



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

FOURTH SECTION

CASE OF SOBCZYK v. POLAND

(Application no. 25693/94 and 27387/95)

JUDGMENT

STRASBOURG

26 October 2000

FINAL

26/01/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form.

In the case of Sobczyk v. Poland,

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

Mr G. RESS, *President*,

Mr A. PASTOR RIDRUEJO,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr I. CABRAL BARRETO,

Mrs N. VAJIĆ,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 5 October 2000,

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

PROCEDURE

1. The case originated in the applications (nos. 25693/94 and 27387/95) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Aleksander Sobczyk (“the applicant”), on 2 March 1992 and 2 November 1994, respectively.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki.

3. The applicant alleged, in particular, that the length of the civil proceedings was in breach of the “reasonable time” requirement laid down in Article 6 § 1 of the Convention.

4. On 6 September 1995 the Commission decided to join the applications and to communicate the applicant’s complaint concerning the length of the civil proceedings.

5. The applicant’s complaint concerning the length of civil proceedings was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

6. The applications were allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

7. By a decision of 10 February 2000 the Chamber declared the applications partly admissible.

THE FACTS

8. In 1990 a group of industrial enterprises in the coal industry was dismantled. As a result, the applicant was dismissed. On 27 July 1990 the Sosnowiec District Court annulled his dismissal and ordered the Minister of Industry to assign a company to re-engage him. In April 1992, the Ministry of Industry informed the applicant that the Niwka-Modrzejów coal-mine had taken over certain obligations of his former employer and would re-engage him. However, the coal-mine refused to do so, considering that the applicant did not satisfy applicable medical requirements.

9. On 27 May 1992 the applicant filed an action against the Niwka-Modrzejów coal mine with the Sosnowiec District Court, claiming that he should be re-engaged to work in accordance with the judgment of the same court given on 27 July 1990, ordering that he be re-engaged to work as a manager. He also claimed compensation for the period for which he had remained unemployed as a result of the defendant's failure to comply with the 1990 judgment.

10. On 25 June 1992 the defendant company submitted its pleadings in reply to the applicant's statement of claim. Subsequently there was an exchange of pleadings between the parties. In August 1992 the judge rapporteur set the date of the first hearing for October 1992. Subsequently the applicant informed the court that he would be unable to attend this hearing for medical reasons.

11. At the hearing of 26 October 1992 the court, at the request of both parties' lawyers, stayed the proceedings. In December 1992 the applicant requested the court to order the Ministry of Industry to join the proceedings as co-defendant and to resume the proceedings. The court refused to resume the proceedings, considering that the applicable provisions of the Code of Civil Procedure did not allow for so doing.

12. In January 1993 the applicant asked the court whether the Minister of Industry had already been called to join the proceedings. Later in January he informed the court that he had withdrawn the power of attorney of his lawyer and requested the court to appoint a lawyer to represent him under the legal aid scheme. He also reiterated his request for the proceedings to be resumed. In a letter to the court of 31 January 1993, the applicant complained that the proceedings had exceeded a reasonable time.

13. On 10 February 1993 the court resumed the proceedings and assigned a lawyer to represent the applicant. On 18 February 1993 the applicant requested that the court summon the prosecutor to join the proceedings. The hearing to be held on 29 March 1993 was adjourned as the defendant's representative had not been duly summoned. By a letter of 29 March 1993 the applicant extended his compensation claim to 1,000,000,000 (old) Polish zlotys.

14. In April 1993, following the increase of the applicant's claim, the case was transmitted to the Katowice Regional Court which became competent to examine the case. On 28 April 1993 the court fixed the date of the first hearing for 30 June 1993 and summoned the Minister of Industry to join the proceedings as a co-defendant.

15. On 5 May 1993 the applicant complained to the Minister of Justice about the length of the civil proceedings and about the District Court's failure to assess correctly the value of his claim. On 17 May 1993 the applicant complained again about the delay in the proceedings and requested the Katowice Regional Court to order the Minister of Industry to join the proceedings as a co-defendant.

16. At a hearing on 30 June 1993, the Katowice Regional Court ordered that the Ministry of Industry should join the proceedings as a co-defendant and requested the defendant enterprise to submit a list of posts in which the applicant could eventually be re-engaged. The applicant was requested to provide information about his earnings since his engagement by another company in November 1990. The applicant submitted the requested information on 5 July 1993.

