CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 50428/99
by Ryszard DZIEDZIC
against Poland

The European Court of Human Rights (Fourth Section), sitting on 25 November 2003 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 6 September 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ryszard Dziedzic, is a Polish national, who was born in 1953 and lives in Kołobrzeg, Poland.

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

On 16 September 1993 he bought a flat from a property developer, the "Bart-Lex" company.

Since then he has been involved in several sets of proceedings relating to disputes over that flat.

Commented [Note1]: To be checked.

A. Eviction proceedings

On 21 August 1995 H.B. and W.B., the owners of the "Bart-Lex" company lodged a claim against the applicant with the Kołobrzeg District Court *(Sąd Rejonowy),* seeking his eviction.

On 12 September 1995 the court found that it was not competent to deal with the case and referred it to the Koszalin Regional Court *(Sąd Wojewódzki)*.

On 22 September 1997 the Regional Court stayed the proceedings because other proceedings (referred to below, in section B) were pending before it. They were resumed on 14 July 1998.

The court held hearings on 23 November and 16 December 1998.

On 7 January 1999 the court refused the applicant's request to grant him free legal assistance. The Gdańsk Court of Appeal *(Sąd Apelacyjny)* upheld that decision on 24 March 1999.

On 27 December 1999 the Regional Court allowed the claim.

The Gdańsk Court of Appeal, on the applicant's appeal, quashed the first-instance judgment and remitted the case on 7 November 2000.

On 19 February 2002 the Kołobrzeg Regional Court stayed the proceedings.

It appears that they are still pending before that court.

B. Proceedings relating to the so-called "declaration of will"

On 27 October 1995 the applicant lodged a claim against the "Bart-Lex" company with the Kołobrzeg Regional Court. He sought a judgment stipulating that the defendant was obliged to make a declaration of will (*oświadczenie woli*) in the form of a consent to the sale contract.

On 21 March 1997 the court dismissed the claim.

The Gdańsk Court of Appeal dismissed the applicant's appeal on 27 November 1997.

The applicant did not lodge a cassation appeal within the prescribed time-limit of one month.

On 24 June 2000 he asked the Court of Appeal to grant him leave to lodge a cassation appeal out of time. On 7 May 2001 the court ordered that the applicant submit the statement of his appeal. The applicant produced it on 14 May 2001.

The court granted the leave requested on 21 June 2001. It found that he had not been informed properly of the possibility of lodging a cassation appeal.

On 20 August 2002 the Supreme Court *(Sąd Najwyższy)* refused to deal with the applicant's cassation appeal.

C. Proceedings for payment (case no. 48/01)

On 15 April 1996 the applicant sued the "Bart-Lex" company before the Kołobrzeg District Court (*Sąd Rejonowy*), seeking payment.

The court referred the case to the Koszalin Regional Court on 30 April 1996.

On 30 September 1997 the Regional Court stayed the proceedings. They were resumed on 25 May 1998.

On 28 June 1998, at the parties' request, the court again stayed the proceedings. They were resumed at the applicant's request on 13 October 2000.

On 2 April 2001 the court stayed the proceedings because other proceedings (related to above, in section A) were pending.

It appears that the proceedings are still pending before the Regional Court.

D. Proceedings for payment (case no. 107/96)

On 28 August 1996 H.B and W.B. lodged a claim for payment against the applicant with the Kołobrzeg District Court.

On 13 December 1996 the court allowed the claim.

The applicant appealed.

The District Court upheld its original judgment on 15 May 1998.

On 4 February 1999 the Koszalin Regional Court dismissed the applicant's further appeal.

It is not clear whether in a present case a cassation appeal was available (the value of the claim has not been specified).

E. Proceedings for payment (case no. 189/97)

On 7 April 1997 the applicant lodged a claim for payment against the "Bart-Lex" company with the Kołobrzeg District Court.

On 11 August 1997 the court returned the statement of the claim to the applicant because he had failed to comply with certain procedural

requirements. A copy of that decision was served on him on 26 August 1997.

On 9 February 1998 the court rejected the applicant's appeal against that decision since he had not paid a court fee for lodging it.

The applicant's appeal against that decision. His appeals against the court's subsequent decisions were rejected on 2 July and 9 November 1998, 24 February and 23 April 1999.

On an unspecified date the applicant asked the court to serve him with a copy of the decision of 11 August 1997.

On 28 July 1999 the court returned his application to him for failure to pay a fee for lodging it (the fee amounted to 6 Polish zlotys (PLN), i.e. approximately 1.4 euros (EUR).

It is not certain whether the applicant appealed against that decision.

On an unspecified later date the applicant again asked to be served with a copy of the decision of 11 August 1997.

On 29 May 2002 the court returned his application for failure to pay the PLN 6 for lodging it.

It appears that the proceedings are pending.

F. Proceedings for payment (case no: 174/98)

On 3 February 1998 the "Bart-Lex" company again sued the applicant before the Kołobrzeg District Court, seeking payment.

On 6 August 1998 the court partly allowed the claim.

The Koszalin Regional Court dismissed the applicant's appeal on 11 February 1999.

On 16 March 1999 the applicant asked the court to appoint a lawyer to assist him in the preparation of a cassation appeal. The court refused on 24 August 1999.

The applicant lodged a cassation appeal himself. On 25 August 1999 it was rejected by the Regional Court as it had not been filed and signed by an advocate.

On 14 September 1999 the Regional Court rejected the applicant's appeal against the decisions of 24 and 25 August 1999 since they had been lodged outside the prescribed time-limit.

G. Criminal proceedings against the applicant

On an unspecified date H.B and W.B. brought a private prosecution, on charges of defamation, against the applicant.

On 13 March 1998 the Kołobrzeg District Court discontinued the proceedings.

The Koszalin Regional Court dismissed the applicant's appeal on 19 February 1999.

On an unspecified later date the applicant asked the court to appoint a lawyer to assist him in the preparation of a cassation appeal. The court refused his application and held that the applicant had failed to prove that he could not bear the costs of legal representation.

The applicant lodged a cassation appeal himself. It was rejected by the Regional Court on an unspecified date. The court found that the applicant had not complied with procedural requirements for lodging it as it had not been filed and signed by an advocate.

H. Criminal proceedings against third persons

From June 1998 to April 2002 the applicant, on numerous occasions, asked the Kołobrzeg District Prosecutor (*Prokurator Rejonowy*) to institute criminal proceedings against third persons. He alleged, among other things, that the judges of the Kołobrzeg Regional Court had deliberately prolonged proceedings in which he was involved and that they had made untrue statements in their judgments. He also accused the officers of the Kołobrzeg Town Office (*Urząd Miasta*) and his officially appointed lawyers of failure to fulfil their professional duties.

In each case the prosecutor either refused to institute the proceedings or discontinued them.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the excessive length of the proceedings referred to in sections A, B, C, and E of the statement of facts.

2. The applicant also complains under Article 6 § 1 about general unfairness of the proceedings described in sections A, B, F and G.

3. He further complains that he was not granted free legal assistance in the proceedings referred to in sections A and D.

4. Furthermore, the applicant complains that the criminal proceedings that he wished to initiate were not instituted by the prosecution.

5. Finally, he generally invokes Articles 3, 14 and Article 1 of Protocol No. 1 of the Convention, without specifying any factual basis for his complaints.

THE LAW

1. The applicant complains that the length of the proceedings referred to in sections A, B and C exceeded a reasonable time.

Commented [Note2]: Use the present tense for communication of a case (the applicant complains) and the past for a decision (the applicant complained).

The Court considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

2. The applicant further complains about the length of the proceedings described in section E.

However, the Court observes that those proceedings solely related to the court's order of 11 August 1997, returning the statement of the claim to the applicant. The order meant that the claim was of no legal effect and the relevant proceedings were regarded as having never been brought before a court. The dispute that followed concerned only procedural matters, in particular the question whether the applicant's claim was properly lodged. It did not involve the "determination of his civil rights or obligations" within the meaning of Article 6 § 1 of the Convention. That provision is therefore not applicable in the present case.

It follows that this part of the application is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

3. The applicant also complains under Article 6 § 1 about unfairness of the proceedings described in sections A and F.

The Court recalls that under Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted.

The proceedings relating to the claim for eviction (described in section A) are still pending before the first-instance court. In the proceedings for payment (section F), the applicant's cassation appeal was rejected for failure to comply with procedural requirements.

It follows that these complaints are inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

4. The applicant further complains about unfairness of the proceedings described in sections B and G.

Even assuming that, in the case referred to in section G, a cassation appeal was not available and, accordingly, the applicant exhausted domestic remedies, the Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing or any specific shortcomings on the part of the relevant courts. In the light of the material in its possession, the Court finds no indication that the impugned proceedings were unfairly conducted.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

5. The applicant further complains that he was not granted free legal aid.

The Court observes, however, that the applicant has failed to submit any material evidence in support of his submissions. His complaint is consequently totally unsubstantiated.

Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

6. The applicant complains that his requests for criminal proceedings to be instituted were rejected.

However, the Court recalls that the Convention does not guarantee a right to have criminal proceedings instituted against third persons or to have such persons convicted (see *R.D. v. Poland*, nos. 29692/96 and 34612/97, Commission decision of 22 October 1997, unpublished)

It follows that this part of the application is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

7. As regards the complaints under Articles 3 and 14 and under Article 1 of Protocol No. 1 of the Convention, the Court notes that the applicant has not indicated any factual basis for his allegations. Nor does the material in the Court's possession disclose any appearance of a violation of the rights and freedoms set out in the invoked Articles.

Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the length of proceedings for eviction, proceedings relating to the declaration of will and proceedings for payment no. 48/01;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President

Commented [Note3]: Summarise the complaints without necessarily citing the invoked Convention Articles.