



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

CASE OF STYRANOWSKI v. POLAND

(9/1998/912/1124)

JUDGMENT

STRASBOURG

30 October 1998

In the case of Styranowski 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 R. BERNHARDT, *President*,

Mr F. MATSCHER,

Mr I. FOIGHEL,

Mr A.B. BAKA,

Mr J. MAKARCZYK,

Mr E. LEVITS,

Mr J. CASADEVALL,

Mr P. VAN DIJK,

Mr M. VOICU,

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

Having deliberated in private on 24 August and 29 October 1998,

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

PROCEDURE

1. The case was referred to the Court by a Polish national, Mr Szczepan Styranowski (“the applicant”), on 19 February 1998 and by the Polish Government (“the Government”) on 26 February 1998, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 28616/95) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under Article 25 by the applicant on 24 July 1995.

The applicant’s application to the Court referred to Article 48 as amended by Protocol No. 9, which Poland has ratified; the Government’s application referred to Article 48. The object of the applications 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 9/1998/912/1124. 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. On 28 April 1998 the President of the Court gave the applicant leave to present his own memorial to the Court and to use the Polish language (Rules 28 § 3 and 31 of Rules of Court B).

3. On 2 March 1998 the then Vice-President of the Court, Mr R. Bernhardt, decided, under Rule 21 § 7 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider both the instant case and the case of *Podbielski v. Poland*¹.

4. The Chamber to be constituted for that purpose included *ex officio* Mr J. Makarczyk, the elected judge of Polish nationality (Article 43 of the Convention), and Mr Bernhardt, the then Vice-President of the Court (Rule 21 § 4 (b)). On 2 March 1998, in the presence of the Registrar, Mr Bernhardt drew by lot the names of the other seven members, namely Mr F. Matscher, Mr I. Foighel, Mr A.B. Baka, Mr E. Levits, Mr J. Casadevall, Mr P. van Dijk and Mr M. Voicu (Article 43 *in fine* of the Convention and Rule 21 § 5).

5. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Government, Mr K. Drzewicki, the applicant and the Delegate of the Commission, Mr S. Trechsel, on the organisation of the proceedings (Rules 39 § 1 and 40). On 25 May 1998, having regard to the views expressed by the applicant, the Government and the Delegate of the Commission, the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 27 and 40).

6. Pursuant to the President's orders, the Registrar received the applicant's and the Government's memorials on 12 June and 2 July 1998 respectively. On 15 July 1998 the Agent of the Government filed supplementary observations on the applicant's memorial. On 12 August 1998 the Delegate of the Commission submitted observations on the issues arising under Article 50 of the Convention.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, a retired judge, was born in 1923 and lives in Olsztyn, Poland.

1. Case no. 12/1998/915/1127.

A. The appeal proceedings

8. The applicant retired in May 1991. The amount of his pension was calculated by the Social Security Board (*Zakład Ubezpieczeń Społecznych*), a public institution responsible for, *inter alia*, the administration of old age pensions. The applicant's pension was calculated in accordance with the relevant provisions of the Old Age Pensions Act of 1972. It was based on his contributions to the pension scheme and on the amount of his salary at the time of his retirement, which was equivalent to 314 per cent of the average salary.

9. On 1 December 1991 the Social Security Board issued a new decision concerning the applicant's pension. This decision was based on the law amending the Old Age Pensions Act adopted on 17 October 1991 and it reduced the applicant's pension by 1,075,600 old zlotys. The reduction resulted from a provision in the amending legislation which imposed a ceiling on the amount of the salary used for the calculation of the pension. The ceiling was equal to 250 per cent of the average salary, regardless of the actual amount of the salary at the time of retirement.

10. On 17 December 1991 the applicant appealed against this decision to the Olsztyn Regional Court (*Sąd Wojewódzki*). He submitted that the 250 per cent ceiling introduced by the amendment deprived him of a part of his pension.

11. On 25 May 1992 the Warsaw Court of Appeal (*Sąd Apelacyjny*) agreed to the request submitted by all the judges of the Olsztyn Regional Court to have the applicant's case examined by another court in view of the fact that he had been their superior for many years. The case was subsequently transferred to the Warsaw Regional Court.

12. On 8 September 1992 the Warsaw Regional Court held a hearing and dismissed the applicant's appeal against the decision of 1 December 1991. It considered that the impugned decision was in conformity with the relevant provisions of the Old Age Pensions Act as amended.

13. Subsequently, on 9 February 1993 the Social Security Board took another decision concerning the applicant's pension. It was based on certain new documents indicating that the applicant's salary at the time of his retirement had in fact been higher than the amount which had been used as the basis of the decision taken on 1 December 1991 (see paragraph 9 above). The applicant appealed against this decision, repeating his earlier complaint that the basis for the recalculation of his pension should not have been limited to 250 per cent of the average salary. On 14 May 1993 the Warsaw Regional Court allowed the applicant's appeal in part as regards the period up until 1 January 1992 but dismissed it in so far as it related to the period after that date, i.e. after the entry into force of the amendment of 17 October 1991.

B. The compensation proceedings

14. On 17 December 1991 the applicant also filed with the Olsztyn District Court a compensation claim against the Social Security Board. He complained that his pension had been recalculated and reduced in accordance with applicable legislation and in disregard of the fact that his actual salary at the time of his retirement had been equivalent to 314 per cent of the average salary. Furthermore, the applicant submitted that the Social Security Board, in basing itself on the 1991 law imposing a ceiling of 250 per cent of an average salary on the amount used for the calculation of a pension, had failed to respect its obligations towards him. These obligations arose from the applicant's payment of contributions to the social security old age pension scheme over a period of forty-four years. Throughout this period no legal provision had ever provided for any ceiling on the amount of the retirement pension. The applicant alleged that the actions of the Social Security Board were unlawful and rendered the Board liable in tort.

15. On 20 May 1992 the Warsaw Court of Appeal agreed to the request submitted by all the judges of the Olsztyn Regional Court to have the appeal in the applicant's compensation proceedings examined by another court. That request was based on the fact that the applicant used to be a Deputy President of the Olsztyn Regional Court. It ordered that the appeal proceedings in the case be transferred to the Ostrołęka Regional Court which received the case file on 19 June 1992.

16. On 26 June 1992 the Ostrołęka Regional Court agreed to the request submitted by all the judges of the Olsztyn District Court to have the case examined in the first instance by another court and decided that the case should be tried by the Szczytno District Court.

17. On 29 September 1992 the Ostrołęka Regional Court, at the request of the judges of the Szczytno District Court, decided that the case should be examined in the first instance by the Przasnysz District Court.

18. The first hearing before the Przasnysz District Court was fixed for 9 November 1992. However, the court adjourned the hearing because it did not receive a confirmation that the defendant Social Security Board had received the summons.

19. On 17 November 1992 the applicant informed the Przasnysz District Court that he maintained his claim and requested that a certain witness be heard. The Przasnysz District Court requested the Olsztyn District Court to hear this witness.

20. The hearing before the Olsztyn District Court was fixed for 24 November 1992 but was adjourned as the witness requested by the applicant failed to appear.

21. The date of the hearing before the Olsztyn District Court was then fixed for 30 December 1992. The applicant requested that this hearing be adjourned. The Olsztyn District Court fixed a new hearing for 14 January 1993 and heard the witness requested by the applicant on that date.

22. On 19 January 1993 the applicant requested that the Olsztyn District Court rectify the minutes of the hearing held on 14 January 1993. The Olsztyn District Court complied with this request on 15 April 1993.

23. The next hearing before the Przasnysz District Court was scheduled for 18 May 1993 but was adjourned, as the court did not receive a confirmation that the defendant had received the summons.

24. On 17 September 1993 the applicant complained to the Przasnysz District Court about the length of the compensation proceedings and requested that the date of the next hearing be fixed. He also requested that the former Prime Minister be heard as a witness to support his claim that in the past social security contributions had been used by the State for purposes other than the payment of social security benefits.

