



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

COURT (CHAMBER)

**CASE OF PARDO v. FRANCE (REVISION - MERITS)**

*(Application no. 13416/87)*

JUDGMENT

STRASBOURG

29 April 1997

**In the case of Pardo v. France (revision of the judgment of 20 September 1993)\*,**

The European Court of Human Rights, sitting, in accordance with Rule 51 of Rules of Court A\*\*, as a Grand Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,  
Mr R. BERNHARDT,  
Mr F. GÖLCÜKLÜ,  
Mr F. MATSCHER,  
Mr L.-E. PETTITI,  
Mr C. RUSSO,  
Mr A. SPIELMANN,  
Mr J. DE MEYER,  
Mr N. VALTICOS,  
Mrs E. PALM,  
Mr R. PEKKANEN,  
Mr A.N. LOIZOU,  
Mr J.M. MORENILLA,  
Sir John FREELAND,  
Mr A.B. BAKA,  
Mr G. MIFSUD BONNICI,  
Mr J. MAKARCZYK,  
Mr D. GOTCHEV,  
Mr B. REPIK,  
Mr P. JAMBREK,  
Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 26 November 1996 and on 24 January and 22 April 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

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\* The case is numbered 25/1992/370/444. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

\*\* Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

## REQUEST FOR REVISION AND PROCEDURE

1. The European Commission of Human Rights ("the Commission") submitted to the Court under Rule 58 of Rules of Court A a request for the revision of the judgment delivered on 20 September 1993 in the case of Pardo v. France (Series A no. 261-B - "the original judgment"). The request for revision was expressed in the following terms:

"The applicant submitted to the Commission a request for revision by a letter dated 8 June 1995 and posted on 20 June 1995.

The Commission noted that the Court, prior to its hearing on 22 March 1993, had asked the participants in the proceedings to produce certain documents (questions 1. and 4.). For the reasons given at the hearing, these requests were not complied with. Since then the applicant has been able to obtain certain of these documents and in particular the letter from Mr de Chessé to Mr Davin of 25 March 1985 and the list of documents contained in the appeal file.

The Commission takes the view that, as the Court asked for these documents to be produced, they might by their nature have had a decisive influence on its judgment.

The Commission accordingly considers that the conditions for submitting to the Court a request for the revision of the Pardo judgment are satisfied."

2. The Commission's request for revision was accompanied by a copy of the letter sent to it on 8 June 1995 by Mr Kleniec, Chairman of the Aix-en-Provence Bar Association, the applicant's new lawyer, and a document drawn up by Mr Pardo himself and entitled "application for revision". The letter from Mr Kleniec was worded as follows:

"In accordance with Rule 58 of the Rules of Court, I hereby submit to the European Commission of Human Rights a request for the revision of the judgment of 20 September 1993 on account of the prejudicial consequences of that decision for Mr Pardo and his family.

Mr Pardo requested me to discover decisive items of evidence that were unknown to him and to the Court when the judgment was delivered.

...

Following my intervention, the First President of the Aix-en-Provence Court of Appeal, after ten years of difficult negotiations, at last, on 27 October 1994, allowed Mr Pardo access to the documents in his case file, which had in fact been kept in the registry of the Aix-en-Provence Court of Appeal in accordance with an instruction from the Ministry of Justice.

Various copies bearing the signature of the chief clerk of that court were handed over to him on 6 February 1995, in particular:

(a) the record of the hearing (plumitif), which, it may be noted, was not certified by the signature of the President of the Chamber or by the secretary, in breach of Article 728, last sub-paragraph, of the New Code of Civil Procedure;

(b) the list drawn up by the clerk present at the hearing (Mrs Mary) mentioning, with the date on which they were filed, all the documents that the parties had lodged for the attention of the Chamber. This list makes no mention of the filing of any of the 959 documents constituting Mr Pardo's file for the case on the merits.

Although the Court requested them to produce these documents, at the hearing on 22 March 1993 the French Government failed to do so, informing the Court that Mr Pardo's file had been destroyed.

The letter from the First President of the Aix-en-Provence Court of Appeal shows this assertion to have been erroneous.

Moreover, when questioned by my colleague, Mr de Chessé, on 1 February 1995, Mr Davin was able to find all the correspondence that he had exchanged with the former concerning the course of the proceedings in the Aix-en-Provence Court of Appeal at the hearing on 9 November 1984.

This correspondence is now produced in full together with Mr Davin's letter of 27 February 1995 in which he reiterates his statement of 22 April 1985, confirming his position in this regard very clearly.

This evidence shows that, at the hearing in the Aix-en-Provence Court of Appeal of 9 November 1984, the only matter raised was an application for the stay of proceedings and that the President had clearly indicated to the lawyers present that the case would be adjourned either to a much later date or to a nearer date so that the merits of the case could be examined at a hearing exclusively devoted to it in view of the length and the number of the documents to be examined.

The European Court had asked Mr Pardo to produce this correspondence to which it rightly attached decisive importance.

It was impossible for Mr Pardo to comply with this request, although it was a legitimate one, because it was only made on 15 and 16 March 1993 and he was only informed of it on 17 and 18 March 1993. Mr Pardo therefore lacked sufficient time to comply with the request at the hearing on 22 March.

It was this that led the Court to disregard Mr Davin's testimony and then state that that of Mr de Chessé could not in itself suffice to establish the facts.

Mr de Chessé is no longer the only person testifying to these events, which circumstance could produce an entirely different outcome to the proceedings.

Furthermore it should be noted that the evidence of these two lawyers is such as to diminish the importance of the opinion expressed by Mrs Jassaud, senior clerk, who certified in a letter dated 19 March 1993, which was produced unexpectedly, that 'judgment in the case was reserved and the proceedings were not adjourned to a subsequent hearing'.

It may be observed that:

1. Mrs Jassaud was not present at the hearing of 9 November 1984.

2. Her statement, which was not handwritten, set against the testimony of two lawyers, must evidently be discounted.

All the foregoing, considered in the light of the various provisions of the New Code of Civil Procedure, invalidates the entire reasoning of the European Court's judgment and shows that its revision is necessary.

..."

3. In a judgment of 10 July 1996 (Reports of Judgments and Decisions 1996-III, "the judgment on admissibility") the Chamber specially constituted to determine the admissibility of the request declared it admissible and, pursuant to Rule 58 para. 4, referred it to the Chamber which gave the original judgment. That Chamber was composed of Mr R. Ryssdal, Mr R. Bernhardt, Mr F. Gölcüklü, Mr L.-E. Pettiti, Mr C. Russo, Mrs E. Palm, Mr A.N. Loizou, Mr A.B. Baka and Mr J. Makarczyk.

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the French Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the written procedure (Rule 37 para. 1). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 8 August and the Government's memorial on 9 August 1996. On 12 August 1996 the Secretary to the Commission informed the Registrar that the Delegate would submit written observations only if the Court were to decide not to hold a hearing on the merits of the request for revision.

5. On 26 September 1996 the Chamber relinquished jurisdiction in favour of a Grand Chamber (Rule 51). The Grand Chamber included as ex officio members Mr Ryssdal, the President, and Mr Bernhardt, the Vice-President, together with the other members of the original Chamber (see paragraph 3 above) and the substitutes, namely Mr R. Pekkanen, Mr B. Walsh, Mr N. Valticos and Mr F. Matscher (Rule 51 para. 2 (a) and (b)). On 27 September 1996, in the presence of the Registrar, the President drew by lot the names of the additional judges, namely Mr R. Macdonald, Mr J. De Meyer, Mr J.M. Morenilla, Sir John Freeland, Mr D. Gotchev, Mr B. Repik, Mr P. Jambrek and Mr P. van Dijk. Subsequently, in the order determined by the drawing of lots, Mr A. Spielmann and Mr G. Mifsud Bonnici replaced respectively Mr Walsh and Mr Macdonald, who were unable to take part in the further consideration of the case (Rules 22 para. 1 and 51 para. 6).

6. After fresh consultations on the organisation of the further procedure, the President invited the Government and the applicant to submit memorials in reply. The applicant submitted his reply on 8 November 1996. On 12 November the Agent of the Government informed the Registrar that he did not intend to lodge a second memorial and confirmed his earlier written observations. On 10 December the Secretary to the Commission communicated to the Registrar the Delegate's written comments.

7. In the meantime, on 26 November 1996, the Grand Chamber, after the usual consultations, had decided that it was not necessary to hold a hearing on the merits of the request for revision.

8. On 7 January 1997 the applicant's lawyer asked the Court:

"1. to separate the question of the merits from that of compensation,

2. to reserve the question of the application of Article 50 of the Convention (art. 50),

3. to set it down for a later hearing so that it is argued in public and in the presence of both parties pursuant to Article 6 of the Convention (art. 6)."

