CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34863/04
by Wladislaw LYSZCZYNA
against Germany

The European Court of Human Rights (Fifth Section), sitting on 4 January 2008 as a Chamber composed of:

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 27 September 2004,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Wladislaw Lyszczyna, is a German national who was born in 1945 and lives in Düsseldorf.

The respondent Government were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

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

Until his emigration to Germany in February 1984 the applicant lived and worked in Katowice (Poland). When applying for benefits in Germany the applicant made differing statements as to his employment or working record in Poland. In an application to the Federal Insurance Fund for Miners (*Bundesknappschaft* – hereinafter called "Federal Insurance Fund") the applicant submitted that he had been self-employed prior to leaving Poland. Yet in an application for unemployment benefits to the Federal Labour Office the applicant submitted that he had been employed at the material time. In Germany the applicant collected unemployment benefits and temporary allowances (*Übergangsgeld*). On 3 October 1984 and 21 December 1992 he had a heart attack.

On 11 April 1995 the applicant applied for an invalidity pension to the Federal Insurance Fund submitting that he had been self-employed in Poland until 31 January 1984 and had made contributions to the Polish pension scheme during that time. On 26 September 1995 the Federal Insurance Fund rejected his request finding that he had not contributed to the pension scheme for a sufficiently long period. On 2 October 1995 the applicant lodged an objection with the Federal Insurance Fund. On 28 February 1996 the Commission for Objections of the Federal Insurance Fund (*Widerspruchsstelle*) rejected his objection. On 20 May 1996 the applicant offered to contribute retroactively (*nachentrichten*) to the pension scheme for the month of January 1984. In October 1997 the Federal Insurance Fund rejected the applicant's request.

On 7 March 1996 the applicant brought an action against the Federal Insurance Fund in the Düsseldorf Social Court arguing *inter alia* that he would be entitled to make contributions to the pension scheme retroactively for the month of January 1984.

In April 1998 the court obtained information from the Polish Pension Fund relating to the applicant's contributions to the Polish pension scheme. According to the Polish Pension Fund the applicant had been self-employed and had contributed to the public pension scheme until 31 December 1983.

On 12 January 1999, following a hearing, the Düsseldorf Social Court rejected the applicant's action confirming the findings of the Federal Insurance Fund. The court noted in addition that the time-limit for contributing retroactively had elapsed.

On 18 February 1999 the applicant lodged an appeal with the Social Court of Appeal. On 18 May 1999 the court ordered the translation of Polish documents submitted by the applicant. On 24 June 1999 the court requested the applicant to submit the original Polish documents.

On 17 June 1999, 9 November 2001, 13 June and 12 September 2002, 7 April and 18 September 2003 the court held hearings and questioned four witnesses altogether.

Following a change of Social Code No. 6 as of 1 January 2001 the applicant requested the application of the new legal provisions to his case.

On 18 September 2003 the Social Court of Appeal rejected the applicant's appeal. The court acknowledged that he had been invalid since his heart attack on 21 December 1992, but confirmed that he had not contributed to the pension scheme for a sufficiently long period. It recalled that according to the provisions of Social Code No. 6 an insured would have had to contribute to the pension scheme for at least 36 months during the last five years preceding the occurrence of invalidity. That period could be extended exceptionally by taking into account previous contributions or periods during which certain benefits had been collected. Although the court took into consideration previous contributions made to the Polish pension system and periods during which the applicant had received unemployment benefits the applicant still did not reach the required minimum number of months. A further exceptional extension was rendered impossible because the court found that the applicant had not made contributions in respect of January 1984. The court pointed out that according to the Polish Pension Insurance the applicant had only made contributions until 31 December 1983. As regards the applicant's own submissions the court found them to be inconsistent, since he had made different statements as to his employment or working record in the past.

Furthermore, the court had grave doubts as to whether the applicant had actually been unemployed in Germany while receiving unemployment benefits since the witnesses questioned had indicated that he had worked illicitly. In addition the applicant had carried a licence to run a bar. However, the court left that question open since the absence of contributions for the month of January 1984 excluded an invalidity pension in any event. Lastly, the court held that also the application of the new legal provisions of Social Code No. 6 would not entitle the applicant to invalidity pension. The court refused the applicant leave to appeal on points of law.

