



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

FOURTH SECTION

**CASE OF SOBAŃSKI v. POLAND**

*(Application no. 40694/98)*

JUDGMENT

(This version has been rectified under article 81 of the Rules of Court  
on 17 September 2003)

STRASBOURG

21 January 2003

**FINAL**

***09/07/2003***

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



**In the case of Sobański v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs E. PALM,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 17 December 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 40694/98) 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, Zenon Sobański (“the applicant”), on 15 September 1997.

2. The applicant was represented by Mr Wojciech Hermeliński, a lawyer practising in Warsaw, Poland. The Polish Government (“the Government”) were represented by their Agent, Mr Krzysztof Drzewicki, Government's Agent.

3. The applicant alleged in particular, that the civil proceedings in his case exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention.

4. The application 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).

5. The application was allocated to the Third 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.

6. On 28 August 2001 the Court declared the application partly inadmissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

8. By a decision of 28 May 2002 the Court declared the remainder of the application admissible. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1963 and lives in Warsaw.

The facts of the case, as submitted by the parties, may be summarised as follows.

10. On 1 May 1983 the applicant, following clashes with the police during anticommunist demonstrations, was put by the police in their van and beaten. He was seriously injured. On 17 May 1983 he was discharged from hospital. A brain injury, post-traumatic epilepsy and permanent brain damage were diagnosed. Since then he has remained under permanent care in a psychiatric clinic.

11. By a judgment of 24 June 1986, the Warsaw Regional Court granted the applicant compensation for damage to his health and held that a monthly supplementary pension be paid by the police – the State Treasury. The court observed that the applicant had lost the capacity to work and was disabled in the so-called second degree (an intermediate degree of disability).

12. On 11 April 1990 the applicant was granted the first degree status of disability (serious disability).

13. In 1990 the monthly supplementary pension was increased to 100 PLN as a result of a settlement between the parties.

14. On 27 February 1993 the applicant's father lodged a claim with the Warsaw Regional Court, in which he requested an increase in his son's monthly pension. On 8 March 1993 the Warsaw Regional Court remitted the case to the Warsaw District Court. Subsequently, six hearings were held in the case. On 15 September 1993 the court held a hearing. The defendant's lawyer asked for an adjournment in order to reach a friendly settlement.

15. On 12 November 1993 the court held a hearing. The applicant increased the amount of the claim. The court decided to request certain information from the applicant's former employer. On 19 November 1993 the court obtained the requested information.

16. On 23 November 1993 the court held a hearing. The applicant increased the amount of the claim. The court decided to request the psychiatric clinic for some additional information on the applicant's health. On 13 December 1993 the applicant's lawyer specified the claim. He

requested the court to appoint an expert to give a report on the applicant's health.

17. On 17 December 1993 the next hearing was held. It was decided to request the psychiatric clinic to expedite the preparation of the requested documents.

18. On 27 January 1994 the court held its next hearing and interviewed witnesses. The applicant further specified the claim.

19. On 6 May 1994 a hearing was held. The defendant contested the amount of the applicant's claim. The court decided to request the applicant's former employer to submit certain information. On 24 May 1994 the applicant increased his claim. Taking into account the value of the claim, on 25 May 1994 the applicant requested the court to remit the case to the Regional Court. On 23 June 1994 the Warsaw District Court remitted the case to the Warsaw Regional Court, as the latter had become competent following the increase of the applicant's claim. Subsequently, on 25 November 1994 and 21 December 1994 the defendant and the applicant submitted pleadings to the court.

20. In January 1995 the applicant requested the court not to schedule any hearings in the period from 1 until 18 March 1995. In February 1995 the applicant requested the court not to schedule any hearings from 1 until 15 April 1995. On 19 April 1995 the applicant increased the claim.

21. On 28 April 1995 the parties asked for an adjournment in order to reach an out-of-court settlement. Their negotiations subsequently failed. By pleadings of 18 May, 20 June, 20 July, 21 August, 22 September, 10 October and 21 November 1995 the applicant further specified his claim. On 14 November 1995 the court requested the applicant's former employer to submit certain documents. The documents were submitted on 21 November 1995.

22. On 1 December 1995 the hearing was adjourned to give the applicant two weeks to submit his comments on the documents received by the court on 21 November. On 1 December 1995, 2 January 1996 and 22 January 1996 the applicant specified his claim.

On 23 February 1996 the applicant complained to the Supreme Court about the length of the proceedings. On 15 April 1996 he was informed that the case had been placed under the administrative supervision of the President of the Warsaw Regional Court.

23. On 9 September 1996 the applicant lodged a motion with the Warsaw Regional Court challenging the presiding judge for an alleged lack of impartiality. This motion was dismissed on 18 September 1996.

24. On 29 January 1997 the court received requested information from the applicant's former employer. On 5 February 1997 the expert submitted a report ordered by the court in November 1996. On 13 February 1997 the applicant's lawyer requested the court not to schedule any hearings in March 1997.

25. On 17 February 1997 the court requested the parties to submit their comments on the expert report within the fourteen days' time-limit. On 26 February 1997 the defendant informed the court that he agreed with the conclusions of the report. On 11 March 1997 the court once more requested the applicant to submit his comments. Apparently, further questions were put to the expert. On 7 November 1997 the expert submitted to the court the supplementary report. On 1 December 1997 the applicant lodged his objections against the report.

26. On 9 January 1998 the court held a hearing. The applicant requested the court to appoint a new expert. He once more challenged the expert opinion. The court refused and closed the hearings in the case.

27. On 12 January 1998 the applicant increased and modified his claim to a very significant extent.

28. On 16 January 1998 the court accordingly re-opened the proceedings. The court also gave an interlocutory decision that a certain sum be paid monthly to the applicant in order to secure his claim.

29. On 4 March 1998 the applicant submitted motions as to the evidence to be taken. On 24 March 1998 the applicant submitted a new proposal for calculating the amount of the pension. On 8 April the defendant opposed that new proposal. On 24 July 1998 the applicant increased his claim.

30. On 5 August 1998 the court held a hearing.

31. By a judgment of 14 August 1998 the applicant's claim was partly dismissed and partly allowed. The judgment was served on the applicant three months later. The applicant appealed. By an order of 2 December 1998, he was requested to submit certain copies of documents for his appeal. This order was left by the postman at the applicant's door. Later, the post office returned it to the court marked "apartment closed".

32. On 29 December 1998 the Warsaw Regional Court rejected the applicant's appeal for failure to comply with its order of 2 December 1998. On 5 January 1999 the applicant complained to the Warsaw Appeal Court. On 11 January 1999 the Warsaw Court of Appeal remitted the case to the Warsaw Regional Court and ordered the court to clarify whether the applicant wished to challenge the decision of 29 December 1998, or to lodge a request in order to reinstate the time-limit for submitting the requested documents.

33. On 14 January 1999 the applicant appealed against the decision of 29 December 1998.

34. On 26 January 1999 the Warsaw Regional Court ordered the applicant to pay a court fee of 50 PLN for the procedural appeal, which the applicant did on the next day.

35. On 5 February 1999 the applicant received an order dated 2 February 1999 summoning him to pay 50 PLN in court fees. The applicant requested a meeting with the President of the Civil Section on 8 February 1999 in order to clarify what the court fee was for. The meeting did not take place as

the President was absent on the date which had been fixed. The President apologised in a letter of 24 February 1999.

36. On 12 February and 29 March 1999 the applicant specified his claim.

37. By a decision of 29 April 1999, the Warsaw Court of Appeal dismissed the applicant's appeal against the decision of 29 December 1998 and rejected his appeal on the merits of the case for failure to comply with the procedural requirements. The court informed the applicant that he could lodge a request to reinstate the time-limit for submitting the documents requested by the court.

38. On 16 June 1999 the applicant requested the court to appoint a lawyer under the legal aid scheme with a view to lodging a cassation appeal against the decision of 29 April 1999. He lodged also a "personal" cassation appeal. On 22 June 1999 the Warsaw Court of Appeal allowed this request, but the lawyer was not appointed until 13 August 1999.

39. In the meantime, on 5 August 1999 the Court of Appeal rejected the cassation appeal against the decision of 29 December 1998 for not having been presented by a lawyer as required by law.

On 20 August 1999 the applicant's lawyer lodged an appeal against the decision of 5 August 1999 with the Supreme Court in order to reinstate the time-limit for lodging the cassation appeal. The cassation appeal itself was submitted to the Supreme Court on 30 August 1999.

40. By a decision of 7 December 1999, the Supreme Court quashed the decision of 5 August 1999 for having been reached without due consideration to the applicant's pending legal aid application.

41. On 31 January, 4 and 15 May 2000 the applicant specified the claim.

42. On 25 May 2000 the Warsaw Court of Appeal reinstated the time-limit for lodging the cassation appeal against the procedural decisions of 29 December 1998 and of 29 April 1999.

43. On 3 October 2000 the Supreme Court quashed the decisions of 29 December 1998 and 29 April 1999 for procedural defects.

44. On 12 January 2001 the applicant increased his claim.

45. By a letter of 16 February 2001, the Warsaw Court of Appeal informed the applicant that the next hearing in the appellate proceedings would be held on 16 March 2001.

46. On 29 March 2001 the Warsaw Court of Appeal dismissed the applicant's appeal against the judgment of 14 August 1998. The judgment was served on the applicant on 8 June 2001.

47. On 2 July 2001 the applicant's lawyer lodged a cassation appeal with the Supreme Court. On 20 December 2001 the court rejected the cassation appeal, considering that it had not been shown that arguable grounds existed which would justify the examination of the appeal.

## THE LAW

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

48. The applicant complained about the length of the civil proceedings under Article 6 § 1 of the Convention, which in its relevant part provides:

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

#### A. The parties' submissions

49. Regarding the complexity of the case, the Government were of the opinion that the case had been complex. First of all, the court had had to have recourse to two expert opinions, which had been submitted in February and in October 1997. Furthermore, in November 1993, May 1994 and November 1995 the court had requested the applicant's former employer to submit certain information, regarding his salary. Some further information had subsequently been requested from a psychiatric clinic of which the applicant was a patient. The essential problem in this case had consisted in determining the amount of the pension to be awarded to him. The defendant had in principle agreed to pay such pension, but the amount to be paid was in dispute between the parties. In particular, the defendant did not accept the method of calculation and the amount of the pension proposed by the applicant's father, who represented the applicant throughout these proceedings. The court, accordingly, had to determine issues itself.

50. As to the applicant's conduct, the Government maintained that he had contributed to the length of the proceedings. Firstly, he had changed his claim several times. Following these modifications, in June 1994 the case had to be remitted to the higher-instance court. Moreover, in January 1998 the hearing, which had already been closed, had to be re-opened as the applicant had modified his claim again. The Government further submitted that the applicant was frequently unavailable for health reasons and had requested the court not to schedule hearings during certain periods.

51. The applicant argued that he had increased his claim several times for various reasons, such as: his difficult financial situation, high inflation throughout the proceedings, rising costs of his therapy and assistance, and the high costs of the proceedings. He also stressed that only two experts had been appointed to submit their opinion on issues relevant to the case and that the case-file had not been voluminous. He argued that the case was not particularly complex, because in the proceedings in which medical issues were of relevance for the ruling on the merits, it was normal that medical

evidence had to be taken. The Government had not submitted convincing grounds which would call for a conclusion that the case differed from cases of a similar character.

52. The applicant admitted that he had requested the courts not to schedule hearings during certain periods. However, he argued that this had caused, on the whole, no more than two months of prolongation. During these periods the applicant had been under medical treatment. Moreover, this could not be seriously considered as contributing to the length of the proceedings, given that they had lasted eight years.

53. As to the conduct of the authorities, the Government were of the opinion that the judicial authorities had shown due diligence in ensuring the proper course of the proceedings. In April 1999 the court had instructed the applicant of procedural steps he should take at that stage of the proceedings. In June 1999 the court had allowed the applicant's request and appointed a lawyer for him, in order to expedite the proceedings. Furthermore, the court had twice requested that the applicant submit his statement on the expert opinion without delay (in February and April 1997).

54. The applicant emphasised the long periods of inactivity on the part of the court. He emphasised that on 29 December 1998 the Warsaw Regional Court wrongly rejected his appeal against the first-instance judgment. This decision was later quashed for not being in accordance with law by the Supreme Court, but it prolonged the proceedings for almost two years.

55. The Government finally argued that what was at stake for the applicant was solely of a pecuniary nature.

56. In this connection, the applicant drew the Court's attention to the fact that he had become totally disabled as a direct result of actions by the State agents; that his health necessitated permanent care and assistance; that his father had been compelled to take care of him on a continuous basis; and that their financial situation was very difficult.

## **B. The Court's assessment**

### *1. Period to be taken into consideration*

57. The Court observes that the proceedings were instituted on 27 February 1993 and terminated by a decision of Supreme Court of 20 December 2001. They therefore have as a whole lasted eight years and ten months, of which 8 years and over 7 months fell after 1 May 1993, the date on which Poland's declaration acknowledging the right of individual petition became effective.

## 2. Reasonableness of the length of the proceedings

58. The Court recalls that 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 many other authorities, *Zwierzyński v. Poland*, no. 34049/96, 19 June 2001, § 41; *Zawadzki v. Poland*, no. 34158/96, 20 December 2001, § 69).

59. As to the complexity of the case, the Court does not find the Government's submissions convincing. First and foremost, it notes that an issue essential for civil liability arising out of bodily harm, namely that of the defendant's responsibility for injuries suffered by the applicant during the demonstrations of 1983, had been settled by the judgment given already in 1986. Therefore, in the present case it remained for the court to establish the present degree of the applicant's disability. The court also had to revise the pension to be paid monthly to the applicant, in the light of his present state of health and his vital needs, the crucial issue of liability having already been settled by way of a final judicial decision.

60. As to the applicant's conduct, the Court acknowledges that he prolonged the proceedings by significantly increasing his claim on 12 January 1998, after the first-instance hearings had already been closed and the case was ready for the court's ruling. The court accordingly had to re-open the hearing and subsequently conducted the proceedings on the merits until 14 August 1998. The applicant therefore prolonged the proceedings by seven months. The Court further notes that the applicant requested the court not to schedule any hearings between 1 and 18 March 1995, between 1 and 15 April 1995 and in March 1997. Otherwise, there is nothing to suggest, in the Court's view, that he contributed to the length of the proceedings.

61. Regarding the conduct of the authorities, the Court notes, firstly, that from 23 June 1994 until 28 April 1995 there was no progress in the proceedings. Likewise, there was no progress in the case throughout the next calendar year. Later on, from March to November 1997, the court waited for the expert opinion to be prepared. After the first-instance judgment had been given on 14 August 1998, there was a three month delay in serving the written grounds of that judgment on the applicant.

62. The Court further observes that the first-instance judgment was given on 14 August 1998. Subsequently, the decision of the Warsaw Regional Court of 2 December 1998 ordering the applicant to submit some documents to complete his appeal against that judgment was not properly served on him by a recorded delivery letter in the manner provided for by law (see § 31 above). This resulted in his appeal being rejected by a

decision of 29 December 1998. The applicant instituted proceedings to have this decision set aside (see §§ 32-33 above).

63. In the course of these proceedings the Warsaw Regional Court ordered the applicant to pay a court fee for an appeal against certain interlocutory decision, having overlooked the fact that he had already done so. The applicant requested a meeting with the President of the Civil Section in order to clarify the matter and the date for such meeting was fixed. However, the President failed to attend the meeting (see §§ 34-35 above).

64. The Court further notes that on 5 August 1999 the Court of Appeal rejected the applicant's cassation appeal against the decision of 29 December 1998 on the ground that it had not been lodged by a lawyer. However, when doing so, the court disregarded the applicant's pending request to have a lawyer appointed under the legal aid scheme for lodging such appeal. Later on, the Supreme Court quashed both the decision of 5 August 1999 for having been given without due consideration of the applicant's pending legal aid application, and the decisions of 29 December 1998 and 29 April 1999 for procedural defects.

65. The Court notes that as a result of these shortcomings, highlighted by the Supreme Court, the proceedings conducted from 2 December 1998 until 3 October 2000 concerned exclusively the question whether it was open to the applicant to lodge the appeal against the first-instance judgment on the merits of August 1998.

66. As to what was at stake for the applicant, in the Court's view the overall circumstances of the case must be borne in mind. In particular, it should be stressed that the applicant became seriously disabled as a result of the police intervention during the anticommunist demonstration in 1983. It is true that in 1986 the applicant was granted a lump sum as compensation for damage to his health and, at the same time, a monthly supplementary pension was awarded to him which he claimed was insufficient for his need bearing in mind the reduction of his life prospects as a result of the incident. Consequently, what was at stake for the applicant in the present case cannot be regarded, in the Court's opinion, as being of a purely pecuniary nature.

67. Having regard to all the evidence before it, the Court concludes that the "reasonable time" within the meaning of Article 6 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. Damage**

69. The applicant claimed 70,000 Polish zlotys (PLN) [approximately EUR 17,500] for pecuniary and non-pecuniary damage such as distress and anxiety caused by the protracted character of the proceedings. Later on, he extended his claim to the amount of 100,000 Polish zlotys [approximately EUR 25,000].

70. The Government submitted that the applicant's claims were excessive. They emphasised that no causal link has been shown between the facts of the case and the damage allegedly suffered by the applicant. They argued that the damage should be assessed in the light of the relevant case-law of the Court in its cases against Poland and of the relevant national economic circumstances.

71. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings instituted by him. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 5,000 as compensation for non-pecuniary damage.

### **B. Costs and expenses**

72. The applicant claimed reimbursement of costs he had incurred before the Strasbourg institutions in the amount of EUR 1,000.

73. The Government requested the Court to make an award, if any, only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum. They relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 35, § 36).

74. The Court, having regard to the nature of the issues before the Court, considers that EUR 1,000 constitutes a reasonable award.

### **C. Default interest**

75. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points (see *Christine Goodwin v. the United Kingdom*, No. 28957/95, 3 July 2002, § 124).

## 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, to be converted into Polish zlotys at the rate applicable at the date of settlement:
    - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 1,000 (one thousand euros) in respect of costs and expenses;
    - (iii) any tax that may be chargeable on the above amounts;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 January 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President