## AS TO THE LAW

9. Before the Commission and subsequently before the Court, Mr Pardo complained of a violation of his right to a fair trial as guaranteed under Article 6 para. 1 of the Convention (art. 6-1). In its report of 1 April 1992, the Commission expressed the unanimous opinion that there had been a breach of that provision (art. 6-1). In its judgment of 20 September 1993 (the original judgment - see paragraph 1 above), the Court found no such breach.

10. On 18 September 1995 the Commission submitted to the Court a request for the revision of that judgment, after receiving a request to that effect from Mr Pardo. The Commission's request was declared admissible on 10 July 1996 by the specially constituted Chamber (judgment on the admissibility - see paragraph 3 above). The Chamber found that it could not exclude the possibility that the two documents which accompanied the Commission's request (Mr de Chessé's letter of 25 March 1985 to Mr Davin and the list of documents (*inventaire*) in the appeal file) "might by [their] nature have a decisive influence" within the meaning of Rule 58 para. 1 of Rules of Court A (see judgment on the admissibility, p. 870, para. 24).

The letter from Mr de Chessé to Mr Davin of 25 March 1985 is worded as follows:

"As you know, the Pardo family has decided to lodge an appeal on points of law in this case, a step which I consider to be particularly necessary in view of the conditions in which judgment was given.

I enclose a copy of the letter I am sending my client. I should be grateful if you would confirm that what happened is as I described it to Mr Ernest Pardo."

The handwritten list of documents, which was drawn up on 10 May 1985, contained the following entries:

"LIST OF DOCUMENTS

Re date lodged document

1 'case preparation' bundle  
 2 first-instance file  
 3 notice of appeal 3 bis " "  
 4 notice of acting (avoué)  
 5 " "  
 6 3.1.84 appellant's submissions  
 7 10.2.84 appellant's submissions  
 8 notice of acting (avoué)  
 9 " "  
 10 12.3.84 respondents' submissions  
 11 14.3.84 appellant's submissions  
 12 " " "  
 13 5.9.84 respondent's submissions  
 15 26.10.84 order concluding preparation  
 16 appellants' submissions  
 17 15.1.85 copy of judgment [illegible word] on the merits  
 18 10.5.85 the present list  
 Aix-en-Provence, 10.5.85  
 The Clerk of court  
 [Signed:] Mrs Mary"

11. The Court must now determine whether those documents do in fact cast doubt on the conclusions it reached in 1993.

## I. SCOPE OF THE CASE BEFORE THE COURT

12. In Mr Pardo's submission, it was the judgment in its entirety that was the subject of the revision procedure and the Court should accordingly have regard not only to the two new documents, but also to the other twenty-one documents appended to his request for revision (judgment on admissibility, p. 865, para. 11). The latter documents, in his view,

established that the proceedings in the Aix-en-Provence Court of Appeal had been unfair.

13. The Government asked the Court not to take cognisance of the other twenty-one items of evidence as they had not been taken into account in its judgment on the admissibility of the request for revision.

14. In accordance with the terms of that judgment (judgment on the admissibility, p. 870, para. 24), the Court is of the opinion that its task is confined to deciding whether the two new documents actually cast doubt on the conclusions which the original Chamber reached in 1993.

## II. MERITS OF THE REQUEST FOR REVISION

15. The Court recalls that the original Chamber was confronted with a dispute concerning the course of the proceedings on 9 November 1984 in the Aix-en-Provence Court of Appeal. Mr Pardo claimed that he had not had the opportunity to plead his case on the merits although the President of the Eighth Civil Division of the Court of Appeal had announced that a hearing for this purpose would be held at a later date (judgment on the admissibility, p. 870, para. 23). It is therefore necessary to establish whether the two documents in question provide sufficient *prima facie* evidence in support of the applicant's version of events.

16. According to Mr Pardo, the documents prove that no hearing was held on the merits in the Court of Appeal. The Government contested this assertion, whereas the Delegate of the Commission considered that the documents adduced provided confirmation of the Commission's opinion at the time that there had been a violation (see paragraph 9 above).

