

AS TO THE ADMISSIBILITY OF

Application No. 28707/95
by A. S.
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 25 June 1995 by A. S. against Poland and registered on 26 September 1995 under file No. 28707/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1935, is a retired actor, residing in Kraków.

The facts of the case, as submitted by the applicant, may be summarised as follows:

In 1989 the applicant retired and by a decision of 21 January 1989 the Social Insurance authorities calculated his retirement pension.

On 5 December 1991 the Social Insurance authorities issued a new decision, in accordance with the Retirement Pensions Act as amended on 17 October 1991, according to which as from 1 January 1992 the applicant was entitled to a pension calculated on the assumption that the basis on which it was determined amounted to 79.919 zlotys.

Apparently in December 1991 the applicant appealed against this decision to the Kraków Regional Court (Sąd Wojewódzki), complaining that the decision had unlawfully reduced the basis on which his pension had been calculated in 1989, i.e. 108.690 zlotys.

On 19 March 1992 the Kraków Regional Court dismissed his appeal.

The applicant lodged a further appeal with the Kraków Court of Appeal (Sąd Apelacyjny).

On 22 June 1992 the Kraków Court of Appeal set the impugned judgment aside and ordered that the case be reconsidered by the Social Insurance. Subsequently the Social Insurance pronounced a new decision, identical with that of 5 December 1991.

Upon the applicant's appeal, on 23 February 1993 the Kraków Regional Court upheld the decision of the Social Insurance.

On 13 October 1993 the Kraków Court of Appeal quashed the judgment of 23 February 1993 and ordered that the case be reconsidered, in view of the fact that the basis on which the retirement pension was to be calculated should have been increased by 36 per cent as provided for by the Council of Ministers' Order of 15 June 1989.

On 14 October 1993 the applicant complained to the President of the Social Insurance Division of the Court of Appeal about the conduct of the case by that Court.

On 26 April 1994 the Regional Court found that in fact the 1989 Order was not applicable in the applicant's situation and dismissed the applicant's appeal against the decision of the Social Insurance.

On 9 November 1994 the Kraków Court of Appeal dismissed the applicant's further appeal against the judgment of the lower court, considering that the calculation of the applicant's pension in the decision of 5 December 1991 was made in accordance with the law, which provided that the basis for that calculation of retirement pensions should not include the increases which had previously been introduced in 1989 and 1990 in pursuance of the relevant legislation.

COMPLAINTS

The applicant complains under Articles 6 para. 1 and 13 of the Convention that the outcome of the proceedings concerning his retirement pension was unfair. He submits that the proceedings exceeded a reasonable time.

The applicant complains under Article 1 of Protocol No. 1 that he was deprived of his property rights in that the basis of his retirement pension was not calculated in conformity with the applicable laws and, consequently, was lower than it should have been.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that the outcome of the proceedings concerning his retirement pension was unfair and that the proceedings exceeded a reasonable time.

Article 6 (Art. 6) of the Convention provides, insofar as relevant:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time..."

As regards the applicability of Article 6 (Art. 6) of the Convention to the proceedings concerned, the Commission recalls the Convention organs' case-law, according to which Article 6 (Art. 6) does apply in the field of social insurance (Eur. Court HR, *Salesi v. Italy* judgment of 26 February 1993, Series A no. 257, p. 59, para. 19).

However, with regard to judicial decisions complained of, the Commission recalls that in accordance with Article 19 (Art. 19) of the

Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with any application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see No. 21283/93, Dec. 5.4.94, D.R. 77-A, pp. 81, 88).

In the present case the Commission finds no indication that the applicant did not have an opportunity to put forward his arguments or that the Court arbitrarily assessed the evidence or that the proceedings were otherwise unfair.

Insofar as the applicant complains about the length of proceedings, the Commission recalls that Poland recognised the competence of the Commission to receive individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". It follows that the Commission is not competent to examine complaints relating to violations of the Convention by acts, decisions or events that have occurred prior to this date.

The Commission further recalls that in cases where it can, by reason of its competence *ratione temporis*, only examine part of the proceedings, it can take into account, in order to assess the length, the stage reached in the proceedings at the beginning of the period under consideration (see No. 7984/77, Dec. 11.7.79, D.R. 16 p. 92). It follows that the Commission is competent *ratione temporis* to examine the applicant's complaint only insofar as it relates to the proceedings after 30 April 1993, taking into consideration the stage of the proceedings reached at this date.

The proceedings have lasted from December 1991 when the applicant lodged an appeal against the Social Insurance's decision of 5 December 1991 to 9 November 1994, i.e. two years and eleven months. The period which falls after the date of recognition of the right of individual petition is one year, six months and nine days.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and on the basis of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (see *Eur. Court H.R., Vernillo v. France* judgment of 20 February 1991, Series A no. 198, p. 12, para. 30).

The Commission considers that the present proceedings appear to be rather complex. They involved the determination of the applicant's entitlement to a retirement pension, based on his salary before retirement and on the later increases of this basis by virtue of subsequent legislation. The case entailed considerable legal difficulties as shown by the fact that the specialised social insurance courts rendered contradictory decisions on the merits of the case.

As regards the applicant's conduct, there are no delays in the proceedings which could be held against him.

As regards the conduct of the authorities, the Commission observes that the case was examined three times by the first instance court and three times by the second instance court. There are no delays in dealing with the case attributable to the courts.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains under Article 1 of Protocol No. 1 (P1-1) that he was deprived of his property rights in that his retirement pension was not calculated in conformity with the applicable laws.

Article 1 of Protocol No. 1 (P1-1) provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

It is true that, according to the Convention organs' case-law, the making of contributions to a pension fund may, in certain circumstances, create a property right in a portion of such fund and such right may be affected by the manner in which the fund is distributed (No. 4130/69, Yearbook 14, pp. 224 and 240 et seq.; No. 5849/72, Dec. 16.12.74, D.R. 1, p. 46; No. 9776/82, Dec. 3.10.83, D.R. 34, p. 153; No. 12264/86, Dec. 13.7.88, D.R. 57, p. 131). However, even if it is assumed that Article 1 of Protocol No. 1 (P1-1) guarantees persons who have paid contributions to a social insurance system the right to derive benefits from the system, it cannot be interpreted as entitling that person to a pension of a particular amount (5849/72, Müller v. Austria, Comm. Report 1.10.75, D.R. 3, p. 25; No. 10671/83, Dec. 4.3.85, D.R. 42, p. 229).

The Commission observes that in the present case the issue to be determined by the Court was to establish the sum of his salary on the basis of which his retirement pension was to be calculated. It appears that as a result the applicant's pension was reduced. However, he was not deprived of his entitlement. The recalculation of the sum based on the Retirement Pensions Act of 17 October 1991 was applicable to all persons covered by the public social insurance system and its purpose was to offset the financial results of considerable increases in retirement pensions effected from 1989 to 1991. The Commission considers that such considerations of a public policy character, even if the operation of laws resulting therefrom entails reduction of retirement pensions, do not affect the property rights of the insured employees within the meaning of Article 1 of Protocol No. 1 (P1-1).

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber