AS TO THE ADMISSIBILITY OF

Application No. 28848/95
by Wanda KAŹMIERCZAK
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. BIELIŪNAS
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 March 1994 by Wanda KAŹMIERCZAK against Polnad and registered on 4 October 1995 under file No. 28848/95;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 21 October 1997 and the observations in reply submitted by the applicant on 15 December 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1915, is a pensioner and resides in Przedbórz, Poland.

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

A. Particular circumstances of the case:

On 7 December 1989 the prisoners of Czarne prison commenced a riot. They protested against the Amnesty Law of 7 December 1989 which, contrary to public promises made by various Polish politicians, did not cover convicts having a previous criminal record. The son of the applicant, who had been serving his sentence in Czarne prison since 26 September 1989, took part in the riot. At the material time 1,446 persons were detained there. On 7 and 8 December 1989 the prisoners broke out of their cells, set fire to certain prison premises and barricaded the access to the prison. On 8 December 1989 at midnight two hundred prison officers, equipped with tear-gas bombs, truncheons and shields, attempted to quell the riot. After nearly two-hours of fighting with the prisoners and the fire, the officers were forced out of the prison precincts. On 9 December 1989, joint security forces comprising military commando, police and prison guards equipped with fire-arms, acting on the permission of the Presidium of the Government of Poland (Prezydium Rzadu), entered the prison premises. During a fight with the prisoners the security forces first used tear-gas bombs and water-cannons and, eventually, shot at the prisoners. As a result six prisoners, including the applicant's son, were shot dead and more than two hundred of them were injured.

Subsequently, on an unspecified date, the Słupsk Regional Prosecutor (Prokurator Wojewódzki) instituted, ex officio, criminal proceeding involving an investigation into the circumstances surrounding the use of fire-arms by the officers who had dealt with the riot.

In 1991, on an unspecified date, the applicant complained to the Minister of Justice about the slow conduct of the investigation relating to the death of her son, which in her opinion prevented her from lodging a claim for compensation for her son's death. In its reply of 3 August 1991 the Ministry of Justice (Prison Department) informed the applicant that, despite the pending investigation, she could have lodged such a claim at any time.

On 4 December 1991 the applicant sued the State Treasury in the person of Czarne prison before the Słupsk Regional Court (Sąd Wojewódzki) seeking compensation for the death of her son. She also requested the court to grant her an exemption from court fees and legal assistance. The court granted the request on 9 January 1992 and scheduled a hearing for 17 March 1992.

On 4 March 1992 the defendant lodged a pleading in reply to the applicant's statement of claim, submitting that the proceedings should be stayed under Section 177 para. 1 (4) of the Code of Civil Procedure since the investigation into the circumstances of the death of the applicant's son, the outcome of which would be decisive for the determination of her claim, was still continuing.

During the hearing of 17 March 1992 the applicant was represented by an officially-appointed lawyer. The court, upon both parties' request, ordered that the proceedings be stayed until the termination of the criminal proceedings relating to the use of fire-arms in Czarne prison.

Subsequently, on six occasions between April 1992 and August 1993, the applicant complained to the Słupsk Regional Prosecutor about the slow conduct of the criminal proceedings in question.

On 23 December 1993 the Słupsk Regional Prosecutor discontinued the investigation in view of the fact that it was impossible to establish which of the officers concerned had shot the applicant's son and other prisoners. Moreover, the prosecutor found that no offence had been committed since the officers had used fire-arms in accordance with the relevant ordinance of the Minister of Justice and under a lawful decision of the Presidium of the Government of Poland. These findings were based on several reports by medical and other experts, including forensic medicine, ballistic and fingerprint experts. It transpires from the relevant decision that in the course of the investigation the prosecutor had heard evidence from nearly three hundred officers involved in quelling the riot and more than two hundred prisoners. On 1 February 1994 the applicant appealed against the above-mentioned decision. On 13 March 1995 the Gdańsk Prosecutor of Appeal (Prokurator Apelacyjny) upheld the decision of the prosecutor at first instance.

In the meantime, on 7 February 1994, the applicant complained to the President of Poland about the slow conduct of the investigation into the circumstances in which her son had been shot, requesting him to intervene on her behalf. In his reply of 17 February 1994, the President informed the applicant that he could not in any way interfere with any court or other proceedings as the judicial and prosecuting authorities were totally independent of the executive organs in carrying out their duties.

On 28 June 1995 the Słupsk Regional Court sent a letter to the applicant, asking whether, in view of the outcome of the criminal proceedings concerned, in particular the finding that no offence had been committed, she wished to pursue her case. On 12 July 1995 the applicant informed the court that she wished to pursue her claim as it had been submitted regardless of the results of the investigation. She apparently relied on Section 419 of the Civil Code, requesting the court to grant her compensation under the so-called "principles of equity".

