CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45312/99
by Henryk MACHNIK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 4 May 2004 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 7 September 1998,

Having regard to the decision to apply the procedure under Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

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 regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Henryk Machnik, is a Polish national who was born in 1954 and lives in Gdynia, Poland.

A. The circumstances of the case

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

I. Facts prior to 1 May 1993

In 1991 the applicant lent USD 4,400 to M.Z. and R.Z. When the debtors failed to return the above sum, the applicant, on 31 May 1991, sued them before the Gdańsk Regional Court (*Sąd Wojewódzki*). On 1 October 1991 the Regional Court allowed his claim.

On 4 November 1991 the applicant asked the Bailiff of the Drawsko Pomorskie District Court (*Komornik Sądu Rejonowego*) to institute enforcement proceedings. On 26 November 1991 the District Court partially exempted the applicant from the enforcement fee.

On 6 May 1992 the applicant asked the bailiff for the second time to institute enforcement proceedings. However, the bailiff discontinued the proceedings, as the applicant had failed to pay the required fee.

II. Facts after 1 May 1993

On 16 September 1993 the District Court exempted the applicant from the total cost of the enforcement proceedings.

On 14 October 1993 the applicant again asked the bailiff to attach M.Z.'s immovable property. The bailiff requested the applicant to submit certain documents. The applicant complied with this request. On 17 November 1993 he asked the bailiff for the fourth time to institute enforcement proceedings. On 29 November 1993 the bailiff ordered the applicant to pay the court fee. As the applicant failed to pay, the bailiff dismissed his application on 11 January 1994.

On 30 November 1993 the applicant lodged a complaint with the Drawsko Pomorskie District Court against the actions taken by the bailiff (*skarga na czynności komornika*). He submitted that those actions had been incorrect and unlawful. On 5 January 1994, the court dismissed his complaint. It held that the exemption had only concerned his application of 4 November 1991 and that the applicant had to apply again for an exemption from the court fee.

On 1 February 1994 the District Court exempted the applicant from the required court fee.

On 8 February 1994 the applicant asked the bailiff for the fifth time to enforce the judgment of 1 October 1991. On 14 March 1994 the bailiff attached M.Z.'s immovable property with a view to selling it at a public auction.

On 12 July 1994 the bailiff made a detailed evaluation of M.Z.'s property. On 12 September 1994 the first public auction was held. It was unsuccessful, as the bailiff was not able to sell M.Z.'s property.

On 7 November 1994, at the second auction, the applicant bought the property in question. However, he failed to honour the sales transaction and on 12 December 1994 the District Court held that his right to acquire the property had expired.

On 23 September 1996 the bailiff discontinued the enforcement proceedings on the ground that the applicant had failed to comply with the necessary formal requirements. Subsequently, he also decided that the applicant should pay the required enforcement fee. On 29 November 1996 the Drawsko Pomorskie District Court dismissed the applicant's appeal against these decisions.

On 15 December 1997 the applicant asked the Bailiff of the Drawsko Pomorskie District Court for the sixth time to institute enforcement proceedings. The bailiff replied that the application was incomplete and refused to examine it.

On 22 February 1998 the applicant filed his seventh application for enforcement. On 3 April 1998 the Bailiff ordered the applicant to complete his application.

On 29 April 1998 the bailiff attached the debtors' immovable property. On 11 May 1998 the Bailiff informed the applicant that he would discontinue the proceedings unless the applicant submitted information concerning the debtor's assets. It appears that on 24 January 1999 the bailiff discontinued the enforcement proceedings.

B. Relevant domestic law and practice

Under Article 767 *et seq*. of the Code of Civil Procedure (*Kodeks Postępowania Cywilnego*), a debtor may lodge a complaint against any action taken by a bailiff in enforcement proceedings (*skarga na czynności komornika*). He may, in particular, seek a ruling as to whether the bailiff's actions were correct, i.e. taken in accordance with a writ of execution, and lawful, i.e. whether the means of enforcement applied in a given case were provided by law. Such a complaint is examined by a district court under the provisions of Volume II of the Code of Civil Procedure relating to enforcement proceedings.

COMPLAINT

The applicant complains under Articles 6, 7 and 13 about the excessive length of the enforcement proceedings.

THE LAW

The applicant complained that the length of the enforcement proceedings in his case exceeded a "reasonable time". The Court finds that this complaint should be examined under Article 6 §1 of the Convention, which provides, in so far as relevant:

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

The proceedings began in 4 November 1991 when the applicant lodged his application with the Bailiff of the Drawsko Pomorskie District Court, but the period to be taken into consideration started on 1 May 1993, the date on which the declaration whereby Poland recognised the right of individual petition for the purposes of former Article 25 of the Convention took effect. The proceedings were terminated on 24 January 1999. Accordingly, the length of the proceedings to be considered under Article 6 § 1 is nearly 5 years and 9 months.

The Government claimed that the case had been rather complex. The only assets of the applicant's debtors that could have been used for satisfaction of the applicant's claim had been their immovable property. The Government stressed that enforcement against immovable property by its nature raises complex issues of a factual and legal nature.

As regards the conduct of the national authorities, the Government maintained that they had shown due diligence in ensuring the proper course of the enforcement proceedings. In their view, there had been no substantial periods of inactivity in the proceedings.

The Government were of the opinion that the applicant had significantly contributed to the prolongation of the proceedings. In particular, he had failed to pay the required court fee on several occasions and, as a result, his applications for the institution of proceeding had been repeatedly rejected.

The applicant generally contested the Government's submissions. He further claimed that he did not contribute to the length of the proceedings. He argued that on three occasions he had been exempted from the court fee due in the enforcement proceedings. Despite that, the bailiff had failed to proceed with his case.

The applicant stressed that there had been much at stake for him in the proceedings, since they concerned a pecuniary claim, which had been allowed by the court. Lastly, he maintained that as a result of the duration of

the proceedings, he suffered a significant decrease in his standard of living, which caused him stress and anxiety.

The Court, assessing the reasonableness of the length of the time in question, will have regard to the particular circumstances of the case and the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among other authorities, *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999).

The Court considers that the case certainly involved a degree of procedural complexity on account of the fact that enforcement was directed against the debtor's immovable property.

The Court further observes that while the conduct of the authorities was not beyond reproach, the applicant was responsible for most of the delays. In this respect the Court notes that on three occasions the applicant failed to pay the required enforcement fee which resulted in a discontinuation of the enforcement proceedings. In consequence, the applicant had to reapply for the institution of enforcement proceedings. Moreover, most of the delays in the proceedings (i.e. from 12 December 1994 to 23 September 1996 and from 29 November 1996 to 22 February 1998) resulted from the applicant's failure to satisfy the formal requirements attached to the enforcement proceedings.

In these circumstances, the Court finds that the applicant's conduct contributed to the prolongation of the proceedings.

In conclusion, regard being had to all circumstances of the case and, more particularly, to the conduct of the applicant, the Court considers that the impugned proceedings do not disclose an unreasonable delay within the meaning of Article 6 § 1 of the Convention.

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

For these reasons, the Court by a majority

Discontinues the application of Article 29 § 3 of the Convention;

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President