25. On 20 September 1993 the applicant requested that the date of the next hearing be fixed without delay. On the same date the presiding judge ordered that the applicant be informed that due to serious staffing difficulties the date of the hearing would be fixed at a later stage.

26. The next hearing was fixed for 25 January 1994. On 21 January 1994 the applicant informed the Przasnysz District Court that he would be unable to attend the hearing, at which his presence was not obligatory. He maintained his claim and referred to the Constitutional Court's judgment of 11 February 1992 which had found certain provisions of the amendment to the Old Age Pensions Act of 17 October 1991 to be incompatible with the Constitution. On 25 January 1994 the hearing was adjourned, as the parties did not appear.

27. The next hearing was fixed for 23 September 1994. On 16 September 1994 the applicant informed the Przasnysz District Court that he would be unable to attend the hearing, at which his presence was not obligatory. He maintained his claim and again requested that the former Prime Minister be heard.

28. On 23 September 1994 the hearing was further adjourned as the Przasnysz District Court decided to request the Social Security Board to submit the applicant's case file to it. It reached the court on 27 October 1994.

29. On 7 December 1994 the applicant complained to the Minister of Justice about the length of the proceedings and in particular about the hearings having been adjourned on numerous occasions without justification.

30. The President of the Ostrołęka Regional Court replied in a letter of 10 January 1995 informing the applicant that his case should be considered privileged since, in view of the fact that the Przasnysz District Court was understaffed, the intervals between the hearings were such as to secure appropriate progress in the proceedings. He also pointed out that the applicant had failed to appear at all these hearings and that the next hearing had been set for 7 February 1995 and that the case was ready for a prompt ruling.

31. In his reply of 11 January 1995 the applicant stressed that he had been present at the hearing of 14 January 1993 and had extensively pleaded his case. Although it was true that he had not been present at other hearings, he had requested that the case be considered in his absence. Moreover, the court had never required his attendance at any of the hearings. He had submitted several letters to the court explaining his position in the light of the progress in the case. It had not transpired from the information which he had obtained on the phone after every hearing that any of the hearings had been adjourned either because of his absence or his failure to submit documents or evidence required by the court.

32. In a letter to the Przasnysz District Court of 2 February 1995 the applicant stated that he would be unable to attend the hearing on 7 February 1995 and pointed out that his attendance was not obligatory. He maintained his claim and submitted additional written pleadings to support it.

33. On 7 February 1995 the Przasnysz District Court rejected the applicant's claim, considering that the matter was *res judicata*. It noted that the issue of the ceiling imposed on his pension had already been decided in two sets of proceedings which resulted in the judgments of 8 September 1992 and 14 May 1993 (see paragraphs 12–13 above).

34. On 8 February 1995 the applicant requested the reasoned judgment which was served on him on 3 April 1995.

35. On 5 March 1995 there was a fire in the building of the Przasnysz District Court.

36. On 6 April 1995 the applicant lodged an appeal against the decision of 7 February 1995.

37. On 13 July 1995 the Ostrołęka Regional Court quashed the decision of 7 February 1995 and ordered that the case be reconsidered. It observed that in the appeal proceedings the only issue which had been decided was whether the calculation of the applicant's pension complied with the relevant legal provisions. However, in the compensation proceedings the applicant claimed compensation for the alteration of the conditions of the contract with the Social Security Board and his claim was based on tort. As these two claims were not identical, the compensation claim could not be considered *res judicata*.

38. The next hearing before the Przasnysz District Court was held on 3 October 1995. The court deferred the delivery of the judgment. It was then delivered on 17 October 1995. On 29 October 1995 the applicant requested the reasoned judgment which was served on him on 5 December 1995. On 13 December 1995 the applicant filed an appeal with the Ostrołęka Regional Court which dismissed it on 16 January 1996.