On 28 September 1995 the Słupsk Regional Court ordered that evidence from the applicant be heard before the district court of her place of residence, i.e. the Radomsko District Court on 12 October 1995.

The next hearing before the Słupsk Regional Court was scheduled for 15 February 1996. The court heard the parties' arguments and considered the material contained in the case-file of the Słupsk Regional Prosecutor. On the same day the court, having regard to the findings of the investigations into the use of fire-arms in Czarne prison, dismissed the applicant's claim. It found that the State Treasury was not liable under Section 417 of the Civil Code for causing the death of the applicant's son since the security forces had used fire-arms lawfully during their action. The court held that even if, according to the so-called "principles of equity" provided in Section 419 of the Civil Code, the State Treasury was liable for the death of the applicant's son, the fact that he was a criminal and had not contributed to her maintenance militated against granting her the compensation requested. In this respect the court referred to documentary evidence from Czarne prison records, according to which the applicant's son had not worked while serving his prison sentence.

On 13 June 1996 the Gdańsk Court of Appeal (Sąd Apelacyjny), upon the applicant's appeal, upheld the judgment of the court of first instance.

B. Relevant domestic law and practice:

1. The State's liability in tort

Sections 417 et seq. of the Polish Civil Code impose vicarious liability on the State Treasury for torts committed by the State's agents.

Section 417 para. 1 of the Code states:

"1. The State Treasury shall be liable for damage caused by a civil servant in the course of his duties."

According to the well-established case-law of the Polish Supreme Court, a plaintiff seeking damages under the foregoing provision must show that the act or omission in question was unlawful and that the State's agent committed a fault (the Supreme Court's judgments: No. I PR 468/70 of 29.12.70, unpublished; No. CR 24/71 of 19.4.71, unpublished; No. I CR 152/74 of 11.4.74, unpublished).

However, Section 418 para. 1 of the Code imposes further limits on the State Treasury's liability in cases where a civil servant causes damage in the course of the implementation or execution of a decision or order given by an organ of the State. In such circumstances:

"... the State Treasury shall be liable for damage only when the issue of such a decision or order was in breach of the law and such a breach was either liable to

prosecution under the criminal law or a matter for a disciplinary investigation, and the guilt of the person who caused the damage in question has been established by a final conviction or disciplinary decision ..."

Thus, in practice, a civil action for compensation for damage which is claimed to have arisen out of the acts of agents of the State carrying out their duties under a specific decision or order issued by a State authority can be lodged on the condition that those acts actually amounted to a criminal or disciplinary offence. Moreover, such a claim cannot be determined prior to the termination of criminal or disciplinary proceedings, as their outcome is decisive for establishing the State's liability.

Only in specific cases concerning damage caused by a lawful act of an agent of the State (e.g. causing death or bodily injuries by lawful action taken for the purpose of maintaining public order), the court may, under Section 419 of the Civil Code providing for the so-called "principles of equity", grant compensation from the State Treasury regardless of the criminal liability of the State's agents. However, a plaintiff must show that he has lost a relative from whom he might have expected future maintenance or that his difficult financial situation militates in favour of granting him such compensation.

2. Stay of civil proceedings

Under Sections 173 et seq. of the Code of Civil Procedure the court may stay civil proceedings either ex officio or at the parties' request. Section 177 para. 1 of the Code, insofar as relevant, provides:

"1. The court shall ex officio stay the proceedings:

...

4) if an investigation into [a given] event or act is being carried out in criminal or disciplinary proceedings, the outcome of which could affect the determination of a civil claim in the proceedings concerned."

Section 180 para. 1 of the Code, insofar as relevant, provides:

"1. The court shall ex officio resume the proceedings if the reason for staying them has ceased to exist, in particular when:

...

4) a final decision has been given in the proceedings on whose outcome the determination of the claim depends; however, if it is justified, the court may resume the proceedings before [any such decision is taken]."

3. Domestic remedies in relation to the length of civil proceedings

The Polish Code of Civil Procedure does not provide for any specific remedy against inactivity on the part of courts. At the material time the Code set out two appellate remedies: an appeal (which, under Sections 367 et seq. of the Code, could be lodged against a judgment of a court of first instance) and an interlocutory appeal (which, under Sections 394 et. seq. of the Code, could be lodged against decisions other than judgments).

As regards the latter, a party to civil proceedings could, firstly, lodge an interlocutory appeal against any decision of the court of first instance terminating proceedings on formal grounds, e.g. discontinuing proceedings or rejecting the claim. Secondly, he could lodge such an appeal against decisions of both the court of first instance and the presiding judge relating to procedural matters (e.g. decisions returning a statement of claim to a plaintiff for non-compliance with formal requirements, referring a given case to another court, refusing to grant an exemption from court fees, staying proceedings or refusing to resume the stayed proceedings, rejecting an appeal, dismissing a challenge to a judge etc.).

COMPLAINTS

The applicant complains about the excessive length of the proceedings in her case and alleges that her access to a civil court was impeded by the slow conduct of the investigation into the circumstances of her son's death. She does not invoke any specific provision of the Convention in support of her complaints.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 4 March 1994 and registered on 4 October 1995.

On 10 September 1997 the Commission decided to communicate the application to the respondent Government.

The Government's written observations were submitted on 21 October 1997. The applicant replied on 15 December 1997.

THE LAW

The applicant complains about the excessive length of the proceedings in her case and alleges that her access to a civil court was impeded by the slow conduct of the investigation into the circumstances of her son's death.

The Commission notes that this complaint, by its nature, falls within the scope of Article 6 para. 1 of the Convention, which, 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 ... ."

a) The Government submit that the present application, insofar as it relates to events prior to 30 April 1993, is outside the temporal competence of the Commission. This part of the application is therefore inadmissible as being incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2.

The applicant replies that most of the proceedings complained of took place after 30 April 1993.

The Commission observes that these proceedings commenced on 4 December 1991, when the applicant lodged a claim for compensation with the Słupsk Regional Court, and ended on 13 June 1996. They relate in part to a period prior to 1 May 1993, the date on which Poland's declaration acknowledging the right of individual petition took effect. Since, in that declaration, Poland limited the Commission's competence to facts subsequent to the declaration, the Commission, by reason of its competence ratione temporis, can examine the applicant's complaint about the length of these proceedings only insofar as they relate to the period after this date. Nonetheless, it can take into account the stage reached in those proceedings at the beginning of the period under consideration (see No. 7984/77, Dec. 11.7.79, D.R. 16, p. 92).

b) Under Article 26 of the Convention "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

The Government maintain that the applicant has not complied with the requirements of Article 26 of the Convention since she has exhausted only some of the remedies available to her under domestic law. They submit that she could have availed herself of two remedies which, under Polish law as applicable at the material time, constituted effective remedies against the length of civil proceedings: an appeal against a judgment of a court of first instance and an interlocutory appeal against other decisions of the court competent to deal with her case.

The Government admit that the applicant appealed against the judgment given by the Słupsk Regional Court on 15 February 1996. In their view, this does not change the situation as she could have lodged an interlocutory appeal against other judicial decisions, in particular those relating to procedural matters.

The applicant replies that the Government failed to show that, in the course of the proceedings complained of, any appealable decision other than the judgment of the court of first instance was given.

The Commission notes, firstly, that the Government have not indicated which concrete procedural decision the applicant should have appealed against but failed to do so, or how such an appeal, had it been lodged, would have accelerated the proceedings.

It further recalls that appeals against decisions pronounced in the course of proceedings cannot be deemed effective remedies against the length of those proceedings as their purpose is to have such decisions set aside or amended. In this respect the Commission also reiterates that, as it has repeatedly stated, in the case of excessive length of civil proceedings in Poland, appeals against substantive and procedural court decisions do not constitute effective remedies against the length of such proceedings (see, e.g. No. 24559/94 Gibas v. Poland, Dec. 6.9.95, D.R. 82-A, p. 76 et seq.; No. 26622/95, Dec. 15.4. 1997, unpublished).

It follows that the present application cannot be rejected for non-exhaustion of domestic remedies.

c) The Government contend that, in any event, the application is manifestly ill-founded as the length of the proceedings concerned did not exceed a "reasonable time " within the meaning of Article 6 para. 1 of the Convention.

They point out that the applicant's case was a complex one, stressing that the determination of the claim submitted by her to the civil court largely depended on the findings made in the criminal proceedings involving the investigation into the circumstances in which her son had been shot. Since the applicant's claim was based on the law of tort, her claim could not be isolated and examined separately from these criminal proceedings since their outcome was decisive for establishing whether or not the manner in which the State's agents had acted while dealing with the prison riot justified finding the State Treasury liable in tort.

The Government further maintain that the applicant contributed to the length of the proceedings in her case because, on numerous occasions, she complained to various public authorities, for instance the President of Poland, about the allegedly slow conduct of those proceedings.

Finally, the Government emphasise that in the present case there is no indication of inactivity on the part of the courts dealing with the applicant's case. The only delay in the proceedings resulted from their being stayed, which was fully justified. Moreover, when the criminal proceedings, the outcome of which was essential for the determination of her claim, had been terminated, the Słupsk Regional Court promptly heard evidence from the applicant, scheduled the hearing and gave judgment, thus displaying the diligence required under Article 6 para. 1 of the Convention.

The applicant contests the Government's submissions, asserting that the length of the proceedings in her case clearly exceeded a "reasonable time" within the meaning of Article 6 para. 1 of the Convention.

She points out that her case was of average complexity. Furthermore, she did not contribute to the length of the proceedings concerned. In this respect the applicant stresses that the Government have not adduced any evidence that her complaints about the manner in which the authorities were dealing with her cases - both civil and criminal - had any implications for the overall duration of the proceedings complained of. Rather, the period of more than three years during which the Słupsk Regional Court, after having stayed the civil proceedings, was awaiting the outcome of the criminal proceedings, was the main factor substantially delaying the determination of her claim. Finally, the applicant submits that the domestic authorities entirely disregarded another important element of her case, namely the question of how much was at stake for her in the proceedings, in particular in view of the loss suffered by her and her age.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the 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. Also, the importance of what is at stake for the applicant in the litigation can be considered as another criterion for assessing whether or not the proceedings concerned were terminated within a "reasonable time" (see, e.g. Eur. Court HR, Duclos v. France judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, No. 25, p. 2180, para. 55; Proszak v. Poland judgment of 16 December 1997, Reports of Judgments and Decisions 1997- VIII, No. 59, p. 2772, para. 32).

The Commission has already noted that the proceedings in question commenced on 4 December 1991, when the applicant lodged a civil action for compensation with the Słupsk Regional Court, and ended on 13 June 1996 when the Gdańsk Court of Appeal pronounced a final judgment. Accordingly, as a whole they lasted four years, six months and nine days, of which three years, one month and twelve days were after the date on which the Commission's competence to examine applications against Poland took effect.

It further observes that the applicant's case was a rather complex one. First of all, the nature of her claim, which was based on the law of tort and directed against the State Treasury, made it essential to establish whether the acts of the State's agents who had dealt with the riot in the Czarne prison had been "unlawful" and whether the death of her son had resulted from a fault on their part. Both these elements were a prerequisite for the State Treasury's civil liability. Since, at the time when the applicant launched her civil action, the criminal proceedings relating to the circumstances of the use of fire-arms against the prisoners were pending, her claim could not be examined in isolation and determined prior to the termination of those proceedings as their outcome was decisive for establishing the defendant's civil liability. Moreover, the complexity of the relevant investigation, in the course of which evidence from several hundred witnesses was heard and various experts' reports were obtained, must be seen as another factor rendering the determination of the applicant's claim even more difficult.

In respect of the conduct of the authorities, the Commission observes that both parties agree that, as a result of the proceedings complained of being stayed until the

termination of the relevant investigation, the Słupsk Regional Court did not take any procedural steps from 17 March 1992 to at least 28 June 1995, when it asked the applicant whether she wished to pursue her case in view of the outcome of this investigation, in particular the finding that no offence had been committed.

It is true that this period of inactivity lasted for more than three years and three months, of which about two years and one month after 1 May 1993. However, it did not result from any omission on the part of the Słupsk Regional Court but was an inevitable legal consequence of the fact that, in view of the strong correlation between the criminal and civil proceedings, which were running concurrently, that court was obliged, under Section 177 para. 1(4) of the Polish Code of Civil Procedure, to postpone the examination of the applicant's claim. It also appears that the applicant considered that the court's decision staying the proceedings was justified, the more so as that decision was taken upon both parties' request, and neither at the time when this decision was given, nor at any further stage of the proceedings did she contest its justification.

As regards the subsequent course of the proceedings, i.e. after the relevant investigation came to an end on 13 March 1995, the Commission observes that, as early as 28 June 1995, the Słupsk Regional Court commenced preparations for a hearing, requesting the applicant to clarify her position in view of the outcome of the criminal proceedings. Shortly afterwards, on 28 September 1995, it ordered that evidence from the applicant be heard on 12 October 1995 and, after a lapse of about four months from this date, it held a hearing and gave judgment on 15 February 1996. The appellate proceedings before the Gdańsk Court of Appeal were completed on 13 June 1996, i.e. within a reasonable period of four further months. As a result, the Commission does not find any substantial periods of inactivity on the part of the courts concerned. Nor does it consider that the applicant's conduct caused any undue delays in the course of the proceedings.

The Commission also finds that important issues were at stake for the applicant in the litigation, especially in view of her age and the inevitable emotional loss suffered by her because of her son's death.

However, having regard to all the circumstances of the present case and, more particularly, to the complexity and variety of legal and factual issues involved in the determination of the applicant's claim, the Commission considers that the length of the proceedings complained of did not exceed a "reasonable time" within the meaning of Article 6 para. 1 of the Convention.

It follows that 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