The applicant then lodged a complaint against the refusal of leave to appeal on points of law with the Federal Social Court, *inter alia* contesting the application of Social Code No. 6. The complaint reached the Federal Social Court on 26 January 2004. The applicant was granted an extension of one month of the time-limit for substantiating his complaint upon his own motion. His submissions reached the court on 5 April 2004 and on 24 June 2004 the Federal Social Court rejected the applicant's complaint as inadmissible stating that he had not sufficiently substantiated his complaints.

COMPLAINTS

The applicant complained under Article 6 of the Convention about the length of the proceedings. Furthermore, he complained under the same provision of the Convention that the domestic courts had wrongly applied national law and had based their conclusion on inaccurate facts.

THE LAW

1. The applicant submitted that the length of the proceedings had not been in accordance with the "reasonable time" requirement of Article 6 of the Convention, the relevant parts of which read as follows:

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

The Government considered that the length of the present case had been reasonable. They submitted that the case had been of a complex factual nature and found that the legal issue examined by the courts had been difficult as well. The Government elaborated that the Social Courts had had to establish not only the contributions made by the applicant to the German pension scheme but also to the Polish pension scheme. The latter had entailed the obtaining of information from the Polish Pension Fund. Furthermore, the Government argued that the applicant had slowed down the proceedings by submitting documents in Polish which required translation. Moreover, those documents either had been incomplete or had not been the original documents. The Government further submitted that the courts had been called on to verify and to establish facts since the applicant's own submissions in respect of his record of employment had been dubious. In this respect the Government recalled that the Social Courts had to determine the facts *ex officio* pursuant to section 103 of the Social Courts Act (*Sozialgerichtsgesetz*). The Government contended that the difficulty of establishing the facts was evidenced by the fact that the Social Court of Appeal had held five hearings during which it had questioned witnesses and the parties. The Government therefore concluded that the length of the proceedings had been primarily caused by the applicant's behaviour and in particular by his incomplete submissions.

The applicant contested the Government's conclusion and held the opinion that the length of the proceedings could under no circumstances be considered reasonable.

The Court notes that the proceedings began on 2 October 1995 when the applicant filed his objection (see *Klasen v. Germany*, no. 75204/01, § 29, 5 October 2006) and ended on 24 June 2004 with the decision of the Federal

Social Court. They thus lasted about eight years and eight months for four levels of jurisdiction.

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 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).

The Court observes that the present case concerned the applicant's request for an invalidity pension and therefore, as a matter of principle, called for a swift termination of the proceedings. Yet the proceedings were of a complex factual nature as evidenced by the domestic courts' efforts to determine the facts, namely by inquiries with the Polish authorities and the questioning of four witnesses.

Moreover, this task was rendered much more difficult by the applicant's inconsistent submissions in previous and the present proceedings. He further introduced new issues to the proceedings by demanding to pay contributions retroactively and by requesting the application of newly amended legal provisions. Lastly, the applicant caused further delays by submitting documents in Polish which were either incomplete or not the originals and which required translation. The Court therefore finds that the length of the present proceedings was mostly attributable to the applicant's behaviour.

Although the proceedings were pending before the Social Court for approximately two years and ten months and for about four years and seven months before the Social Court of Appeal, the Court considers that the overall length of proceedings of eight years and eight months for four levels of jurisdiction does not yet exceed what could be considered reasonable in view of the abovementioned circumstances.

Therefore, the applicant's complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complained under Article 6 of the Convention that the domestic courts had erred when applying national law and had furthermore failed to accurately establish the facts. That provision, as far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

The Court reiterates that, as a general rule, the assessment of the facts and the taking of evidence and its evaluation is a matter which necessarily comes within the appreciation of the national courts and cannot be reviewed by the Court unless there is an indication that the judges have drawn grossly unfair or arbitrary conclusions from the facts before them (see *mutatis mutandis*, *Tamminen v. Finland*, no. 40847/98, § 38, 15 June 2004; *García*

Ruiz v. Spain [GC], no. 30544/96, § 28, ECHR 1999-I). Moreover, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Streletz, Kessler and Krenz v. Germany* [GC], no. 34044/96, 35532/97 and 44801/98, § 49, ECHR 2001-II).

The Court considers that the determination of the facts, the taking and interpretation of evidence and the application of domestic law do not disclose any appearance of arbitrariness. Therefore, the applicant's complaint is manifestly ill-founded. It follows that this part of the application should be rejected according to Article 35 §§ 3 and 4 of the Convention.

In view of the above, it is appropriate to discontinue the application of Article 29 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Peer Lorenzen
President