CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 33753/96
by Adam OBODYŃSKI
against Poland

The European Court of Human Rights (Fourth Section) sitting on 2 February 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr J.A. Pastor Ridruejo,
Mr L. Caflisch,
Mr J. Makarczyk,
Mr V. Butkevych,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 January 1996 by Adam OBODYŃSKI against Poland and registered on 13 November 1996 under file no. 33753/96;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 4 November 1997 and the observations in reply submitted by the applicant on 13 January 1998;

Having deliberated;

Decides as follows:

Error! Cannot open file.

THE FACTS

The applicant is a Polish national, born in 1947 and resident in Warsaw.

The following is a summary of the proceedings:

Particular circumstances of the case

On 7 November 1984 the applicant lodged a civil action against his wife, her sister and her brother-in-law with the Warszawa- Praga District Court, claiming repossession of an apartment of which he and his wife were co-owners, and from which he had allegedly been unlawfully evicted in January 1984.

In their reply of 14 January 1985 the defendants requested the court to dismiss the applicant's action and contended that he had never lived in the apartment and had never intended to make it his principal residence.

A first hearing in the case was held in December 1985.

In 1985, seven hearings were fixed in the case.

In 1986, five hearings were fixed.

Some of those hearings were adjourned, either as the parties were (justifiably) absent, or because the court had not received postal confirmation that summonses had been properly served on them. Certain adjournments were necessary in order to summon certain witnesses proposed by the parties at the hearings. The court also adjourned certain hearings in order to request various authorities to submit files of cases pending before judicial or prosecution bodies which the parties deemed necessary for the accurate determination of their claims. Thus, the parties lodged motions to have at least four files of investigations pending before the prosecutor submitted to the court. Likewise, the parties requested that a file of administrative proceedings pending before the Housing Department of the Warszawa-Wola District Office be submitted to the court. They further requested that the case-file of the applicant's divorce proceedings, instituted in 1983, be submitted to the court.

In a letter of 14 May 1986 the Warszawa-Wola District Prosecutor informed the court that the case-file of one of the criminal cases could not be submitted to the court as the file had been transmitted to the Regional Prosecutor following the applicant's appeal against a particular decision.

On 17 November 1986 the court heard evidence from the parties and adjourned the hearing, as certain files had not yet been submitted to the court.

In 1987 and 1988 two hearings were fixed each year.

In his pleadings of 25 April 1988 the applicant stated that the defendant had sold the apartment concerned. He reiterated this statement at the hearing of 25 July 1988. The court adjourned the hearing and requested the housing co-operative to submit the documents concerning the apartment.

On 10 December 1988 the defendant requested the court to stay the proceedings as, according to the co-operative's letter of 13 August 1987, it had been the defendant who had an exclusive right to the apartment, governed by the legal provisions on housing co-operatives. She further informed the court that on 27 May 1988 the applicant had brought a civil action against her, requesting that the contract of sale of the apartment be declared null and void.

In 1989, one hearing was held.

In 1991, the applicant unsuccessfully requested that the presiding judge step down.

In 1992, two hearings were held before the District Court. In the same year, the applicant once again requested that the presiding judge step down, alleging lack of impartiality on his part. His request was refused as it did not comply with the applicable legal requirements.

In 1993, the court was to hold three hearings. The first hearing was adjourned on 26 April 1993, the court apparently not having received confirmation that the summonses had been served on the parties. Likewise the hearing on 17 September 1993 was adjourned.

On 18 October 1993 the District Court again dismissed the applicant's challenge of one of the judges and imposed a fine on him, considering that his request that the judge step down had been submitted in bad faith.

The hearing fixed for 15 December 1993 was adjourned, as the court had not received confirmation of proper service of certain summonses.

In a judgment of 11 February 1994 the Warszawa Praga District Court ordered repossession of the apartment of which the applicant was a co-owner and from which he had been evicted by his wife in 1984.

On 29 September 1994 the Warsaw Regional Court confirmed the judgment, which, accordingly, became final.

On 14 May 1994 the Warsaw District Court dismissed the applicant's claim for annulment of the sale contract of the apartment.

Subsequently, upon the defendants' request, on 28 March 1995 the Minister of Justice lodged an extraordinary appeal with the Supreme Court against the judgment of 29 September 1994.

On 7 July 1995 the Supreme Court set aside the impugned judgment and dismissed the applicant's claim, considering that the action for repossession had become devoid of purpose as in 1987 the defendant had sold the apartment concerned.

Relevant domestic law

Article 344 of the Civil Code provides that a possessor can apply to a court for repossession against a person who has deprived him of *de facto* possession, regardless of whether he or she is a *bona fide* possessor or whether the factual possession is in conformity with the law.

Articles 417 to 424 of the Code of Civil Procedure, as applicable at the material time, provided that an extraordinary appeal could be lodged against any final judicial decision with the Supreme Court by the Minister of Justice - the Prosecutor General, the President of the Supreme Court and the Ombudsman. An extraordinary appeal could be lodged on the ground that the decision was in flagrant breach of the law. A party to the proceedings could file a request to have such an appeal lodged with these authorities on his or her behalf. The Supreme Court, having examined the extraordinary appeal at a public hearing, could dismiss it if no grounds for allowing it had been established. If the extraordinary appeal was allowed, the Supreme Court could set the decision under appeal aside and rule on the merits of the case, or reject the claim and discontinue the proceedings.

COMPLAINT

The applicant complains of the length of the proceedings and invokes Article 6 § 1 of the Convention.

PROCEDURE

On 2 July 1997 the European Commission of Human Rights decided to give notice of the applicant's complaint concerning the length of proceedings to the respondent Government, and invited them to submit their observations on its admissibility and merits. It declared the remainder of the application inadmissible.

The Government submitted their observations on 4 November 1997, to which the applicant replied on 13 January 1998.

On 1 November 1998, by operation of Article 5 § 2 of Protocol No. 11 to the Convention, the case fell to be examined by the Court in accordance with the provisions of that Protocol.

THE LAW

The applicant's complaint relates to the length of the proceedings in question. Those proceedings began on 7 November 1984. On 29 September 1994 the Warsaw Regional Court gave a final judgment in the case. This judgment was subsequently set aside by the Supreme Court on 7 July 1995, following the extraordinary appeal lodged by the Minister of Justice upon the defendants' request, and the applicant's claim was dismissed.

Article 6 § 1 of the Convention in its relevant part reads:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time..."

a) The Court first recalls that Poland recognised the competence of the European Commission of Human Rights to examine individual applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation of the rights recognised in the Convention through any act, decision or event occurring after 30 April 1993". Pursuant to Article 6 of Protocol No. 11 to the Convention this limitation shall remain valid for the jurisdiction of the Court under that Protocol. Hence, the Court notes that the period to be taken into consideration began not on 7 November 1984, when the applicant lodged the action for repossession with the Warszawa-Praga District Court, but on 1 May 1993, when the declaration whereby Poland recognised the right of individual petition took effect. The period ended on 7 July 1995, the date on which the Supreme Court set aside the judgment of 29 September 1994.

However, the Court recalls that in order to determine the reasonableness of the length of proceedings in question, regard must be had to the state of the case on 1 May 1993. On the above understanding the proceedings lasted ten years and nine months, of which two years, two months and seven days fall within the scope of the Court's competence *ratione temporis* (see, among other authorities, the Proszak v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, § 31, and the Styranowski v. Poland judgment of 30 October 1998, *Reports* 1998, §§ 45-46).

b) The Government do not contest the applicability of Article 6 to the proceedings concerned. The Court considers that there are no grounds on which to hold otherwise.

c) The Government accept that the applicant exhausted relevant domestic remedies.

d) The Government further emphasise that the period under examination, regard being had to the Court's competence *ratione temporis*, began on 1 May 1993. A final judgment was subsequently given by the Warsaw Regional Court on 29 September 1994, i.e. one year and five months later. The proceedings instituted by the extraordinary appeal lodged by the Minister of Justice lasted a further ten months. The Government are of the opinion that these periods should be considered as being in compliance with the reasonable time requirement of Article 6 § 1 of the Convention.

