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. 75108/01
by Zdzisław PADO
against Poland

The European Court of Human Rights (Fourth Section), sitting on 14 January 2003 as a Chamber composed of

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

Having regard to the above application introduced on 15 August 2000,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Zdzisław Pado, is a Polish national, who was born in 1935 and lives in Rzeszów, Poland.

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

A. Facts prior to 1 May 1993

Since 1979 the applicant had been selling flowers from a wooden stall placed in the centre of the Rzeszów old town. In 1984 the applicant was granted the right of a perpetual use (*użytkowanie wieczyste)* of the plot of land on which the stall was located. The stall had historical value as it had been brought at the beginning of the XX century from Vienna.

In 1990 the "S" co-operative, which owned the adjacent land, decided to install the heating system on its property. The applicant claimed that the construction was being illegally carried out partly on his plot of land and had damaged his stall. Furthermore, it obstructed the access to the stall which prevented the applicant from continuing his commercial activity.

On 21 September 1990 the applicant instituted before the Rzeszów District Court civil proceedings against the "S" co-operative. He asked the court to prevent further infringements of his possession rights by the defendant ("*o ochronę posiadania"*). The applicant applied for an interim measure to immediately stop the construction.

On 4 October 1990 the Rzeszów District Court allowed his application for the interim measure and ordered the defendant to stop further works. The defendant appealed against this decision.

On 10 December 1990 the Rzeszów Regional Court dismissed the appeal. Nevertheless, the construction continued.

On 31 March 1992 the Rzeszów District Court gave a judgment. It dismissed the applicant's action. The applicant appealed against it.

On 9 November 1992 the Rzeszów Regional Court finally allowed the applicant's application for leave to appeal against the District Court's judgment out of time.

B. Facts after 30 April 1993

On 3 September 1993 the Rzeszów Regional Court quashed the impugned judgment and remitted the case to the first-instance court.

On 15 July 1994 the trial court held a hearing at which the applicant changed his claim. He requested 500,000,000 old zlotys in compensation for the damaged stall and damages in respect of the loss of income. The case was transferred to the Rzeszów Regional Court.

On an unspecified date the court ordered an expert opinion.

On 10 July 1997 the Rzeszów Regional Court gave a judgement. It partly allowed the applicant's action and awarded him PLN 28,216 in compensation. The court established that the defendant was responsible for the destruction of the stall, however, it did not award the applicant damages in respect of the loss of income. The applicant appealed against it.

The appellate court requested at least one expert opinion.

On 18 June 1998 the Rzeszów Court of Appeal partly allowed the appeal, in respect of damages for the loss of income, and changed the amount of the compensation to PLN 35,515. The applicant appealed against it.

On 5 July 2000 the Supreme Court dismissed the cassation appeal.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the proceedings.

2. He also alleged a breach of Articles 6 and 13 in that he did not have a "fair trial" and his appeal and cassation appeal were ineffective.

3. The applicant further complained under Article 1 of Protocol No. 1 to the Convention about the fact that the courts failed to protect his property as the other party to the proceedings had damaged his possessions.

THE LAW

1. The applicant complained under Article 6 § 1 that the length of the proceedings 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 responded Government.

2. The applicant also complained about a breach of Articles 6 and 13 in that he did not have a "fair trial" and his appeal and cassation appeal were ineffective.

However, the Court finds that the applicant's assertions about the violations of the above provisions of the Convention are wholly unsubstantiated.

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

3. He further complained that the domestic courts failed to protect his property as it was damaged by the other party to the proceedings.

The Court notes that the domestic proceedings in the present case concerned a civil law dispute between private individuals and, therefore, they do not themselves engage the responsibility of the State under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, application no. 13021/87, *Ruiz Mateos v. the United Kingdom*, Commission decision of 8 September 1988, Decisions and Reports 57, p. 268). In so far as the applicant complains that the State did not adequately protect his rights under that Article in the proceedings themselves, the Court finds the complaint to be unsubstantiated, there being no indication that the domestic court did not properly examine and determine his claims. It follows that this part of the application is inadmissible as being manifestly ill-founded, within the meaning of Article 35 § 3 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 that the length of the proceedings in his case exceeded a "reasonable time" within the meaning of Article 6 § 1 of the Convention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President