



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

CASE OF PROSZAK v. POLAND

(2/1997/786/987)

JUDGMENT

STRASBOURG

16 December 1997

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SUMMARY¹

Judgment delivered by a Chamber

Poland – length of civil proceedings

ARTICLE 6 § 1 OF THE CONVENTION (“reasonable time”)

A. Period to be taken into consideration

Starting-point: 1 May 1993, when declaration whereby Poland recognised right of individual petition for the purposes of Article 25 of the Convention took effect.

End: 19 February 1997, when appeal on points of law was dismissed by Tarnobrzeg Regional Court.

Total: about three years, nine months and two weeks.

Need to have regard to state of case on 1 May 1993.

B. Applicable criteria

Complexity as to facts: issue to be resolved had made it essential to obtain specialist medical opinions.

Applicant’s conduct: three groundless challenges of reporting judge – failures to attend hearings and refusal to attend for third psychiatric examination had contributed decisively to slowing down proceedings – applicant and her counsel seemed to have coordinated their actions poorly – conduct scarcely consistent with the diligence which must be shown by plaintiff in civil proceedings – authorities dealing with case not responsible for lapse of more than one month between lodging of appeal on points of law and its dismissal for want of any legal basis.

Conduct of judicial authorities: almost the whole period falling within Court’s jurisdiction *ratione temporis* had essentially been taken up with search for an expert with sufficient specialist qualifications – reasonable to take view that a third opinion on applicant’s health had been necessary – District Court had done everything possible to obtain it – length of time complained of might at first sight seem excessive, but evidence did not disclose any significant period of inactivity; District Court had even gone so far as to offer to take evidence from applicant at her home in view of her bad health – furthermore, once the expert had been appointed, applicant had refused to undergo examination.

Conclusion: no violation (six votes to three).

COURT’S CASE-LAW REFERRED TO

20.2.1991, Vernillo v. France; 26.2.1993, Billi v. Italy; 4.12.1995, Ciricosta and Viola v. Italy; 26.9.1996, Zappia v. Italy

1. This summary by the registry does not bind the Court.

In the case of Proszak v. Poland¹,

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B², as a Chamber composed of the following judges:

Mr THÓR VILHJÁLMSSON, *President*,

Mr J. DE MEYER,

Mr A.N. LOIZOU,

Sir John FREELAND,

Mr G. MIFSUD BONNICI,

Mr J. MAKARCZYK,

Mr D. GOTCHEV,

Mr B. REPIK,

Mr E. LEVITS,

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

Having deliberated in private on 27 August and 24 November 1997,

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

PROCEDURE

1. The case was referred to the Court by the Polish Government (“the Government”) on 6 January 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 25086/94) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by a Polish national, Mrs Bronisława Proszak, on 28 April 1994.

The Government’s application referred to Articles 44 and 48 of the Convention and to the declaration whereby Poland recognised the compulsory jurisdiction of the Court (Article 46). The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 2/1997/786/987. 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.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant stated that she wished to take part in the proceedings and designated the lawyer who would represent her (Rule 31). The lawyer was given leave by the President of the Court, Mr R. Ryssdal, to use the Polish language (Rule 28 § 3).

3. The Chamber to be constituted included *ex officio* Mr J. Makarczyk, the elected judge of Polish nationality (Article 43 of the Convention), and Mr Ryssdal, the President (Rule 21 § 4 (b)). On 20 January 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J. De Meyer, Mr A.N. Loizou, Sir John Freeland, Mr L. Wildhaber, Mr G. Mifsud Bonnici, Mr B. Repik and Mr E. Levits (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 25 June 1997 and the Government's memorial on 17 July 1997.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 August 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr K. DRZEWICKI, Professor of Public International Law, University of Gdańsk,	<i>Agent,</i>
Mrs E. CHAŁUBIŃSKA, judge on secondment to the Ministry of Justice,	<i>Counsel;</i>

(b) *for the Commission*

Mr K. HERNDL,	<i>Delegate;</i>
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(c) *for the applicant*

Mr Z. CICHON, of the Cracow Bar,	<i>Counsel.</i>
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The Court heard addresses by Mr Herndl, Mr Cichon and Mr Drzewicki.