PROCEEDINGS BEFORE THE COMMISSION

39. Mr Styranowski applied to the Commission on 24 July 1995. He relied on Article 6 of the Convention, complaining about the length of the compensation proceedings. He also complained that the decision to reduce his pension deprived him of the rights which he had lawfully acquired and amounted to a violation of Article 6 read together with Article 17 of the Convention. Furthermore, the applicant complained that the decisions reducing his pension breached the Convention and together with the law on which they were based were incompatible with the Polish Constitution.

40. On 27 June 1996 the Commission (Second Chamber) decided to adjourn the examination of the applicant's complaint concerning the length of the compensation proceedings and dismissed the remainder of the application (no. 28616/95). On 15 April 1997 the Commission declared admissible this complaint. In its report of 3 December 1997 (Article 31), it expressed by ten votes to five the opinion that there had been a violation of Article 6 § 1 of the Convention. The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

41. The applicant in his memorial requested the Court to find that the facts of the case disclosed a violation of Article 6 § 1 of the Convention and to award him just satisfaction under Article 50.

42. The Government for their part requested the Court in their memorial to find that Article 6 § 1 was not violated in the case at issue.

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* 1998), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

43. The applicant contended that the compensation proceedings in his case were not concluded within a reasonable time, contrary to Article 6 § 1 of the Convention, which in so far as relevant provides:

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

44. The Commission agreed with the applicant’s arguments whereas the Government contended that the facts of the case disclosed no breach of that provision.

A. Period to be taken into consideration

45. The Court notes that the period to be taken into consideration began not on 17 December 1991, when the applicant filed a compensation claim with the Olsztyn District Court, but 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 16 January 1996 when the Ostrołęka Regional Court dismissed the applicant’s appeal (see paragraphs 14 and 38 above).

46. However, in order to determine the reasonableness of the length of time in question, regard must be had to the state of the case on 1 May 1993. On the above understanding the proceedings lasted four years and one month, out of which two years, eight months and sixteen days are taken into consideration by the Court (see, among other authorities, the *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31).

B. Reasonableness of the length of the proceedings

47. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among other authorities, the *Süßmann v. Germany* judgment of 16 September 1996, *Reports* 1996-IV, pp. 1172–73, § 48).

1. Complexity of the case

48. The Commission pointed out that the facts of the case had not been disputed by the parties to the proceedings. Although the constitutional nature of the arguments raised by the applicant had introduced an element of complexity into the case, it took the courts too long to dismiss his claim after the Przasnysz District Court had ruled on 7 February 1995 that the matter was *res judicata* (see paragraph 33 above).

49. The applicant endorsed the Commission's reasoning and conclusion.

50. The Government agreed with the Commission that the facts of the case had not been disputed. However, they submitted that the case was complex because of the legal nature of both the substantive and procedural issues involved. In particular, the subject matter of the applicant's claim was unclear. He relied on the law of 17 October 1991 amending the Old Age Pensions Act (see paragraph 9 above), the constitutionality of which had given rise to doubts, as well as on certain complex provisions of the Civil Code. Furthermore, the fact that the case had to be transferred on several occasions to different courts on account of the requests made by the applicant's former colleagues also contributed to the complexity of the case (see paragraphs 15–17 above).

51. The Court considers that, even though the case involved a measure of procedural complexity on account of the need to transfer the case between different courts, it cannot be said that this in itself justified the length of the compensation proceedings. It does not consider either that the nature of the substantive issues raised by the applicant's claim can justify the length of the proceedings.

As the length of the proceedings cannot be explained in terms of the complexity of the issues involved, the Court will examine it in the light of the conduct of the applicant and of the national authorities (see paragraph 47 above).

2. Conduct of the applicant

52. The Court notes that it is common ground that the applicant's conduct did not contribute to the length of the proceedings.

3. Conduct of the national authorities

53. The Commission observed that the Przasnysz District Court had remained passive with respect to the behaviour of the Social Security Board, a public body, which resulted in delays in the proceedings. In particular, the court did not enquire on two occasions why it had not received confirmation that the Board had been served with summonses. This failure led to the adjournment of hearings (see paragraphs 18 and 23 above). Furthermore, since the applicant's case file had not been destroyed in the fire in the

Przasnysz District Court, this incident had no bearing on the length of the proceedings (see paragraph 35 above). The Commission also noted that no convincing explanation had been provided for the periods of inactivity between 18 May 1993 and 25 January 1994 and between 25 January 1994 and 23 September 1994.

54. The applicant endorsed the Commission's reasoning and conclusion.

55. The Government disagreed with the Commission's assessment of the conduct of the national authorities. They submitted that the delivery of summonses was the responsibility of the Post Office and not of the courts. Moreover, even if the defendant Social Security Board could be blamed for some delays in the proceedings, the Government could not be held responsible for its actions. Further, they contended that although the fire in the Przasnysz District Court had not destroyed the applicant's file, it had seriously impaired the court's ability to operate and thus contributed to the length of the proceedings. The Government concluded that although two periods of inactivity had occurred in the proceedings, these could not be regarded as excessive since no special diligence had been required in the case and taking into account the number of stages in the proceedings as a whole.

56. The Court notes that it took over four years to decide the compensation claim arising from the reduction of the applicant's pension (see paragraph 46 above). Leaving aside the question whether the respondent State can be held responsible for every delay in the case, it is in any event to be noted that, as the Government admitted, after 1 May 1993 when Poland recognised the right of individual petition, there were two periods of inactivity: between 18 May 1993 and 25 January 1994 and between 25 January 1994 and 23 September 1994 (see paragraphs 23–28 above). They resulted in delays in the proceedings lasting respectively seven months and six days and almost eight months – a total period of over fifteen months. As no explanation has been provided for these periods of inactivity the delays have to be attributed to the national authorities.

4. Conclusion

57. The Court concludes that the complexity of the case is not in itself sufficient to justify the length of the compensation proceedings. While the applicant throughout the proceedings behaved in a diligent manner and on several occasions requested that the proceedings in his case be expedited (see paragraphs 24–25 and 29–31 above), it is also to be noted that the compensation proceedings originated from and were based on the reduction of the applicant's pension (see paragraph 14 above). Therefore, in view of his age, the proceedings were of undeniable importance for him. Accordingly, what was at stake for the applicant called for an expeditious decision on his claim.

In sum, basing itself on the above-mentioned two periods of inactivity and having regard to the circumstances of the instant case and the overall length of the proceedings, the Court concludes that there was an unreasonable delay in dealing with the applicant's case.

58. There has accordingly been a violation of Article 6 § 1 in that the applicant's "civil right" was not determined within a "reasonable time".

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

59. The applicant claimed just satisfaction under Article 50 of the Convention which provides as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary and non-pecuniary damage

60. The applicant sought 26,377 zlotys (PLN) by way of compensation for the reduction in the amount of his pension between 1 January 1992 and 30 June 1997.

61. The Government submitted that in the event that the Court found a violation, this finding would in itself constitute sufficient just satisfaction. In the alternative, they requested the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law in civil cases in which normal diligence was required.

62. The Delegate of the Commission considered that the applicant's claim was not related to his complaint before the Court and suggested instead an award of PLN 10,000 under the head of non-pecuniary damage.

63. The Court considers that there is no causal link between the breach established and any alleged pecuniary damage. Consequently, it sees no reason to make any award under the head of pecuniary damage.

On the other hand, the Court is of the view that the applicant can reasonably be considered to have suffered frustration on account of the protracted nature of the proceedings, which contributed to the sense of injustice he felt about the impact of the new pensions regulations on his livelihood. Accordingly, the Court considers that, in the circumstances of this particular case and deciding on an equitable basis, the applicant should be awarded the sum of PLN 15,000.

B. Default interest

64. According to the information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 33% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 § 1 of the Convention has been violated;
2. Holds
 - (a) that the respondent State is to pay the applicant, within three months, 15,000 (fifteen thousand) zlotys in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 33% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 October 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar