AS TO THE ADMISSIBILITY OF

Application No. 31206/96
by Zyta KAWECKA
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELI□NAS
E.A. ALKEMA
A. ARABADJIEV

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 4 April 1995 by Zyta KAWECKA against Poland and registered on 29 April 1996 under file No. 31206/96;

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 1947, is a teacher residing in Wisla, Poland.

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

Particular circumstances of the case

a) Proceedings concerning the claim for payment of PLZ 32,382,832.

On 14 May 1991 the applicant sued the Ustron Housing Co-operative (Spóldzielnia Mieszkaniowa) called "Zacisze" before the Bielsko-Biala Regional Court (Sad Wojewódzki), seeking payment of PLZ 32,382,832 for the unjustified and unfair calculation of the price which she had paid for her apartment. She relied on an expert's report (which had previously been obtained at the request of the Board of Auditors (Komisja Rewizyjna) of the defendant co-operative), according to which the actual price per square metre of her apartment should have been PLZ 1,208,926 instead of PLZ 1,500,000 paid by her. She also requested the court to exempt her from the whole court costs (i.e. fees and other expenses), submitting that she had no financial assets enabling her to bear such costs and that she had spent all her money, including a bank loan, in buying her dwelling.

On an unspecified date the court dismissed the applicant's request for exemption from court costs; however, as the applicant failed to submit any documents (including any court decision) in this connection, it is not possible to establish either what were the reasons given by the court to justify its ruling or whether the applicant appealed against the decision dismissing her request.

On 24 September 1992 the Bielsko-Biala Regional Court dismissed the applicant's claim, finding, inter alia, that, in the light of the two chartered accountants' reports obtained in the course of the proceedings, the price obtained by the defendant had been fair and fully supported by various documents reflecting the expenses incurred by the defendant in relation to the construction of the dwelling concerned. Moreover, under the relevant principles laid down by the case-law of the Supreme Court (Sad Najwyzszy), which were binding on lower courts, a member of a housing co-operative could not demand a reduction in the costs falling to his share, on the basis that any part of the cost of constructing his dwelling had been incurred as a result of negligence on the part of the organs of a given co-operative,

On 12 November 1992 the applicant appealed against the above judgment, submitting that the court had incorrectly applied the relevant law and based its findings on the obviously erroneous reports of experts. She also maintained that the court had unjustifiably dismissed her requests for fresh evidence to be obtained from experts and failed to hear evidence from her.

On 2 April 1993 the Katowice Court of Appeal (Sad Apelacyjny) quashed the contested judgment and remitted the case to the court of first instance (i.e. the Cieszyn District Court which was, at the material time, competent to deal with it). It held that the lower court had not complied with the procedural rules laid down in respect of the admissibility and assessment of evidence and that, therefore, the dismissal of the applicant's claim had been premature, in particular as the court had failed to establish all the facts relevant for the determination of her case. The court also noted that the expert reports obtained by the court of first instance had not referred to the question of whether the costs incurred by the defendant in relation to the construction of the applicant's dwelling had been proved to correspond to the actual value of the construction works done by the contractor. Moreover, no evidence from the applicant had been heard and compared with the evidence adduced by the defendant. On the other hand, the court rejected the applicant's arguments that the domestic law and the Supreme Court's case-law had been wrongly applied. Finally, the appellate court gave guidelines, instructing the lower court to establish all the facts essential for the proper determination of the claim and, for this purpose, to obtain evidence from a housing construction expert and from the applicant.

On 20 April 1993 the case-file was transferred to the Cieszyn District Court.

On 20 April and 30 May 1993 the applicant filed pleadings, requesting the court to order that fresh documentary evidence be submitted by the defendant.

In the meantime, on unspecified dates, the court held at least two hearings which, upon the defendant's request, were cancelled.

During a hearing held on 12 October 1993, the applicant submitted a pleading. The court, upon the defendant's request, adjourned the hearing in order to enable the opposite party to submit a pleading in reply. The next hearing took place on 26 October 1993 but was adjourned since the court, upon the applicant's motion, had ordered evidence to be obtained from a housing construction expert.