Subsequently Mr D. Gotchev, substitute judge, replaced Mr Wildhaber, who was unable to take part in the further consideration of the case (Rules 22 § 1 and 24 § 1).

As Mr Ryssdal was unable to attend the deliberations on 24 November 1997, his place as President of the Chamber was taken by Mr Thór Vilhjálmsson, substitute judge (Rule 21 § 6).

AS TO THE FACTS

6. Mrs Bronisława Proszak, who was born in 1926, is retired and lives at Stalowa Wola.

A. The criminal proceedings

7. On 20 December 1988 the applicant was attacked and struck by her neighbour, Mr R.T. On 29 November 1989 the Stalowa Wola District Court (Criminal Division) sentenced Mr R.T. to six months' imprisonment for assault and causing actual bodily harm. Mrs Proszak had not joined the proceedings as a civil party. On 12 March 1990 the Tarnobrzeg Regional Court decided to discontinue the proceedings, pursuant to an amnesty.

B. The civil proceedings

8. On 25 October 1990 the applicant brought a civil action against Mr R.T. in the Stalowa Wola District Court (Civil Division – “the District Court”). She sought damages of five million (old) zlotys for injury resulting from the attack; on an unspecified date the applicant increased the amount of that claim.

9. On 14 April 1992 the District Court took expert evidence from a psychiatrist, Dr B.S., in order to determine the extent to which the applicant's health had been affected by the attack and whether there was a causal link between the attack and the injury alleged by the victim.

10. On 23 February 1993 the applicant was examined by two other psychiatrists, Dr W.S. and Dr A.S., at the request of the District Court, which had appointed them as experts. On 8 June 1993 Dr W.S., who had been treating the applicant for ten years, gave evidence to the court, confirming that he disagreed with Dr B.S.'s findings. Counsel for the defendant then applied for another expert to be appointed. The applicant's lawyer initially opposed the application but eventually agreed to it, and the court allowed it.

11. On 18 June 1993 Mrs Proszak refused to undergo a further psychiatric examination, arguing that there was already sufficient evidence as to the state of her mental health and that she had already been examined on two occasions during the proceedings. She said that she did not see how a further examination could be of use in determining the defendant's civil liability.

On 7 September 1993 the applicant informed the District Court that, for health reasons duly confirmed in a medical certificate, she had been unable to appear at the hearing on 2 September 1993 and she also complained of the length of the proceedings. In a letter of 10 September 1993 to the District Court she confirmed her refusal to undergo a further psychiatric examination.

12. On 6 October 1993 the District Court set a date for a further psychiatric examination of the applicant, who did not attend for it. Subsequently she complained of the slowness of the proceedings. On 19 October 1993 the President of the District Court informed her that the alleged delays were in part due to her refusal to submit to another medical examination and that there was nothing to show any lack of diligence on the part of the court.

13. On 26 October 1993 Mrs Proszak wrote to the Minister of Justice complaining of the length of the proceedings. She also alleged that the President of the District Court had not answered some of her complaints and she applied for the reporting judge to be removed from the case on the ground that he had not dealt with it diligently and was prejudiced against her. On 2 November this letter was forwarded by the Minister to the President of the Tarnobrzeg Regional Court.

14. On 16 November 1993 the applicant asked to be examined by a psychiatrist who was a specialist in the syndrome of former prisoners of German concentration camps; she had herself been held in Ravensbrück during the Second World War and considered that this factor had not been sufficiently taken into account by the various court-appointed psychiatrists. The court contacted Cracow Military Hospital, where Dr W.Ł. replied on 26 November 1993 that the case called for a joint opinion and a longer period of observation as Mrs Proszak might compensate for her symptoms during an examination by a single expert. On 15 December 1993 the court wrote to Łódź Military Medical Academy, which informed it that, in view of commitments already entered into, it could not undertake the task asked of it.

15. On 9 February 1994 the applicant demanded that the judge in charge of her case should be replaced, on the ground that the proceedings had exceeded a reasonable time. On 10 March 1994 the District Court dismissed her application as lacking any legal basis.

16. In August 1994 the court contacted the District Mental Health Centre at Rzeszów but received no reply, despite a number of reminders. On 31 March 1995 it turned to the Lublin Medical Academy, which on 30 June 1995 agreed. The specialist initially designated made it known on 7 November 1995 that his workload made it impossible for him to produce the requested opinion. On 20 December 1995 a second specialist requested the court to ask the applicant to attend for examination on 23 January 1996.

17. On 9 January 1996 Mrs Proszak informed the District Court that for health reasons she was unable to undergo the fresh examination. She again complained of the length of the proceedings and also stressed the pointlessness of the further examination in view of those already undergone. On 18 January 1996, being of the view that she had supplied all the information necessary for deciding her case, she asked the court to continue the proceedings in her absence.

18. On 15 January 1996 the District Court had notified the applicant that as the previous experts had given conflicting opinions, her file had been sent to the Faculty of Medicine at Lublin University for a fresh expert opinion. It ordered her to attend for examination on 23 January.

19. On 21 February the Lublin Academy informed the court that, despite repeated reminders, Mrs Proszak had not attended for examination.

20. On 18 March 1996 Mrs Proszak submitted a medical certificate to the District Court to the effect that for health reasons she was unable to appear at the hearing set down for 20 March 1996. That hearing was adjourned as the applicant's lawyer was not present either. In a letter of 20 March 1996 the court offered to take evidence from her at her home.

21. On 2 April 1996 the applicant informed the District Court of her health problems and emphasised the pointlessness of fresh hearings in that her case was pending before the Strasbourg institutions and the Commission had already determined her state of health.

22. On 16 May 1996 the District Court partly allowed the applicant's claim, awarding her 1,500 new zlotys plus interest and costs.

Mr R.T. and the applicant appealed.

23. On 16 September 1996, after the District Court had given judgment, the applicant asked it to replace the reporting judge, but the application was refused on 26 September 1996. That refusal was upheld by the Tarnobrzeg Regional Court on 23 October 1996.

24. On 5 December 1996 the appellate court affirmed the District Court's judgment of 16 May 1996 but reduced the first sum awarded by 6 zlotys.

25. On 7 January 1997 the applicant appealed on points of law in order to obtain more substantial damages. The appeal was, however, dismissed by the Tarnobrzeg Regional Court on 19 February 1997 on the ground that the claim related to a sum below the threshold laid down in Article 393 of the Code of Civil Procedure (5,000 new zlotys).

PROCEEDINGS BEFORE THE COMMISSION

26. Mrs Proszak applied to the Commission on 28 April 1994. She complained of: (1) the length of the civil proceedings brought in the Stalowa Wola District Court (Article 6 § 1 of the Convention); (2) a slur on her reputation due to a 1986 medical certificate to the effect that she was suffering from schizophrenia; (3) the refusal of the Ministry of Justice to reopen proceedings relating to her son's death; and (4) persecution by various individuals.

27. In its partial decision on admissibility of 17 January 1995 the Commission (Second Chamber) adjourned consideration of the first complaint and declared the others inadmissible. On 18 October 1995 it declared the application (no. 25086/94) admissible as to the complaint concerning the length of the proceedings. In its report of 4 September 1996 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

28. The Government submitted that there had not been a breach of Article 6 § 1 of the Convention.

Counsel for the applicant asked the Court to hold that there had been a breach of that provision and to award his client just satisfaction.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. The applicant complained of the length of a set of civil proceedings and relied on Article 6 § 1 of the Convention, which provides:

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1997), but a copy of the Commission's report is obtainable from the registry.

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

The Government rejected the complaint but the Commission accepted it.

A. Period to be taken into consideration

30. The Court notes that the period to be taken into consideration began not on 25 October 1990, when the application was made to the Stalowa Wola District Court, but only on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition for the purposes of Article 25 of the Convention took effect. The period ended on 19 February 1997, when the appeal on points of law was dismissed by the Tarnobrzeg Regional Court (see paragraphs 8 and 25 above). It therefore lasted about three years, nine months and two weeks.

31. In order to determine the reasonableness of the length of time in question, regard must be had, however, to the state of the case on 1 May 1993 (see, among other authorities, the *Zappia v. Italy* judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1412, § 22).

B. Reasonableness of the length of the proceedings

32. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among other authorities, the *Zappia* judgment cited above, p. 1412, § 23).