17. The next hearing was held on 10 August 1993. In order to establish the applicant's state of health for the purposes of his claim for compensation for deterioration of his health brought about allegedly by stress originating from his dismissal, the court requested several public health care institutions to submit the applicant's medical records. The court further requested the defendant company to submit a description of health requirements for the posts in which the applicant could eventually be re-engaged. It also requested the Ministry of Industry as a co-defendant to submit documents concerning the take-over of the obligations of the applicant's former employer by the defendant coal-mine Niwka-Modrzejów, and in particular concerning the trade union's position relating to the possibility of re-engagement of former managers.

18. As the medical records requested by the court had not been submitted in their entirety, the hearings to be held on 13 October and 17 November 1993 were adjourned and the court urged the health care institutions concerned to submit them.

19. At a hearing held on 22 December 1993 the court established that part of the applicant's medical records had been misplaced while being processed by the health care institutions. The applicant was therefore required to submit to the court his medical insurance booklet.

20. On 17 January 1994 the applicant extended his compensation claim by a further claim for income from technical inventions which he was unable to obtain as a result of his dismissal.

21. At a hearing on 26 January 1994 the Katowice Regional Court questioned the parties and examined the applicant's medical documents. The court further prepared a list of questions concerning the applicant's

health, to be answered by a neurologist, a psychiatrist and a psychologist, with a view to establishing whether the applicant suffered from any ailments which could have originated from or be linked to his dismissal. On 31 January 1994 a request to prepare a medical expert opinion, a list of questions and the applicant's medical records were submitted to the Department of Forensic Medicine of the Silesian Medical University. The expert report was to be prepared within one month.

22. By a letter of 11 April 1994 the President of the Katowice Regional Court informed the applicant that the expert opinion would not be ready before three months.

23. On 9 May 1994 the applicant complained to the court and to the Minister of Justice, alleging that the court had amended the list of questions to be answered by the medical experts and had deleted several questions which were of direct relevance for the outcome of the case. The applicant indicated that he had become aware of these changes only during his medical examination at the Medical University. He requested the court to put these questions to the experts. This letter apparently remained unanswered.

24. In a letter of 13 June 1994 the President of the Regional Court brought to the attention of the President of the Labour Division of the Katowice Regional Court that the proceedings in the applicant's case were unacceptably long and requested him to supervise their conduct, in particular with a view to ensuring that the expert opinion be prepared with no delay.

25. On 1 September 1994 the Minister of Justice informed the applicant that his complaint about the length of the proceedings had been forwarded for investigation to the President of the Katowice Court of Appeal.

26. The medical expert report was submitted to the Katowice Regional Court on 18 October 1994, after the court had urged the experts in writing five times, on 11 April, 12 May, 10 June, 7 July and 5 September 1994, and twice by telephone on 14 June and on 20 July 1994, to expedite their work.

27. On 18 October 1994 only a part of the applicant's medical files was returned by the experts. On 3 November 1994 the applicant requested the court to reconstruct the part of the case-file which had allegedly been lost during the transfer from the Medical University. He reiterated his complaints about the length of the proceedings. The remaining part of the files was submitted to the court on 10 November 1994. On 14 November 1994 the court set the date of the next hearing for 29 November 1994.

28. On 22 November 1994 the Minister of Justice informed the applicant that the missing medical files had been found and that the next hearing before the Katowice Regional Court had been fixed for 29 November 1994, with a view to pronouncing the judgment on that date.

29. At the hearing held on 29 November 1994 the applicant's lawyer was not present for medical reasons. The court decided to request the local Bar

to assign a new lawyer to the case and to request the Medical University to submit an additional expert opinion in order to establish the percentage of the applicant's health's loss which could be attributed to his dismissal. On 30 November 1994 the case-file was again sent to the Medical University for a further report to be prepared.

30. On 29 December 1994 the applicant submitted pleadings to the court in which he argued that the Ministry of Industry should order his re-engagement. On 5 January 1995 the court urged the Medical University to submit the complementary medical opinion.

31. On 6 January 1995 the President of the Katowice Court of Appeal forwarded to the applicant a letter from the President of the Labour Division of the Katowice Regional Court explaining that the delay in the proceedings in 1994 had been caused by the experts' failure to prepare their report in due time. On the same day the additional expert report was submitted to the court. On 9 January 1995 the presiding judge fixed the date of the next hearing for 24 January 1995 and ordered the defendant to submit a list of salaries earned by persons employed in posts comparable to that of the applicant in order to establish the income which he had lost following his dismissal.

32. On 19 January 1995 the applicant complained to the Bureau of the Council of Ministers about the length of the proceedings. He submitted, in particular, that since 26 January 1994 the court had failed to take any steps to ensure that the expert opinion be prepared, that the court had not reacted to the fact that the Ministry of Industry had persistently failed to send its representative to the hearings, that the court had ordered him to submit the same documents several times and that hearings had not been held often enough.

33. At a hearing on 24 January 1995 the court again questioned the applicant and decided that the medical report should be submitted to the Medical University so that its specialists could reply to objections that the applicant had expressed in its regard.

34. In their further report of 9 February 1995 the medical experts estimated the applicant's health loss at ten percent.

35. On 20 February 1995 the applicant submitted further pleadings to the court. He requested that the defendants apologise in writing for his unjustified dismissal and publish the apology in the gazette of the mining industry.

36. In his pleadings of 7 March 1995 the applicant requested the court to give a decision to the effect that he should be employed by the defendant enterprise Niwka-Modrzejów as Chief Mechanic. In his further pleadings of 15 March 1995 he requested that the period from 1 August 1990 to 1 February 1992 be counted towards the period giving rise to social insurance disability benefits of employees of the mining industry.

37. The hearing on 21 March 1995 was adjourned, as the medical experts failed to attend, having submitted a justification therefor. They were questioned by the court at the hearing on 6 April 1995.

38. By a judgment of 13 April 1995 the court awarded the applicant compensation from the Ministry of Industry of 13,163 PZL for the loss of income resulting from his unemployment from August 1990 to March 1992 and 4,413 PZL for loss of health caused by stress which he had suffered, and dismissed the applicant's remaining claims. Written grounds for the judgment were sent to the parties on 19 May 1995. On 26 June 1996 the court dismissed the applicant's request of 18 May 1995 to have the judgment supplemented by rulings on his various requests and claims submitted in the course of the proceedings.

39. On 28 April 1995 the Katowice District Prosecutor refused the applicant's request to institute criminal proceedings against persons who had allegedly breached his rights guaranteed by various provisions of labour law and had committed numerous other offences to the applicant's detriment.

40. On 6 June 1995 the applicant, and on 16 June 1995 the Ministry of Industry, lodged their appeals against the judgment of 13 April 1995 with the Regional Court. On 13 September 1996 the case file and the appeals were transmitted to the Katowice Court of Appeal.

41. On 26 June 1995 the applicant was re-engaged in the Niwka-Modrzejów coal mine, pursuant to the judgment of 27 July 1990. Apparently the applicant, dissatisfied with his new post, later instituted proceedings in the Sosnowiec District Court, claiming that he should obtain a post identical to that from which he had been dismissed in 1990.

42. On 19 September 1995 the Katowice Regional Prosecutor quashed in part the District Prosecutor's decision of 28 April 1995 and ordered that the case be re-examined regarding the alleged breach of the applicant's rights as an employee. On 30 November 1995 the Katowice District Prosecutor discontinued, however, the investigations, finding that no offence had been committed. The applicant appealed.

43. On 20 December 1995 the applicant complained to the Ministry of Justice that there was no progress in the appellate proceedings pending before the Katowice Court of Appeal.

44. In letters of 22 and 29 January and of 2 and 3 February 1996 the applicant submitted additional arguments in support of his appeal to the Katowice Court of Appeal.

45. On 16 February 1996 the Katowice Court of Appeal partly amended the first-instance judgment of 13 April 1995 in that it reduced certain sums awarded to the applicant as compensation and increased other sums. The court also partly dismissed the applicant's appeal. Further, a part of the judgment concerning the compensation claim for the loss of earnings, caused by the defendant enterprise's failure to re-engage the applicant after April 1992, was quashed. Likewise, the part relating to his compensation

claim for his reduced earning power resulting from the deterioration of his health, was quashed and the case was remitted to the lower court for reconsideration.

46. The case was subsequently re-examined by the Katowice Regional Court. Hearings were held before that court on 4 and 29 November 1996, 13 December 1996, 21 February 1997, 14 March 1997 and 8 August 1997.

47. By a partial judgment of 14 August 1997 the Katowice Regional Court awarded the applicant compensation. The defendant coal mine lodged an appeal against this judgment. On 25 March 1998 the Katowice Court of Appeal dismissed the appeal.

48. A further hearing was held before the Katowice Regional Court on 9 October 1998. The applicant was questioned and on that occasion he reduced his compensation claims. The hearing was adjourned in order for the defendants to submit their comments.

49. On 20 November 1998 the hearing was adjourned as the defendant's representatives failed to attend. On the same date the court imposed a fine on the applicant for insulting the court. By a judgment of 15 January 1999 the Katowice Regional Court awarded further compensation to the applicant. On the same date the court rejected the applicant's appeal against the decision of 20 November imposing a fine on him.

50. On 5 March 1999 the Regional Court refused the applicant's request for interpretation of the 15 January 1999 judgment.

51. On 15 October 1999 the Katowice Court of Appeal dismissed the applicant's appeal against the judgment of 15 January 1999.

52. Subsequently the applicant lodged a cassation appeal with the Supreme Court.

THE LAW

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

53. In the applicant's submission, the length of the proceedings exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention, which, insofar as relevant, provides as follows :

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

A. Period to be taken in consideration

54. The Court first observes that the period to be taken into consideration began not on 27 May 1992, when the applicant instituted proceedings before the Sosnowiec District Court, claiming that he should be re-engaged into work and compensation, 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 proceedings instituted by the applicant's cassation appeal are currently pending before the Supreme Court. The period to be examined has thus lasted so far approximately seven years and four months.

55. The Court further notes that 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 *Proszak v. Poland* judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 31; *Styranowski v. Poland* judgment of 30 October 1998, *Reports* 1998-VIII, § 46).

B. Applicable criteria

56. The Court reiterates that the "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among other authorities, *Comingersoll S.A. v. Portugal* [G. C.], no. 35382/97, 6.4.2000, § 19).

C. The Court's assessment

57. The Court considers that the issues involved in the present case did present a certain complexity. This is so because the case originated from the applicant's dismissal in 1990 from the post of manager in a state-owned group of companies in the coal-mining industry against the background of significant legal and organisational changes in this sector in the context of transition of the Polish economy. In the Court's opinion, this circumstance to a certain extent rendered the legal issues involved in the case more difficult. The Court further notes that the nature of the applicant's compensation claim necessitated that his state of health be established and, in particular, that the loss of health which he had allegedly suffered as a result of stress caused by his dismissal be assessed. Also, the courts had to assess the damage sustained by the applicant in that he had not received his salary for the period during which he remained unemployed, as well as other prejudice caused by his dismissal. In the Court's view, however, all this can hardly be deemed exceptionally difficult as these are normal

obligations of labour courts in cases arising out of allegedly unjustified dismissals.

58. On the whole, the Court therefore does not consider that the difficulty of the substantive issues involved in the case was sufficient to justify the length of proceedings.

59. In respect of the applicant's conduct, the Court notes that throughout the proceedings the applicant on numerous occasions submitted voluminous pleadings to the courts. Thus, in the Court's view, it cannot be excluded that the applicant has thereby to some extent contributed to the length of the proceedings. It must not be overlooked, however, that for the most part the applicant's pleadings did not necessitate any particular reaction on the part of the courts. On most occasions, they only contained expression of the applicant's general dissatisfaction with the course of the proceedings. In any event, the Government have not shown how the applicant's submissions affected the conduct of the proceedings, in particular which were the procedural decisions that had to be made by the court only on account of the applicant's pleadings.

60. The Government submitted that the applicant extended his claims on many occasions. The applicant stated in this respect that he had extended and modified his claims in view of the fact that due to the lapse of time since the beginning of the proceedings new circumstances affecting his claim, and in particular further damage to his health, came to light. In the Court's view, regard must also be had to serious inflation in Poland at the beginning of the period under examination, which justified successive increases to the applicant's financial claims. In these circumstances, the Court considers that it cannot be held against the applicant that he extended and modified his claims.

61. The Court further notes that after the first medical expert report had been submitted to the Katowice Regional Court on 18 October 1994, during the hearing on 24 January 1995 the applicant lodged objections against it, which necessitated a further examination of his medical records by experts. In the appellate proceedings, the applicant four times submitted additional arguments in support of his appeal against the first-instance judgment of 13 April 1995.

