



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

FOURTH SECTION

CASE OF SURMAN-JANUSZEWSKA v. POLAND

(Application no. 52478/99)

JUDGMENT

STRASBOURG

27 April 2004

FINAL

10/11/2004

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 Surman-Januszevska v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mrs V. STRÁŽNICKÁ,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM, *judges*,

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

Having deliberated in private on 30 March 2004,

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

PROCEDURE

1. The case originated in an application (no. 52478/99) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Urszula Surman-Januszevska (“the applicant”), on 17 May 1999.

2. The Polish Government (“the Government”) were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged 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 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.

5. On 19 March 2002 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1930 and lives in Warszawa.

7. In 1962 the applicant was injured in a train accident. Her injury caused her permanent disability and she was unable to continue her employment.

8. As from 1963 the applicant was in receipt of a monthly supplementary disability pension from the Central Direction of the State Railways (CDOKP: hereinafter “the State Railways”). By a decision of 15 March 1993 the State Railways reduced the applicant's supplementary pension, considering that she had reached pensionable age. The applicant objected to this decision.

9. On 16 February 1994 the State Railways lodged a motion with the Warsaw District Court in order to have the amount of the applicant's pension fixed. The court held three hearings, respectively on 10 May, on 7 July and on 26 September 1994.

10. By a judgment of 6 October 1994 the Warsaw District Court dismissed the claim and ordered the State Railways to pay the pension in the sum which it had hitherto paid her, considering that the applicant's reduced earning power had to be taken into account.

11. On 23 November 1994 the State Railways lodged an appeal with the Warsaw Regional Court.

12. By a decision of 19 January 1995 the Warsaw Regional Court quashed the judgment of 6 October 1994 and ordered that the case be remitted to the Warsaw District Court for reconsideration.

13. On 19 September 1995 the first hearing was held before the Warsaw District Court. New expert evidence was ordered to be taken in September 1996. The expert report was submitted to the court in May 1998. The next hearing was held on 12 January 1999, but both the plaintiff's representative and the applicant's legal representative appointed by the court under the legal aid scheme failed to attend.

14. By a judgment of 4 January 2000 the Warsaw District Court dismissed the appeal of the State Railways and ruled that the applicant's pension should not be reduced.

15. On 7 April 2000 the State Railways lodged an appeal against this judgment. On 4 July 2000 the Warsaw Regional Court dismissed the appeal and upheld the reasoning of the first-instance court.

THE LAW

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

16. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement in Article 6 § 1 of the Convention, which reads as follows:

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

17. The Government contested that argument.

18. The period to be taken into consideration began on 16 February 1994 and ended on 4 July 2000. It thus lasted over 6 years and 4 months.

1. Admissibility

19. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. The Court will therefore declare it admissible.

2. Merits

20. The Government were of the view that the case had been rather complex and made reference to the expert opinion that had to be ordered in the course of the proceedings.

21. They submitted that the applicant did not contribute to the length of the proceedings.

22. The Government considered that the domestic courts had dealt with the case with due diligence. They pointed out, *inter alia*, that the courts had played an active role in conducting the proceedings, notably in collecting necessary evidence.

23. The applicant was of the opinion that the case had not been complex but the courts and the State Railways had complicated it. She emphasised the long periods of inactivity on the part of the courts.

24. 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 criteria established by its case-law, particularly 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 many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

25. The Court considers that the case was not particularly complex.

26. As to the applicant's conduct, the Court shares the Government's opinion that the applicant did not contribute to the length of proceedings.

27. Regarding the conduct of the authorities, the Court notes firstly that there was no progress in the proceedings between the quashing of the original first-instance judgment on 19 January 1995 and the first hearing in the renewed proceedings before the District Court on 19 September 1995.

28. The Court further notes that the preparation of the expert report took a long time, lasting from September 1996 till May 1998. There is no indication in the case-file that the court tried to discipline the expert. The Court sees no reason in the circumstances of the present case for departing from the usual principle that the primary responsibility for delays resulting from the provision of expert opinions rests ultimately with the State (see, *mutatis mutandis*, the Capuano v. Italy judgment of 25 June 1987, Series A no. 119, p. 14, § 32).

29. The Court also points out that there was no progress in the proceedings from May 1998 to January 1999.

30. Assessing the circumstances of the case as a whole, the Court considers that an overall period of over 6 years and 4 months exceeds a reasonable time.

31. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed in respect of pecuniary damage the amount of 28,747,30 PLN. She referred to her difficult financial situation and bad state of health. She further claimed 120,000 PLN in respect of non-pecuniary damage such as distress and anxiety caused by the protracted character of the proceedings. Furthermore, she claimed reimbursement of all costs and expenses she had borne in the course of the proceedings.

34. 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.

35. The Court observes that there is no 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's conclusion, on the evidence before it, is that the applicant has failed to demonstrate that the pecuniary damage pleaded was actually caused by the length of the proceedings. Consequently, there is no justification for making any award to her under that head (see *Kudła v. Poland* [GC], no. 30210/96, § 164, ECHR 2000-X).

36. However, the Court acknowledges that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings instituted by her. Making its assessment on an equitable basis and having regard to the circumstances of the case, the Court awards the applicant EUR 3,300 as compensation for non-pecuniary damage.

B. Costs and expenses

37. The applicant also claimed 6,120,000 Polish zlotys (PLN) for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

38. Again, the Government submitted that the applicant's claim was excessive.

39. The Courts observes that the applicant did not submit any specifications of fees or other expenses. The Court observes that for an award to be made it has to be satisfied that the costs and expenses were actually and necessarily incurred and were reasonable as to quantum (see, among other authorities, the *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, § 36). The Court accordingly dismisses the claim.

C. Default interest

40. 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.

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, EUR 3,300 (three thousand three hundred euros) in respect of non-pecuniary damage, plus any tax that

may be chargeable, to be converted into Polish zlotys at the rate applicable at the day of the settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 27 April 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President