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. 35192/97
by Kazimierz MRÓZ
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 lodged with the European Commission of Human Rights on 3 January 1997,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Kazimierz Mróz, is a Polish national, who was born in 1943 and lives in Ostrów Wielkopolski, Poland.

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

1. Proceedings concerning a payment order

On 21 August 1992 the applicant applied to the Poznań District Court (*Sąd Rejonowy*) for a payment order (*nakaz zapłaty*) against a certain Z.G. and his wife T.G. who had defaulted on a loan made by the applicant on 30 April 1992.

On 3 November 1992 the Poznań District Court allowed the application and issued a payment order. Subsequently, the applicant obtained from the District Court a writ of execution (*klauzulę wykonalności*) necessary to start the enforcement of the payment order.

On 6 September 1993 the applicant requested the Bailiff of the Poznań District Court (*Komornik Rewiru V Sądu Rejonowego w Poznaniu*) to enforce the payment order. The case was registered by the bailiff under no. V Km 249/93.

Between 18 April and 13 June 1994 the enforcement proceedings were stayed by the Poznań Regional Court (S*ąd Wojewódzki*) at the request of Z.G. submitted in the course of the proceedings no. I C 1072/94 (see below).

On 23 September 1994 the bailiff announced an auction sale of a property owned by Z.G.

On 18 October 1994 the Poznań Regional Court again allowed a request submitted by Z.G. and stayed the enforcement proceedings. The applicant's appeal against that decision was dismissed by the Poznań Court of Appeal (*Sąd Apelacyjny*).

On an unspecified date in 1998 the enforcement proceedings were resumed. On 24 August 1998 the bailiff requested the applicant to pay a PLN 8,730 fee and PLN 1,000 for the valuation of a property belonging to Z.G.

On 1 September 1999 the bailiff stayed the enforcement proceedings because the applicant had not complied with the request of 24 August 1998.

On 14 December 1999, upon the applicant's appeal, the Poznań District Court upheld the decision.

On 28 September 2001 the bailiff discontinued the enforcement proceedings.

2. Proceedings concerning an application for annulment of the writ of execution of the payment order

On 13 January 1994 Z.G. filed with the Poznań Regional Court an application for annulment of the writ of execution obtained by the applicant in respect of the payment order issued on 3 November 1992 (see above). The case was registered under no. I C 1072/94.

On 18 April and 18 October 1994 the court applied interim measures and stayed enforcement proceedings against Z.G. based on the disputed writ of execution.

Subsequently, the court held hearings on the following dates: 22 December 1994, 25 January and 11 May 1995.

On 17 July 1995 the court rejected the applicant's challenge to a judge.

On 5 December 1995 the court held a hearing.

During the hearing held on 23 January 1996 the plaintiff asked the court to formally notify his wife T.G. of his application for annulment of the writ of execution. Subsequently, she joined the proceedings as a second plaintiff.

The trial court held hearings on the following dates: 7 May, 22 August, 19 November 1996 and 11 March 1997.

On 18 March 1997 the Poznań Regional Court delivered a judgment in which it annulled the writ of execution. The applicant appealed.

On 17 September 1997 the Poznań Court of Appeal held a hearing. The next hearing was fixed for 2 October 1997 but it was adjourned because two witnesses failed to attend it.

The hearing scheduled for 27 November 1997 was adjourned as a judge was ill. Subsequently, the court held hearings on 15 January and 11 March 1998.

On 8 April 1998 the court quashed the judgment of the first-instance court and rejected the application for annulment of the writ of execution. On 13 July 1998 the plaintiffs lodged with the Supreme Court (*Sąd Najwyższy*) a cassation appeal against that judgment.

On 22 December 2000 the court held a hearing. On 5 January 2001 the Supreme Court quashed the contested judgment and remitted the case for re-examination.

On 8 May 2001 the Poznań Court of Appeal gave judgment.

It appears that the applicant did not lodge a cassation appeal against the judgment.

3. Proceedings concerning a claim for damages from a bank

On 4 December 1993 the applicant filed with the Ostrów Wielkopolski District Court an action in which he claimed from a certain bank damages for negligence in arranging a loan facility. As the Ostrów Wielkopolski District Court did not have jurisdiction to decide the case, it was transmitted to the Kalisz Regional Court where it was registered under no. I C 480/93.

On 11 February 1994 the Kalisz Regional Court requested the applicant to specify his claim. On 11 February 1994 the applicant complied with the court's order.

On 13 May 1994, upon the applicant's request, the court exempted him from the payment of the court fees.

On 13 September 1994 the applicant filed with the Ostrów Wielkopolski District Court a request to issue an interim measure annulling the writ of execution obtained by the bank against him. On 16 February 1995 the court dismissed the applicant's request. As the Ostrów Wielkopolski District Court did not have jurisdiction to decide the case, it was transmitted to the Kalisz Regional Court where it was registered under no. I C 428/94. Subsequently, the Kalisz Regional Court stayed the proceedings.

On 19January 1995 the applicant filed with the Kalisz Regional Court an application to annul the writ of execution obtained by the bank.

On 10 March 1995 the court issued an interim measure by annulling the writ of execution. The bank appealed.

On 29 May 1995 the Łódź Court of Appeal dismissed the appeal.

On 7 June 1995 the Kalisz Regional Court held a hearing in the case No I C 480/93. On the same day the court stayed the proceedings in this case.

On 17 September 1996 the Kalisz Regional Court resumed the proceedings in the case no. I C 480/93 and changed its number to I C 1014/96. On the same date the court also resumed the proceedings in the case no. I C 428/94 and changed its number to I C 1013/96.

Subsequently, both cases were joined and given the number I C 1013/96. On 16 December 1996 the court stayed the proceedings. The applicant appealed.

On 7 December 1997 the Łódź Court of Appeal quashed the decision of 16 December 1996.

On 9 December 1997 the court held a hearing. On 19 December 1997 it delivered a judgment in which it rejected the applicant's claims. The applicant appealed against that decision to the Łódź Court of Appeal.

On 16 March 1998 the court rejected his appeal as unsubstantiated.

In a letter of 22 June 1998 the Ombudsman rejected the applicant's request to lodge a cassation appeal against the appellate court's decision.

4. Proceedings concerning a claim for damages from R.P. and the Ostrów Wielkopolski Tax Office

On 9 November 1995 the applicant lodged with the Ostrów Wielkopolski District Court an action in which he claimed from a certain R.P. and the Ostrów Wielkopolski Tax Office damages in the total amount of PLN 10,000. The case was registered under no. I C 465/95.

On 9 February 1996 the court partially exempted the applicant from the payment of court fees. The applicant appealed. On 26 March 1996 the Kalisz Regional Court dismissed his request.

On 19 June 1996 the Ostrów Wielkopolski District Court held a hearing. On 26 August and 1 October 1996 respectively the trial court requested the Kalisz Regional Court to provide it with the case-file no. III K 87/95. The Regional Court replied that the case-file had been sent to the Łódź Court of Appeal.

On 10 April 1997 the trial court held a hearing. On 16 September 1997, upon the joint request of the parties, the court stayed the proceedings.

On 5 August 1998 the trial court requested the Kalisz Regional Court to provide it with the case-file no. III K 3/94 but on 1 September 1998 the Regional Court replied that the case-file no. III K 3/94 had been sent to the Ombudsman.

On 23 October and 3 December 1998 respectively the trial court again requested the Kalisz Regional Court to provide it with the case-file no. III K 3/94.

On 20 January 1999 the trial court held a hearing. The applicant withdrew his request to examine the case-file no. III K 12/98 (previously no. III K 3/94). On 22 January 1999 the trial court again requested case-file no. III K 12/98. On 26 January 1999 the Kalisz Regional Court delivered certain documents from the requested case-file.

On 3 September 1999 the applicant challenged the impartiality of judge M.J.

On 2 November 1999 the applicant requested the trial court to resume the proceedings.

On 1 March 2000 the Ostrów Wielkopolski District Court rejected the applicant's challenge to the judge as unsubstantiated. On the same day the court allowed a request submitted by judge M.J. to exempt him from sitting on the case.

On 3 April 2000 the Ostrów Wielkopolski District Court resumed the proceedings and changed the number of the case from I C 465/95 to I C 115/2000.

On 21 July and 29 September 2000 the trial court held hearings.

On 2 October 2000 the court requested the Kalisz Regional Court to provide it with case-file no. III K 12/98.

Subsequently, the court held hearings on 18 October 2000 and 17 January 2001.

On 2 March 2001 the applicant extended his claim by requesting damages from five other persons. On 11 April 2001 the trial court rejected his extended claim as he had not complied with the formal requirements for lodging such a claim.

It appears that the proceedings are still pending.

5. Proceedings concerning a claim for damages against the Konin Regional Police Chief

On 18 March 1995 the applicant filed with the Konin District Court an action in which he claimed damages for an allegedly erroneous expert opinion concerning his signature issued by a police officer in the course of criminal proceedings in case no. III K 3/94. The Konin District Court registered the applicant's action under no. I C 182/95.

On 28 February 1997 a hearing before the Konin District Court took place. The applicant requested the court that a police officer who issued an expert opinion be examined and that a document with his signature be submitted for examination to the Institute of Graphology in Warsaw. However, the court rejected the applicant's request and delivered a judgment in which it dismissed his action.

On 17 October 1997 the Konin Regional Court dismissed the applicant's appeal against the District Court's judgment.

In a letter of 11 February 1998 the Ombudsman declined the applicant's request to lodge a cassation appeal against the Regional Court's decision.

6. Criminal proceedings

The applicant also makes submissions concerning criminal proceedings before the Kalisz Regional Court in a case no. III K 3/94 (subsequently changed to III K 87/95 and III K 12/98) against an employee of a certain bank and two individuals who took loans from that bank and criminal proceedings before the Ostrów Wielkopolski District Court in a case no. II K 352/94 in which four employees of that bank were prosecuted.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the excessive length of the proceedings referred to in sections 1 to 5 above.

2. The applicant also complains about the unfairness of the proceedings referred in sections 1 to 5 above. However, he had not specified any concrete elements.

3. Finally, the applicant complains about the outcome of two sets of criminal proceedings and the assessment of evidence.

THE LAW

1. The applicant complains about the length of the proceedings concerning a payment order, which began on 21 August 1992 and ended on 28 September 2001. They therefore lasted 9 years, 1 month and 7 days, out of which the period of approximately 8 years and 4 months falls within the Court's jurisdiction *ratione temporis*.

According to the applicant, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

2. The second complaint relates to the length of the proceedings concerning an application for annulment of the writ of execution of the payment order, which began on 13 January 1994 and ended on 8 May 2001. They therefore lasted nearly 7 years and 4 months.

According to the applicant, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

3. The applicant further complains about the length of the proceedings concerning a claim for damages from a bank. They began on 4 December 1993 and ended on 16 March 1998. They therefore lasted 4 years and 3 months.

According to the applicant, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

4. The applicant also complains about the length of the proceedings concerning a claim for damages from R.P. and the Ostrów Wielkopolski Tax Office. The proceedings began on 9 November 1995 and are still pending. They have therefore already lasted approximately 7 years.

According to the applicant, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Government reject the allegation.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

5. Furthermore, the applicant complains about the length of the proceedings concerning a claim for damages again the Konin Regional Police Chief. The proceedings began on 18 March 1995 and ended on 17 October 1997. They therefore lasted 2 years and 7 months.

The applicant contended that the length of the proceedings in his case was in breach of Article 6 § 1.

The Court notes that its case-law is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case. In this instance those circumstances call for a global assessment (see, among other authorities, the *Obermeier v. Austria* judgment of 28 June 1990, Series A no. 179, pp. 23-24, § 72; the *Ferraro v. Italy* judgment of 19 February 1991, Series A no. 197, pp. 9-10, § 17, *Mączyńsk*i *v. Poland,* no. 43779/98, judgment of 15 January 2002, unreported).

The Court observes that the proceedings in question were clearly of some complexity. Moreover, having regard to the overall length of 2 years and 7 months, the Court considers that the impugned proceedings do not disclose unreasonable delay within the meaning of Article 6 § 1 of the Convention.

It follows that this complaint is inadmissible as being manifestly ill-founded within the meaning of Article 6 § 1 of the Convention and that it must be rejected, pursuant to Article 35 § 4.

6. The applicant also complains under Article 6 § 1 of the Convention about the unfairness of the proceedings referred to in sections 1 to 5 above.

However, the Court finds that the applicant's assertions about the violation of the above provision of the Convention are wholly unsubstantiated. It follows that these complaints are inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

7. Lastly, the applicant complains about the outcome of two sets of criminal proceedings and the assessment of evidence.

The Court observes that the impugned proceedings did not involve the determination of the applicant's civil rights or obligations, nor of any criminal charge against him. Therefore, this part of the application is incompatible *ratione materiae* with the provisions of the Convention

pursuant to Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints relating to the excessive length of the proceedings described in sections 1 to 4 above;

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President