62. Otherwise, the applicant attended almost all the hearings and complied with the court's summonses. The Court finds therefore that the applicant's conduct cannot in itself explain the length of the proceedings.

63. As to the conduct of the authorities, the Court first acknowledges that in the course of the proceedings the courts made efforts in order to determine the applicant's various claims as they were becoming ready for a ruling, giving the judgment on a part of the applicant's claims on 14 August 1997.

64. The Court notes, however, that it took the courts as long as seven months to decide whether the Ministry of Industry should join the

proceedings as a co-defendant. On 31 January 1994 the Katowice Regional Court ordered that a medical expert opinion be submitted within one month, yet the preparation of this opinion took ultimately nine months. After the first medical report had been submitted to the Katowice Regional Court, it immediately decided that additional questions had to be asked and that the report had to be supplemented, which prolonged the proceedings for a further three months. The Court notes in this respect that already on 9 May 1994 the applicant complained that the court had deleted from the list of questions to be put to the expert several queries of direct relevance for the outcome of the case. In addition, it was only after the medical expert report had been submitted to the Katowice Regional Court, that the court decided that it was necessary for the determination of the case to have a list of salaries paid to persons working in posts similar to that of the applicant in order to assess his lost income.

65. The Court further notes that the transfer of the case-file from the first-instance to the appellate court lasted three months, from 16 June 1995 to 13 September 1995. Once the case was transferred to the appellate court, following the applicant's and the defendant's appeal against the judgment of 13 April 1995, a period of inactivity of ten months occurred in the case as the Katowice Court of Appeal gave its judgment on 16 February 1996, by which it upheld the judgment in part and ordered part of the case to be reconsidered by the first-instance court. Subsequently, the first hearing before the first-instance court was held after a further interval of over eight months, i.e. on 4 November 1996. There was a further five-months interval between the two hearings held before the Katowice Regional Court, i.e. on 14 March and 8 August 1997. Subsequently, by a partial judgment given on 14 August 1997, the Katowice Regional Court awarded the applicant compensation. In the proceedings concerning the applicant's remaining claims the next hearing before the Regional Court was held only on 9 October 1998, i.e. after a further period of inactivity lasting over six months.

66. It is also noteworthy that as early as 1994 the authorities acknowledged that the proceedings had already lasted too long. For instance, in a letter of 13 June 1994 the President of the Regional Court indicated to the President of the Labour Division of the Katowice Regional Court that the proceedings in the applicant's case were unacceptably long and ordered him to supervise their conduct.

67. Having regard to all the evidence before it, the Court thus concludes that the "reasonable time" within the meaning of Article 6 § 1 of the Convention has been exceeded. There has accordingly been a violation of Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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. Damages and costs and expenses

69. The applicant claimed a total amount of 10,000,000 EURO for pecuniary and non-pecuniary damage and for costs and expenses incurred in the proceedings before the domestic courts and before the Strasbourg institutions. The applicant referred to anxiety and suffering, which he had sustained as a result of the protracted domestic proceedings, and which led to a serious deterioration of his health.

70. The Government submitted that the sum claimed by the applicant was exorbitant and in no proportion to any damages which he could have sustained. They requested the Court to make an award of just satisfaction in the light of its case-law in similar cases.

71. Having regard to the overall length of the proceedings, which can reasonably be considered to have been a source of anxiety and concern to the applicant, and deciding on an equitable basis, the Court awards the sum of PLN 20,000 in respect of non-pecuniary damage.

72. As regards the applicant's claim for pecuniary damage, the Court cannot find that there is causal link between the facts in respect of which it has found a breach of the Convention and the pecuniary damage for which the applicant seeks compensation. The court accordingly dismisses this claim.

73. As regards the costs and expenses, the Court, making an assessment on an equitable basis, awards the applicant the overall sum of PLN 2,000, together with any value-added tax (VAT) that may be chargeable.

C. Default interest

74. According to information available to the Court, the statutory rate of interest applicable in Poland at the date of adoption of the present judgment is 21% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) for non-pecuniary damage, 20,000 (twenty thousand) Polish zlotys;
 - (ii) for costs and expenses, 2,000 (two thousand) Polish zlotys, together with any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 21 % shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President