Meanwhile, on 15 October 1993, the applicant complained to the Chief Justice of the Cieszyn District Court about the length and general unfairness of the proceedings in her case. In the applicant's view, the presiding judge was not impartial as he had ordered her to submit copies of her pleadings, whereas the defendant had not been required to do so. In a letter of 27 October 1993 the Chief Justice informed the applicant that even though the proceedings concerned were progressing rather slowly, this was partly due to the fairly complicated nature of her case and the need to obtain various pieces of evidence. Referring to the applicant's opinion that the proceedings were being conducted unfairly, the Chief Justice stated that there was no indication of any such conduct on the part of the court concerned.

On 5 December 1993 the applicant again complained to the Chief Justice of the Cieszyn District Court, this time generally objecting to the contents of his reply of 27

October 1993 and repeating her original arguments contesting the fairness of the proceedings. In a letter of 9 December 1993 the Chief Justice maintained his previous position and informed the applicant that he was not competent to interfere with any procedural decisions taken by the court. The applicant replied on 20 December 1993 and 14 January 1994, submitting that even though the court had, at her request, ordered the defendant to submit various pieces of documentary evidence within a seven day time-limit, it had, to date, ignored the fact that the defendant had not complied with this deadline. On 20 January 1994 the Chief Justice informed the applicant that his previous position remained unchanged.

In the meantime, on 8 January 1994, the applicant complained to the Minister of Justice that the proceedings in her case were being conducted unfairly, in particular in view of incorrect procedural decisions taken by the Cieszyn District Court with respect to the taking of evidence. She also submitted various arguments relating to the merits of the case. On an unspecified date her complaint was referred to the Chief Justice of the Cieszyn District Court who, on 23 March 1994, informed her that the court concerned, in dealing with her case, was clearly complying with the guidelines in respect of the taking of evidence issued by the Katowice Court of Appeal in its judgment of 2 April 1993. Moreover, there was no appearance that the court lacked impartiality or that the proceedings were being conducted unfairly.

On 25 April 1994 the applicant challenged the presiding judge, submitting, inter alia, that he had failed to determine her claim in a reasonable time, that he had made incorrect decisions on the admissibility of evidence, especially by putting irrelevant questions to the experts and ignoring her requests for various pieces of documentary evidence to be obtained.

On 30 May 1994 a panel of three judges, sitting as the Cieszyn District Court, dismissed the applicant's challenge, finding that it lacked any justification and stressing that all the contested decisions of the presiding judge relating to the admissibility of evidence had been justified by the need to clarify, in an objective manner, the facts of the case. In any event, such decisions, which fell totally within the court's power to admit and evaluate evidence, were, if incorrect, subject to a further judicial review in appellate proceedings.

On 28 October 1994 the Cieszyn District Court held a hearing. During the hearing it apparently refused to request additional documentary evidence proposed by the applicant. After hearing evidence from the parties and considering all the documentary evidence and expert evidence, it gave judgment dismissing the applicant's claim. It held that, according to a comprehensive report prepared by a housing construction expert, the price for the applicant's apartment had been correctly calculated by the defendant.

On 29 December 1994 the applicant appealed against the judgment, submitting that the court had wrongly applied the relevant law, made an illogical assessment of the facts of the case and failed to establish all the facts relevant for the determination of her case, in particular by its refusal to ask for all the documentary evidence requested by her.

On 14 March 1995 the Bielsko-Biala Regional Court dismissed the applicant's appeal. It found that the lower court had made correct findings of fact in the applicant's case and, in compliance with the guidelines issued by the Katowice Court of Appeal on 2 April 1993, had admitted all the evidence, including evidence from the housing construction expert and the applicant herself, which was essential for the determination of the claim. It rejected the applicant's arguments contesting the application of the domestic substantive law, stressing that the original first-instance judgment had been quashed for non-compliance with the rules of procedure resulting in her claim having been prematurely dismissed, not for wrongful application of any substantive legal provision or of the relevant case-law of the Supreme Court. Finally, the court ordered the applicant to pay the defendant's costs in the litigation amounting to PLZ 11,824,00.

On 23 May 1995 the applicant requested the Minister of Justice to grant her leave to file an extraordinary appeal against the final judgment given in her case. The request was dismissed on 7 April 1996 as lacking sufficient grounds.

b) Proceedings concerning the claim for payment of PLZ 20,689,200.

On 26 September 1994 the applicant sued the Ustron Housing Co-operative called "Zacisze" before the Cieszyn District Court, seeking payment of PLZ 20,689,200 for having obtained an unfair price for her apartment. In the applicant's view, the total price of her apartment should have amounted to PLZ 98,464,300, whereas the defendant had arbitrarily asked for and obtained the sum of PLZ 119,153,500.