33. As the Government pointed out in their memorial to the Court, the way a case proceeds under Polish civil procedure depends largely on the conduct of the parties. This does not, however, dispense the courts from ensuring compliance with Article 6 as to the “reasonable time” requirement (see, *inter alia*, the *Vernillo v. France* judgment of 20 February 1991, Series A no. 198, p. 13, § 30). The Government indeed acknowledged that courts were responsible for ensuring that cases proceeded satisfactorily in cooperation with the parties.

1. Complexity of the case

34. In the Commission's view, the case was not particularly complex. The circumstances of the offence which had given rise to the action for damages had already been established by the criminal court, in 1989, so that essentially what remained to be determined was whether the applicant's health had been affected and whether there was a causal link between the assault and the damage sustained. The fact that the experts had reached different conclusions could not justify the slowness of the proceedings as it was for the court concerned to assess the expert opinions' relevance to the resolution of the case, even where the experts disagreed.

The applicant shared that view.

35. The Government said, firstly, that the purpose of the criminal proceedings had been to determine whether an offence had been committed and, if so, by whom. Only a final criminal decision would have bound the civil court as to the facts and the attacker's liability. There had been no such decision, however, in the instant case as Mr R.T. had appealed against his conviction and the Tarnobrzeg Regional Court had decided to discontinue the proceedings, pursuant to an amnesty.

The Government went on to argue that the case had been a complex one. Launching the civil action approximately two years after the assault and one year after Mr R.T.'s conviction had had a direct bearing on the proceedings, because it had been necessary to obtain several medical opinions and other evidence in order to ascertain whether and, if so, to what extent the applicant had already been suffering from several illnesses before the assault took place. The task of the medical experts and the court had consequently been much more difficult than in the normal case, in which a causal link between an assault on a person and an alleged deterioration in that person's health could be established immediately. It had also been more difficult to obtain fresh witness evidence.

Furthermore, the psychiatrists appointed by the court had acknowledged that the major difficulty facing them had been due to the fact that most of the symptoms indicating that the applicant had mental-health problems had already been noted and recorded in her medical file before the assault as well as after it; hence the need to seek the opinion of a third expert.

36. The Court considers that in respect of the facts the case was to some extent a complex one. The issue to be resolved, namely whether there was a causal link between the damage relied on and the assault, made it essential to obtain specialist medical opinions. Mrs Proszak's lawyer had initially opposed the application by counsel for Mr R.T. on 8 June 1993 for the appointment of another expert, but eventually agreed to it (see paragraph 10 above). She herself subsequently sought an additional examination by a specialist in the syndrome of former prisoners in German concentration camps, as she took the view that this aspect of her life had not been sufficiently taken into account (see paragraph 14 above).

2. Applicant's conduct

37. The Government submitted that the applicant had contributed to the length of the proceedings in that she had asked for the judge to be replaced, had not attended examinations and had requested a further expert opinion.

38. The Commission accepted this but considered that her behaviour could not account for the total length of the proceedings.

39. The applicant considered that her refusal to undergo a fresh psychiatric examination had been legitimate as the court had since 1993 had enough information on which to base a decision.

40. The Court firstly reiterates that only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see, among other authorities, the *Ciricosta and Viola v. Italy* judgment of 4 December 1995, Series A no. 337-A, p. 10, § 28). Secondly, it notes that the applicant groundlessly challenged the reporting judge on three occasions, once even after judgment had been given at first instance (see paragraph 23 above). Her failures to attend the hearings, only some of which were justified by her state of health, and her refusal to attend for the third psychiatric examination contributed decisively to slowing down the proceedings. Had she undergone the third psychiatric examination, the case could have been concluded within a short space of time. Furthermore, the applicant and her counsel seem to have coordinated their actions poorly. Although the lawyer had accepted the court's appointment of a fresh psychiatrist as an expert (see paragraph 10 above), Mrs Proszak did not attend on the day appointed for the examination (see paragraph 11 above). That was scarcely consistent with the diligence which must be shown by the plaintiff in civil proceedings. Nor can the authorities dealing with the case be blamed for the lapse of more than one month between the lodging of the appeal on points of law and its dismissal for want of any legal basis (see paragraph 25 above).

3. *Conduct of the judicial authorities*

41. The Commission noted that the Government had not provided any convincing explanation of the time that had been needed to find an expert to produce the third report. It therefore regarded the national authorities as having been mainly responsible for the length of the proceedings from 1 May 1993 onwards.

42. The applicant criticised the District Court's manner of proceeding and, in particular, its persistent search for a further expert, although, she maintained, the case file had been complete by June 1993.

43. In the Government's submission, the District Court and the Regional Court had not been responsible for any procrastination. Hearings had been scheduled at regular intervals, without any excessive periods of inactivity. Furthermore, on each occasion that it had been possible, the District Court had heard witness evidence, sometimes even in the applicant's absence, in order to avoid any unnecessary delay. Without denying the difficulties encountered in finding a third expert, the Government maintained that, although long, the period in question had not breached Article 6 of the Convention in view of the efforts made by the District Court to bring the case to a conclusion.

44. The Court notes that almost the whole period falling within its jurisdiction *ratione temporis* was essentially taken up with the search for an expert with sufficient specialist qualifications, as the applicant herself had wished. It observes in this connection that experts work in the context of judicial proceedings supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, *mutatis mutandis*, the Billi v. Italy judgment of 26 February 1993, Series A no. 257-G, p. 89, § 19). In the instant case it was reasonable to take the view that a third opinion on Mrs Proszak's mental health was necessary. The District Court did everything possible to obtain it. Admittedly, the length of time complained of may at first sight seem excessive, but the evidence does not disclose any significant period of inactivity. The District Court even went so far as to offer to take evidence from her at her home in view of her bad health (see paragraph 20 above). Furthermore, once the expert was appointed, the applicant refused to undergo examination on 23 January 1996 despite being requested to do so (see paragraph 19 above).

4. *Conclusion*

45. In conclusion, regard being had to all the circumstances of the case and, more particularly, to the part played by the applicant in the conduct of the proceedings, the length of time complained of cannot be regarded as unreasonable.

There has therefore not been a breach of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

Holds by six votes to three that there has been no breach of Article 6 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 16 December 1997.

Signed: THÓR VILHJÁLMSOON
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the dissenting opinion of Sir John Freeland, joined by Mr Thór Vilhjálmsson and Mr Mifsud Bonnici, is annexed to this judgment.

Initialled: T. V.
Initialled: H. P.

DISSENTING OPINION OF JUDGE Sir John FREELAND,
JOINED BY JUDGES THÓR VILHJÁLMSSON
AND MIFSUD BONNICI

1. We are unable to agree that the length of the proceedings with which the Court is concerned in this case meets the “reasonable time” requirement imposed by Article 6 of the Convention. Our reasons can be shortly stated.

2. As the Court notes in paragraph 44 of its judgment, almost the whole period falling within its jurisdiction *ratione temporis* – that is, the period from 1 May 1993 to 19 February 1997 – was essentially taken up with the search for a further expert with sufficient specialist qualifications, the view having initially been taken that an additional opinion on Mrs Proszak’s mental health was necessary after it had been established that there was disagreement between experts who gave evidence on 14 April 1992 and 8 June 1993 respectively, and Mrs Proszak having herself subsequently requested, in November 1993, an examination by an expert in the syndrome of former concentration camp prisoners.

3. It is understandable that further expert evidence should have been sought in the light of the conflict of testimony and, later, of Mrs Proszak’s request. It is also clear both that some delay was unavoidable because of the difficulties, beyond the control of the District Court, in finding a suitable expert and that failings of cooperation on the part of Mrs Proszak were a further source of delay. But, even if, as the Government pointed out and as the Court accepts in paragraph 33 of the judgment, the way a case proceeds under Polish civil procedure depends largely upon the parties, this does not dispense the courts from ensuring compliance with Article 6 as to the “reasonable time” requirement.

4. Given that responsibility, and given that we are not satisfied that the issues in dispute were particularly complex, it is our view that the District Court should have recognised much sooner that, despite the grounds which had existed for considering a further expert opinion to be desirable, such an opinion was not essential and that it could and should decide the case, as it eventually did on 16 May 1996, on the basis of an assessment by it of the material already before it. And although, as we have indicated, we accept that Mrs Proszak proved to be a difficult person for the District Court to deal with (perhaps not altogether surprisingly, in the light of her personal history as a concentration camp victim) and made some contribution to the delay, we do not consider that this should have prevented it from so proceeding.

5. We accordingly would find that there was a violation of Article 6 § 1 of the Convention in this case.