The Government further argue that the applicant has contributed to a considerable extent to the prolonging of the proceedings, in particular by lodging various motions for evidence to be taken, which had necessitated that case-files of other administrative and criminal proceedings were submitted to the court. The court granted the parties' motions to admit evidence with a view to establishing the essential circumstances of the case. The applicant also challenged judges without justified legal grounds.

The Government finally emphasise that the hearings were adjourned only when there were justified grounds for it.

The applicant first submits that he never failed to comply with the summonses, whereas the defendants did so repeatedly and without justification. He states that he drew the court's

attention to the fact that its lack of reaction to their failure to comply with the summonses prolonged the proceedings. He further submits that he requested an exemption from court fees several times, but his requests remained unanswered. Therefore, his subsequent requests that the presiding judge step down were the only remedies he had at his disposal to draw the attention of the appellate court to the District Court's failure to consider his requests. The applicant contends that in view of his difficult financial situation, the court's failure to grant him an exemption from court fees amounted to a denial of access to a court.

The applicant submits that the Government, by stating that he contributed to the prolonging of the proceedings, in fact acknowledge that the proceedings lasted too long. He disagrees with the Government's argument that he contributed to their prolongation.

The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in the case-law of the Convention institutions, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities (see, among other authorities, the Podbielski v. Poland judgment of 30 October 1998, *Reports* 1998, § 34).

As regards the complexity of the case, the Court observes that the applicant claimed repossession of his apartment. In repossession proceedings a court's only task is to establish the factual circumstances as to whether the plaintiff possessed the property concerned and whether he or she was ultimately *de facto* deprived of it. Thus, the case did not involve any complex legal issues as a legal assessment of the parties' property rights was not necessary for the determination of the applicant's claim. Moreover, there are no indications that the factual circumstances of the case were such as to entail particular difficulties in establishing the relevant facts. The Government, in the Court's view, have not advanced any convincing arguments to the contrary.

As regards the conduct of the authorities, the Court first observes that before 1 May 1993 the District Court requested on many occasions to have numerous files of various other proceedings submitted to it, and that this proved very time-consuming. The parties lodged four motions to have four case-files of proceedings pending before the prosecuting authorities, the case-file of divorce proceedings and one case-file of administrative proceedings submitted to the court. The Court considers that the Government have not submitted persuasive arguments to show that all these case-files were of relevance to the proceedings concerned or necessary for establishing the facts of the case.

The Court further observes that before 1 May 1993 there were certain periods of inactivity on the part of the court. In particular, in 1989 only one hearing was held. No hearings were held in 1990 and in 1991 the only development in the case was the applicant's request that the presiding judge step down. However, after 30 April 1993 there is no indication of any unexplained delays on the part of the courts. The case was decided by the first-instance court on the first hearing held after that date. The court cannot be held responsible for the two previous adjournments, on 17 September 1993 and 15 December 1993.

The Court further observes that the applicant contributed to the prolonging of the proceedings by lodging a request that the judge step down. The Court further notes that this request was dismissed and a fine imposed on the applicant as the court considered that he had lodged it, acting in bad faith.

The Court also notes that, after the applicant had lodged an appeal with the Warsaw Court of Appeal, the court rendered its decision after one hearing.

The Court concludes that the proceedings were conducted in compliance with the reasonable time requirement of Article 6 § 1 of the Convention.

For these reasons, unanimously, the Court

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Matti Pellonpää
President