CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 47711/99
by Witold STAWICKI
against Poland

The European Court of Human Rights (Fourth Section) sitting on 10 February 2000 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr G. Ress,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr V. Butkevych,
Mrs S. Botoucharova, *judges*,

and Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 22 October 1998 by Witold Stawicki against Poland and registered on 23 April 1999 under file no. 47711/99;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Polish citizen, born in 1933 and living in Szczecin.

A. Particular circumstances of the case

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

On 22 April 1996 the Szczecin Regional Court dismissed the applicant's appeal against a decision of the Social Insurance Board by which the latter had refused to grant him retirement pension for persons working in difficult conditions. On 10 June 1996 the applicant lodged an appeal against this decision with the Szczecin Regional Court, which transmitted it to the Court of Appeal.

On 25 June 1996 the Regional Court, following an order of the Court of Appeal, requested the applicant to supplement his appeal by indicating what errors of fact and law had allegedly been committed by the court during the examination of the case. This order was served on the applicant on 27 June 1996 and he was informed that he should comply with it within seven days from its service.

On 1 July 1996 the applicant submitted pleadings to the court explaining the grounds of his appeal. The date of submitting the pleadings to the court is clearly certified by a stamp of the court's registry on a copy of the document.

By a decision of 2 July 1996 the Szczecin Regional Court rejected the applicant's appeal, finding that he had failed to comply with its order of 25 June 1996.

In 1998 the applicant requested assistance from his local MP, complaining that the Regional Court had rejected his appeal, having failed to take into consideration his pleadings of 1 July 1996. In reply to the MP's enquiry as to circumstances in which the applicant's appeal had been rejected, the Regional Court informed him by a letter of 7 July 1998 that the judgment of 22 April 1996 had became final since the applicant had failed to complement his appeal within the time-limit fixed by the court for that purpose.

In reply, by a letter to the President of the Court of 14 July 1998, the MP referred to information he had received on 13 July 1998 in a telephone conversation with the Regional Court's registry, according to which the applicant had failed to pick up the court's decision of 2 July 1996 at the post office. The MP reiterated his request that the applicant's complaint be thoroughly investigated.

By a letter of 22 July 1996 the President of the Labour Law Division of the Regional Court informed the MP that on 1 July 1996 the applicant had complemented his appeal, but, since his appeal so complemented still did not comply with the requirements that the law attached to an appeal against a first-instance judicial decision, the court rejected it on 2 July 1996. This decision was later duly served on the applicant, in a manner compatible with the requirements of the Code of Civil Procedure.

On 3 September 1998 the applicant lodged an appeal against the decision of 2 July 1996. He submitted that the court, when rejecting his appeal on 2 July 1996, must have been unaware that he had complied with its order to complement it by detailed arguments. Thus, his appeal had been rejected erroneously.

He further submitted that this decision had been served on him only in August 1998. He also stated that he did not pick up the decision of 2 July 1996 at the post office, as in July 1996 he had been on holidays for a month. It had only been in 1998 that he had enquired about the further course of the proceedings. He had received a copy of the decision from which it transpired that it had been taken on the erroneous ground of his alleged failure to comply with the court's order to supplement his appeal.

On 17 September 1998 the Szczecin Regional Court rejected the applicant's appeal. The court found that the decision of 2 July 1996 had been sent to the applicant by registered letter. It could not be served on him because of his absence. On 11 July 1996, the decision was deposited at the post office. As the applicant did not pick it up at the post office within the seven-days' time-limit provided for by law, it was not delivered to him. On 19 July 1996 the decision was returned to the court and deposited in the case-file. Pursuant to Article 136 § 2 of the Code of Civil Procedure, it should therefore be regarded as having been duly served. Thus, the applicant's appeal had to be rejected, having been lodged out of time.

B. Relevant domestic law

Article 168 § 1 of the Code of Civil Procedure, insofar as relevant, provides that if a party to proceedings fails to comply with the prescribed time-limit without its fault, the court shall, on that party's request, grant leave to appeal out of time.

Article 136 of the Code of Civil Procedure provides that the parties to proceedings are under an obligation to inform the court about any changes in their addresses. Under § 2 of this provision, if they fail to do so, a decision to be served on the party shall be filed in the case-file and shall be regarded as having been duly served, unless the court knows the new address of that party.

COMPLAINTS

The applicant complains under Article 6 of the Convention that he did not have access to the second-instance court since his appeal had been erroneously rejected by the Regional Court's decision of 2 July 1996. He submits that in fact he did comply with the order of 25 June 1996 by lodging on 1 July 1996 his supplementary pleadings in appeal, but that the court, when taking its decision of 2 July 1996, disregarded that fact entirely. He further submits that that decision was served on him much later and only as a result of his persistent requests. He further states that in July 1996 he was on holiday.

He further complains, invoking Article 1 of Protocol No. 1 to the Convention that the judgment amounted to a breach of his rights guaranteed by this provision in that his claim for a special retirement pension was dismissed.

THE LAW

1. The applicant complains under Article 6 of the Convention that he did not have access to the second-instance court since his appeal had been erroneously rejected by the court.

Article 6 of the Convention, insofar as relevant, provides:

> "In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. "

The Court recalls that Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect. However, the "right to a court" is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; lastly, such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among other authorities, the Stubbings and Others v. the United Kingdom judgment of 22 October 1996, Reports of Judgments and Decisions 1996-IV, p. 1502, § 50; the Edificaciones March Gallego S.A. v. Spain judgment of 19 February 1998, Reports 1998-I, p. 279, § 34).

The Court further recalls that Article 6 § 1 does not guarantee the right to appeal or a second level of jurisdiction, the latter being recognised under Article 2 of Protocol No. 7 only in respect of persons convicted of a criminal offence. However, where several court levels do exist, the guarantees of Article 6, including the right of effective access to court, must be complied with at each of them (see the Brualla Gómez de la Torre v. Spain judgment of 19 December 1997, Reports 1997-VIII, p. 2945, § 37).

Turning to the circumstances of the present case, the Court first observes that on 3 September 1998, the Szczecin Regional Court rejected the applicant's appeal against its decision of 2 July 1996.

The Court first notes that the court did not take into account the fact that the applicant had lodged his appeal against the decision of 2 July 1996 out of statutory time-limit. Therefore the Court considers that the applicant's appeal of 3 September 1998 was considered by the court both as a request for leave to appeal out of time and as an appeal against its decision of 2 July 1996.

The Court further notes that the applicant lodged an appeal against the judgment of 22 April 1996 with the Regional Court, which rejected it on 2 July 1996, alleging failure on the applicant's part to submit pleadings supplementing his appeal lodged with the court on 10 June 1996. Subsequently this decision was sent to the applicant by registered letter. The applicant acknowledges that this decision could not be served on him at that time as in July 1996 he was on holidays. Consequently, on 11 July 1996 this decision was deposited at the post office. As the applicant did not pick it up, it was not served on him. On 19 July 1996 the decision was returned to the court and deposited in the case-file, with a note to the effect that it had not been served on the applicant.

The Court further notes that the decision of 2 July 1996 was based on the applicant's failure to lodge supplementary pleadings, in compliance with the court's order of 25 June 1996. However, it is clear that in fact the applicant did lodge these pleadings on 1 June 1996. The Court further notes that the president of the Labour Law Division of the Regional Court, in her letter of 22 July 1998, stated that the court had rejected the applicant's appeal because, even though supplemented by his pleadings of 1 June 1996, it still did not comply with the statutory requirements that law attached to an appeal. However, the Court observes that the decision of 2 July 1996 in fact does not refer to the applicant's supplementary pleadings at all. On the contrary, it is stated therein that the applicant had simply failed to comply with the order of 25 June 1996. Consequently, the Court finds it doubtful whether the applicant's pleadings had indeed been taken into account in the decision of 2 July 1996.

However, the Court further notes that this decision was subsequently sent to the applicant by registered letter and that the applicant did not pick it up at the post office within the time-limit provided for by law. In his submissions to the Court and in his appeal of 3 September 1998, the applicant stated that in July 1996 he was on holiday and was unaware of the fact that the decision could be served on him during that period.

The Court further observes that, had the applicant taken the decision from the post office at that time, or had he taken other measures to have official decisions forwarded to him, or at least measures ensuring that he be informed about impending service, it would have been open to him to lodge an appeal. The applicant did not take such measures and, in fact, it was only in 1998 that he requested his local MP to intervene in his case. The applicant does not submit that he took any steps in order to be informed of the contents of the decision concerned, which would have enabled him to lodge an appeal against it. The Court therefore considers that the applicant has not shown that in pursuing the appeal proceedings he displayed the due diligence, which could normally be expected from a party to civil proceedings.

In these circumstances, the Court does not consider that the Regional Court, when rejecting the applicant's appeal on 17 September 1998, took a decision which was incompatible with the applicant's right of access to court under Article 6 § 1 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 34 § 4 of the Convention and must be rejected under Article 35 § 4 of the Convention.

2. The applicant further complains, invoking Article 1 of Protocol No. 1 to the Convention that the judgment amounted to a breach of his rights guaranteed by this provision in that his claim for a retirement pension was in part dismissed.

The Court recalls that the applicant did not lodge an appeal against this judgment with the second-instance court in compliance with the procedures laid down by domestic law. However, even assuming that the applicant did exhaust relevant domestic remedies as regards his claim to social insurance entitlements, the Court recalls that the making of contributions to a pension fund may, in certain circumstances, create a property right and that such a right may be affected by the manner in which the fund is distributed (nos. 40832/98, 40833/98 and 40906/98, Bellet, Huertas and Vialatte v. France, decision on admissibility [Third Section] 27.04.99). The Court further recalls that the rights stemming from the paying contributions to

social insurance systems are pecuniary rights for the purposes of Article 1 of Protocol No. 1 to the Convention (the Gaygusuz v. Austria judgment of 16 September 1996*, Reports* 1997, p. 1142, §§ 39-41). However, even assuming that Article 1 of Protocol No. 1 guarantees benefits to persons who have contributed to a social insurance system, it cannot be interpreted as entitling that person to a pension of a particular amount (no. 5849/72, Müller v. Austria, Comm. Report. 1.10.1975, D.R. 3, p. 25; no. 10671/83, Dec. 4.3.1985, D.R. 42, p. 229).

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Matti Pellonpää
President