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. 29695/96
by Adam GRONUŚ
against Poland

The European Court of Human Rights (Fourth Section) sitting on 2 December 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr V. Butkevych,
Mr J. Hedigan,
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 25 August 1995 by Adam Gronuś against Poland and registered on 4 January 1996 under file no. 29695/96;

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 1955 and living in Przechlewo.

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

On 15 October 1993 the chimney of a heating plant located in P. and belonging to the State Agency of Agricultural Property, adjacent to the applicant's horticultural farm, partly collapsed, causing damage in the applicant's farm, in particular in the field of cabbage which he had planted there.

Apparently the applicant requested the Agency to pay compensation for damage which he sustained.

In a letter of 10 December 1993 the applicant complained to the Ministry of Environment about the damage, submitting that the fumes from the chimney which, as a result of the incident, had become much lower than it had been before, continually polluted the grounds of his plantation.

In a letter of 12 January 1994 the State Inspection of Environmental Protection informed the applicant, in reply to his complaint about the pollution caused by the fumes from the chimney, that on 10 January 1994 an inspection had checked the state of the installations of the heating plant. It had been established that the chimney's height had been reduced by fifteen metres, to thirty metres. The heating plant had smoke-filtering devices installed, which were in conformity with the decision of 1989 concerning the acceptable level of emission of smoke. The technical state of these installations was good and they were working. It was further stated that on 25 October 1993 the local branch of the Agency, the owner of the heating plant, had requested the local Environment Protection Department to give a decision permitting the use of the plant until the end of winter. As of the date of the letter, the Department had not taken any decision. On 7 January 1994 the Agency had concluded a contract with a building company for the reconstruction of the chimney to its original height. The time-limit for the reconstruction to be completed had been fixed for 28 February 1994. It had further been established that the ground adjacent to the chimney had been covered with a certain amount of dust, but it was impossible to establish how much of this dust had originated from the fact that the chimney was lower than before the accident of 15 October 1993.

In a letter of 19 January 1994 the Słupsk division of the State Agency of Agricultural Property informed the applicant that his compensation claims could not be satisfied, given that he had failed to submit evidence capable of proving that he had sustained damage. It was further stated that there were significant discrepancies between the applicant's submissions as to the area on which he had planted cabbage and the measurements taken on 4 January 1994 by an employee of the Agency in the applicant's presence. It was finally stated that the applicant had not informed the Agency of the alleged damage on his plantation immediately after the accident.

As the applicant's efforts to obtain compensation for damage failed, on 16 May 1994 he lodged an action against R.B., the administrator of the State-owned farm in P., with the Słupsk District Court, claiming compensation for the damaged vegetables and equipment.

On 8 June 1994 the Słupsk District Court decided that it lacked jurisdiction to examine the case and ordered that the case be examined by the Słupsk Regional Court.

On 26 August 1994 the Słupsk Regional Court decided that the decision of 8 June 1994 was premature in that the District Court had failed to establish whether the defendant had been correctly identified by the applicant and, also, the sum of the compensation sought by the applicant, which was relevant for the determination of a court competent to examine the case. The court transmitted the case to the Commercial Division of the Słupsk District Court.

The applicant lodged an appeal, submitting that the courts limited themselves to transferring the case-file from one to another, while there was no hope that any decision on the merits of the case would be taken in a reasonable future.

On 3 November 1994 the Gdańsk Court of Appeal allowed the applicant's appeal and quashed the decision of 26 August 1994, finding that it was not in conformity with the law in that the Regional Court itself should have established the facts relevant for the decision which court had jurisdiction to consider the case.

On 26 January 1995 a hearing was held before the Słupsk Regional Court, during which the Court decided again that it lacked jurisdiction and transmitted the case to the Koszalin Regional Court.

Subsequently the applicant waited for a certain time for this decision to be served on him. On 3 June 1995 he complained to the President of the Gdańsk Court of Appeal about the lack of progress in the proceedings.

In reply, by a letter of 20 June 1995, the Judge-Supervisor in Civil Proceedings of the Koszalin Regional Court acknowledged that the proceedings were slow, in particular as there had been no progress since the case had been transferred to the Civil Division of the Regional Court on 6 March 1995. It had been only on 5 June 1995 that the judge ordered the applicant to pay the court fees. However, there was no confirmation in the case-file that this order had been properly served on the applicant, which prevented the court from proceeding further.

In a reply of 23 June 1995 to the applicant's complaint, the President of the Regional Court informed him that his case was pending before the Koszalin Regional Court. The President further noted that the problems with establishing the court competent to entertain the case had been in part caused by the fact that the applicant had lodged an action against a natural person, whereas his action concerned in fact the acts of a State entity. However, the applicant's complaint was in part justified, as the case-file had been transmitted to the competent court on 17 February 1995 and a period of three months of inexplicable inactivity followed.

On 30 June 1995 the applicant complained to the Minister of Justice about the lack of progress in the proceedings. His complaint was subsequently transmitted for reply to the Koszalin Regional Court.

On 16 August 1995 the Judge-Supervisor in Civil Proceedings of the Koszalin Regional Court acknowledged that the proceedings had not been conducted speedily. It was further stated that on 5 March 1995 the applicant had been ordered to pay the court fees. On 14 June 1995 he had requested to be granted exemption from the court fees and subsequently the court ordered him to submit information as to his income. As the applicant had failed to do so, on 21 July 1995 the court ordered that the applicant's income be established on the basis of certain documents to be furnished by the relevant Tax Office. These proceedings were pending.

On an unspecified later date and for unknown reasons the court decided to stay the proceedings. On 27 May 1996 the Koszalin Regional Court resumed the proceedings.

On 10 June 1996 the applicant requested the Regional Court to be granted the assistance of a lawyer paid by the legal aid scheme.

The proceedings are apparently pending before the first-instance court.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the civil proceedings in his case have lasted too long. He submits that as a results of the courts' failure to rule on his justified compensation claims speedily, he is ruined and has lost all of his property and all prospects of business success.

The applicant complains under Article 8 of the Convention that he and his family were, as a result of the collapsed chimney of the heating plant, subjected to serious pollution originating from the noxious smoke emitted by the chimney at a low level above the ground. He submits that this amounted to a breach of his right to respect for home and private life.

THE LAW

1. The applicant complains under Article 8 of the Convention that he and his family were subjected to serious pollution, which amounted to a breach of his right to respect for home and private life.

Article 8 of the Convention, insofar as relevant, provides:

"1. Everyone has the right to respect for his private and family life, his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court first recalls the case-law of the Convention institutions according to which severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (see the Lopez Ostra v. Spain judgment of 9 December1994, Series A no. 303-C, p. 54, § 51).

As regards the present case, the Court notes that the chimney of the heating plant belonging to the State Agency of Agricultural Property, located in the vicinity of the applicant's farm, collapsed on 15 October 1993. As a result of this accident, the height of the chimney was reduced from 45 to 30 metres. However, the Court observes that, even assuming that the applicant took relevant steps in order to exhaust applicable domestic remedies in respect of this complaint, the Court notes that in the proceedings before the Court he has failed to submit details concerning the actual level of the alleged pollution. The Court also notes that the State Inspection of Environmental Protection carried out an inspection in order to establish whether the pollution control installations of the heating plant were in working order and found that they corresponded to the relevant technical norms as set out in the original permission for the plant to operate. The Court further notes that the State Agency of Agricultural Property took steps in order to eradicate the cause of the alleged pollution, by concluding a contract with the building company for reconstruction of the chimney. The applicant has not alleged that this has not been done. The Court finally observes that the applicant has not submitted any arguments or expert reports capable of proving that the continued operation of the heating plant exceeded permitted limits of emission of pollutants.

On the whole, the Court considers that it cannot be established on the basis of the applicant's submissions that the operation of the damaged heating plant caused nuisance, impairing normal environmental health and hygiene to such an extent that would allow the Court to accept that the applicant's and his family's right to respect for home was infringed.

It follows that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains under Article 6 of the Convention that the civil proceedings in his case have lasted too long.

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

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint about the length of the civil proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Matti Pellonpää
President