The court scheduled a hearing for 8 December 1994. The defendant requested the court to stay the proceedings in view of the fact that, at the same time, the proceedings relating to the other similar claim lodged by the applicant (i.e. concerning the correctness of the price obtained from the applicant for her apartment) were pending before the same court and that the outcome of those proceedings would be decisive for the determination of the present claim. The applicant requested the court to proceed with her claim.

On the same day the court, under Section 199 para. 1 (2) of the Code of Civil Procedure, rejected the applicant's claim, finding that it was essentially the same as that relating to the payment of PLZ 32,382,832 and based on the same grounds, i.e. the allegedly incorrect evaluation of the price for the same apartment.

On 9 May 1995, upon the applicant's appeal, the Bielsko-Biala Regional Court upheld the decision of the court of first instance.

Relevant domestic law

Section 199 para. 1 (2) of the Polish Code of Civil Procedure provides:

"1. The court shall reject the claim:

...

(2) if proceedings relating to the same claim, in which the same parties are involved, are pending or have already been terminated [by a final decision]."

COMPLAINTS

1. In respect of the proceedings relating to her claim for payment of PLZ 32,382,832, which were terminated by the judgment of the Bielsko-Biala Regional Court of 14 March 1995, the applicant submits, under Article 6 para. 1 of the Convention, the following complaints:

a) that the Bielsko-Biala Regional Court's refusal to grant her exemption from court costs resulted in her having to bear exorbitant costs of litigation;

b) that the length of those proceedings exceeded a "reasonable time" within the meaning of Article 6 of the Convention;

c) that those proceedings were unfairly conducted, in particular as the courts concerned wrongly applied the domestic law and refused to obtain evidence proposed by her, thereby displaying their lack of impartiality.

2. In respect of the proceedings relating to her claim for payment of PLZ 20,689,200, the applicant complains that the Cieszyn District Court, in rejecting her claim, deprived her of access to a court for the determination of her civil rights.

THE LAW

1. The applicant raises various complaints under Article 6 para. 1 of the Convention about the proceedings relating to her claim for payment of PLZ 32,382,832, which were terminated by the judgment of the Bielsko-Biala Regional Court of 14 March 1995.

a) She first complains that the Bielsko-Biala Court's refusal to grant her exemption from court costs resulted in her having to bear exorbitant costs of litigation.

The Commission notes that the applicant requested the Bielsko- Biala Regional Court to grant her exemption from court costs on 14 May 1991, when she launched her civil action. Moreover, in the light of the facts as submitted by her, there is no indication that, at any further stage of the proceedings, she again requested that court, or the courts subsequently dealing with her case, to grant her such exemption.

It is true that the applicant has failed to adduce any documents supporting her complaint, such as the relevant decision or decisions taken by the court or courts concerned.

However, the Commission observes that it transpires from other documents produced by the applicant, and the sequence of events described in her own submissions, that, regardless of whether or not she appealed against the refusal to grant her exemption from court costs, the final decision in this respect was taken some time between 14 May 1991, when she submitted her claim to the Bielsko-Biala Regional Court, and 24 September 1992, when her claim was dismissed at first instance.

Poland has 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 by Poland of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993".

Since, according to all the material at the Commission's disposal, the final decision refusing the applicant exemption from court costs was taken prior to this date, the present complaint is outside the Commission's competence ratione temporis.

It follows that this part of the application is inadmissible as being incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2.

b) The applicant also complains that the length of these proceedings exceeded a "reasonable time" within the meaning of Article 6 para. 1 of the Convention.

This provision, insofar as relevant, provides:

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

The Commission notes that the proceedings commenced on 14 May 1991, when the applicant lodged her civil action with the Bielsko-Biala Regional Court and came to an end on 14 March 1995, when the final judgment was given in her case. As a whole they lasted for about three years and ten months.

However, the Commission, by reason of its competence ratione temporis, can examine the present complaint only insofar as it relates to the proceedings as from 1 May 1993, the date on which Poland's declaration acknowledging the right of individual petition with a temporal limitation took effect. It can, in order to assess the length of the proceedings concerned, take into account the stage reached in these proceedings at the beginning of the period under consideration (No. 7984/77, Dec. 11.7.79, D.R. 16, p. 92).

Consequently, the period to be considered under Article 6 para. 1 of the Convention is one year, ten months and thirteen days.

The Commission has made an assessment of the length of these proceedings in the light of the particular circumstances of the present case and having regard to the criteria laid down in the Convention organs' case-law, in particular the complexity of the

case and the conduct of the applicant and of the relevant authorities (see Eur. Court HR, Proszak v. Poland judgment of 16 December 1997, Reports of Judgments and Decisions 1997-VIII No. 59, p. 2772, para. 32).

As regards the complexity of the case, the Commission considers that the applicant's case was, to some extent, a complex one, especially as, due to the nature of the claim to be determined, the court needed to obtain evidence from experts, including chartered accountants and a housing construction expert.

It further observes that when the period under consideration started, the applicant's case was, after the quashing of the original first-instance judgment, being re-examined by the Cieszyn District Court. Within the next one year and about six months that court scheduled at least five hearings, obtained various pieces of documentary evidence and evidence from experts, and gave judgment. Moreover, the appellate proceedings before the Bielsko-Biala Regional Court lasted for a reasonably short period of about five months. The Commission therefore finds that the courts concerned displayed the necessary diligence in dealing with the applicant's case, the more so as there were no substantial periods of inactivity on their part.

In respect of the conduct of the applicant, the Commission notes that, in the course of the proceedings at first instance, she submitted several pleadings, requested the court to obtain various forms of evidence and challenged the presiding judge; yet it does not appear that the manner in which she exercised her procedural rights materially contributed to the length of the proceedings complained of.

Nonetheless, assessing the facts of the case as a whole and having regard to the fact that the domestic authorities did not fail to act with the diligence required under Article 6 para. 1 of the Convention, the Commission considers that the length of these proceedings did not exceed a "reasonable time" within the meaning of this provision.

It follows that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

c) The applicant further complains, invoking Article 6 para. 1 of the Convention, that the proceedings concerned were unfairly conducted, in particular as the courts concerned wrongly applied the domestic law and refused to obtain evidence proposed by her, thereby displaying their lack of impartiality.

However, the Commission recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. It is not, therefore, competent to examine alleged errors of fact or law committed by national courts, except where it considers that such errors might have involved a possible violation of the rights and freedoms set forth in the Convention (No. 29583/96, Dec. 10.7.97, D.R. 90-A, pp. 109 and 117).

It further recalls that the admissibility of evidence is primarily a matter for regulation by national law. As a rule, it is for the national courts to assess the evidence before them whereas it is the Convention organs' task to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see, e.g. Eur. Court HR, Asch v. Austria judgment of 26 April 1991, Series A no. 203, p. 10, para. 26).

In the present case the Commission finds no elements which would indicate that the courts concerned went beyond their discretion to refuse to take evidence proposed by the applicant. Nor does it find that such refusal on their part would, in itself, have amounted to a breach of the principle of impartiality.

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

2. Under Article 6 para. 1 of the Convention the applicant complains, lastly, that the Cieszyn District Court, in rejecting her claim for payment of PLZ 20,689,200, deprived her of access to a court for the determination of her civil rights.

The Commission recalls that the right of access to the courts secured by Article para. 1 of the Convention may be subject to limitations in the form of regulation by the State and that, in this respect, the State enjoys a certain margin of appreciation. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, any restriction must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved (see Eur. Court HR, Tolstoy-Miloslavsky v. the United Kingdom judgment of 13 July 1995, Series A no. 316, pp. 78-79, para. 59).

In the present case the Commission observes that the applicant was barred from submitting her second claim for payment arising from the allegedly incorrect evaluation of the price due for her apartment since, according to Section 199 para. 1 (2) of the Polish Code of Civil Procedure, no one is entitled to seek the determination of a civil claim which is essentially the same as one already submitted by him to the courts for adjudication or already finally determined by the courts. It further observes that this provision contains the principles of the lis pendens and res iudicata which, in the Commission's view, must be seen as important elements of the proper administration of justice.

As a consequence, the Commission does not consider that the limitations applied by the Polish authorities in respect of the applicant's claim lacked a legitimate aim; this aim was, as noted above, the interests of the proper administration of justice. Nor does it find that the national authorities did, in any way, overstep their margin of appreciation by preventing the applicant from pursuing her case or that the justification given by them for their decisions disclosed any arbitrariness on their part.

It follows that the remainder of the application is inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber