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. 46247/99
by Andrzej KUCHARCZYK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 21 January 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 2 April 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, Andrzej Kucharczyk, is a Polish national, who was born in 1944 and lives in Kielce, Poland.

A. Proceedings concerning the applicant's claim for payment.

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

The applicant entered into a contract with two companies "Rap" PPH and "Ebejot". On 16 July 1992 the applicant filed an action with the Warsaw Regional Court (*Sąd Wojewódzki*) against those companies. He sought damages for a breach of contract.

From 4 June to 22 October 1993 the court held five hearings.

At the hearing held on 12 November 1993 the court delivered a partial judgment.

On 12 March 1994 an expert submitted his report to the court.

On 5 May 1994 the applicant asked the court to secure his claim. The court dismissed that application on 11 July 1994.

Between 15 December 1994 and 4 January 1996 the court held six hearings.

Meanwhile, the court asked the applicant to specify his claim. On 5 February 1996 the applicant submitted his pleadings to the court.

On 29 February 1996 the court held a subsequent hearing and ordered that evidence from two experts be obtained. On 12 June 1997 the first expert (an accountant) submitted his report to the court. At the hearing held on 17 April 1998 the court heard evidence from that expert.

On 4 May 1998 the applicant modified his claim.

On 26 August 1998, in reply to the applicant's complaints, the president of the Warsaw Regional Court informed him that the delay in the proceedings was caused by fact that the presiding judge had been on holiday.

On 24 September 1998 the second expert (an engineer) submitted his report to the court.

On 29 January 1999 the trial court held a hearing and closed the examination of the case. On 31 March 1999 it reopened the examination of the case. A further hearing was held on 18 May 1999.

On 28 May 1999 the Warsaw Regional Court delivered a judgment. Upon the applicant's appeal, the Warsaw Court of Appeal (*Sąd Apelacyjny*) gave judgment on 7 February 2000. The judgment is final.

B. Proceedings concerning the applicant's claim for compensation.

On 18 August 1994 the applicant was injured in a car accident. He was subsequently granted compensation from the State Insurance Company (*Powszechny Zakład Ubezpieczeń* - "PZU"). The applicant was not satisfied with its amount and on 23 December 1998 he lodged a compensation claim with the Kielce Regional Court against "PZU". He also made an application for an exemption from all court fees involved in the litigation.

On 7 January 1999 the court exempted him from most part of the fees, ordering that he should pay PLN 915 [approx. EURO 230]. The court held that the applicant's financial situation was quite good as had already received PLN 11,498 [approx. EURO 2875] compensation from "PZU".

On 9 February 1999 the Kraków Court of Appeal dismissed the applicant's appeal, considering that he had already been exempted from a substantial part of the fees. It further noted that that the applicant's wife conducted business activities and that the sum levied on him was not unusually high or out of proportion to their standard of living.

On 28 February 1999 the applicant sent a letter to the Minister of Justice complaining about both court's decisions.

It further appears that the applicant failed to pay the required court fees and as a consequence the court returned him the statement of claim.

C. Enforcement proceedings against "Interhotel Ltd."

On 18 July 1993 the applicant lodged a claim against a limited liability company - "Interhotel Ltd." with the Warsaw Regional Court seeking compensation.

On 5 June 1995 the court gave judgment and granted the applicant's claim. On 16 February 1996 the court issued a writ of execution.

On 24 March 1997 the applicant asked the Bailiff of the Warsaw District Court (*komornik sądowy*) to institute enforcement proceedings against Interhotel Ltd. On 17 April 1997 the bailiff ordered the applicant to make an advance payment for the procedural costs in the execution proceedings.

On 8 June 1998 the Bailiff of the Warsaw District Court discontinued the enforcement proceedings on the ground that the debtor company owned no property that could be seized in order to cover the debts in question.

On 28 August 1998 the applicant lodged a complaint against the actions taken by the bailiff (*skarga na czynności komornika)* with the Warsaw District Court. On 4 January 1999 the court dismissed his complaint.

COMPLAINTS

1. The applicant complains under Article 6 about the excessive length of the proceedings concerning his claim for payment.

2. He further complains under Article 6 about excessive court fees required for proceeding with his claim for compensation against "PZU".

3. Lastly, he complains under Article 6 § 1 alleging excessive length of the enforcement proceedings against Interhotel Ltd..

THE LAW

1. The applicant complains under 6 § 1 of the Convention that the length of the proceedings concerning his claim for payment exceeded a reasonable time.

The Court considers that it cannot, on the basis of the 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 complaint to the respondent Government.

2. The applicant also complains under Article 6 § 1 of the Convention that on account of the excessive court fees he was not able to pursue his compensation claim.

However, the Court notes that the national courts had exempted the applicant from the greater part of the fee for lodging his claim and the court fee eventually imposed on him was very moderate. Moreover, it does not appear that the courts were arbitrary in assessing the applicant's financial situation and there is no indication that the limitations applied constituted a disproportionate restriction on the applicant's access to a "tribunal" (see *Kreuz v. Poland* no. 28249/95, §§ 61- 64, ECHR 2001-VI).

It follows that this complaint is therefore inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it must be rejected pursuant to Article 35 § 4.

3. The applicant further complains under Article 6 §1 of the Convention that the length of the enforcement proceedings against Interhotel Ltd. exceeded a reasonable time".

The Court notes that the impugned proceedings lasted 1 year 9 months and 11 days. The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time" (see, e.g., the Humen v. Poland [GC], no. 26614/95, 15 October 1999, § 59, unreported), and having regard to all the material in its possession, that the overall length of the proceedings did not exceed a "reasonable time" within the meaning of Article 6 § 1.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the proceedings for payment

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President