand, since only the least well-off litigants, those who had to apply for legal aid, were subjected to a prior scrutiny of the merits of their ground of appeal to the Court of Cassation. Unless there was an "objective and reasonable justification" for it, such difference in treatment could amount to discrimination. They continued that no system may impair the essence of the right of a particular class of litigant to a court, as guaranteed by Article 6 of the Convention, and the existence of safeguards, even substantive ones, against abuse of the system intended to afford protection from arbitrariness, would not suffice to compensate for any such impairment.

9. In the case of Shamoyan the Court had an opportunity to develop the issue of access by less well-off persons to justice. In fact the Government mention that the applicant, a person with disabilities, at no point requested a lawyer to represent her before the Court of Cassation. Ms Shamoyan replied was that it was useless to her to request a lawyer since she has no financial means to afford a lawyer.

10. The Court did not take into account, as it has in previous cases, whether the applicant has made any effort to find a lawyer since she is disabled and lacks financial means. Therefore it is a development of the case law that the Court has noted that the absence of the possibility to be granted legal aid in order to comply made a disproportionate restriction on the right of the applicant's effective right to access to that court. In this respect the case departs from *Del Sol* because the Chamber is not analysing

the right to apply for legal aid in a credible case but the simply the right to legal aid. Equality among the applicants has become effective in the sense of Article 6 § 1.