### A. Mr de Chessé's letter of 25 March 1985 to Mr Davin

17. Mr Pardo maintained that the Mr de Chessé's letter of 25 March 1985 to Mr Davin constituted the proof that, although the two lawyers had been present, they had not been able to make oral submissions on the merits at the hearing in the Aix-en-Provence Court of Appeal on 9 November 1984 because of the announcement by the President of the Division that the hearing would be adjourned to a later date.

18. In the Government's contention, the letter does not prove that there was any such adjournment. No provision of law empowered the President of a Court of Appeal to set aside on the day of the hearing the order concluding the preparation of the case for trial (*ordonnance de clôture*) made by the judge responsible for that stage of the proceedings. That decision could only be taken by the court sitting as a division. In those circumstances the President of the Eighth Civil Division of the Aix-en-Provence Court of Appeal could not, on his own and before the beginning of the hearing, have

given to Mr Pardo's lawyers an assurance that argument on the merits would be taken at a later stage.

19. The Court notes that the letter to which Mr de Chessé refers in his letter to Mr Davin of 25 March 1985 (see paragraph 10 above) and the latter's reply of 22 April 1985 had been communicated to it by the Commission on 12 February 1993 (see the original judgment, p. 24, para. 5). In the judgment of 20 September 1993 those documents are summarised as follows:

"..., Mr de Chessé, wrote to him on 25 March 1985 certifying that the President had stated that the case would be adjourned either to a much later date, if the request for a stay was granted, or to a date in the near future when it would be the only case on the list in view of the number of documents to be examined. According to the lawyer, the court had had before it only his two sets of final submissions, whereas the file of his pleadings had comprised thirteen folders 14cm thick. Mr Davin, the counsel for one of the other directors of the company, also implicated in the case, confirmed, in his reply dated 22 April 1985 to a letter which Mr de Chessé had sent to him on 25 March, a copy of which the applicant was, however, unable to produce, that the hearing in issue had indeed followed the course described by the applicant's lawyer in his letter." (loc. cit., p. 26, para. 16).

The letter of 25 March 1985 was therefore merely a covering letter by which Mr de Chessé communicated to Mr Davin a copy of his letter of the same day to Mr Pardo. Only that last letter and Mr Davin's reply to Mr de Chessé of 22 April 1985 contain any information concerning the course of the proceedings before the Eighth Civil Division of the Aix-en-Provence Court of Appeal, but the Commission had transmitted these documents to the Court in February 1993 and the Court had regard to them in its original judgment (loc. cit., pp. 26 and 31, paras. 16 and 28).

## **B. The list of documents in the appeal file**

20. The applicant pointed out that no mention was made in the list of documents contained in the appeal file (see paragraph 10 above) of the lodging with the Court of Appeal of the nine hundred and fifty-nine documents comprising the file on the merits. Nor was there any reference to the filing of any of the three thousand appendices submitted in support of those documents. This fact corroborated his version of events. The lack of any such entry could only mean that no oral argument on the merits had been taken at the hearing on 9 November 1984 since parties were required to lodge their supporting documents at the conclusion of argument.

21. According to the Government, the purpose of the list is to record steps taken in the course of the proceedings and to provide a recapitulation of the documents appearing in the file before its communication to the Court of Cassation. In the present case a study of the list did not disclose any evidence to prove that the President of the Division of the Aix-en-Provence Court of Appeal had agreed to an adjournment.

22. In the Court's opinion the list does not provide any information on the course of the proceedings in the Eighth Civil Division of the Aix-en-Provence Court of Appeal. Drawn up on 10 May 1985 - approximately four months after the delivery of the Court of Appeal's judgment - it was a mere note of procedural documents and pleadings lodged. There were eighteen entries, for example, the order concluding the preparation for trial under no. 15 and the undated submissions of the appellants, including the applicant (original judgment, p. 25, paras. 11-12) under no. 16, followed by the registration on 15 January and 10 May 1985 respectively of a copy of the Court of Appeal's judgment and of the list itself. None of the eighteen entries refer, expressly or otherwise, to the hearing of 9 November 1984.

### **C. Conclusion**

23. In conclusion, the Court finds that the documents on which the Commission based its request would not have had a decisive influence on the judgment of 20 September 1993 and do not constitute grounds for revision. The Commission's request is accordingly unfounded.

**FOR THESE REASONS, THE COURT UNANIMOUSLY**

Dismisses the request for revision.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 29 April 1997.

Rolv RYSSDAL  
President

Herbert PETZOLD  
Registrar