AS TO THE ADMISSIBILITY OF

Application No. 26766/95
by Slawomir PAPIEWSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 22 October 1997, the following members being present:

Mrs G.H. THUNE, President
MM J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 August 1994 by Slawomir Papiewski against Poland and registered on 20 March 1995 under file No. 26766/95;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 16 September 1996 and the observations in reply submitted by the applicant on 13 November 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1942, is a civil servant residing in Ryki.

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

A. Particular circumstances of the case

In January 1990 the applicant paid 13,000,000 zlotys to the "D." company as a loan for one year, with 250 per cent of interest provided for in the contract between the applicant and the company. Later in 1990 the owner of the company, L.G., left Poland, having embezzled all the funds deposited with his company.

On 29 October 1990 the Warsaw District Court (S*d Rejonowy)

adjudged thirteen million zlotys to the applicant in civil proceedings against the "D." company.

On 7 May 1993 the applicant requested the Warsaw Regional Court (S*d Wojewódzki), Economic Division, to include his unenforced claim of thirteen million zlotys in the list of the "D." company's debts in the bankruptcy proceedings.

On 10 May 1993 the applicant filed a civil claim against L.G., to be ruled on in the criminal proceedings against L.G., claiming the sum of two hundred fifty-one million zlotys, consisting in the main claim owed to him and legal interest accumulated since 1990.

At an unspecified later date the Court, pursuant to Article 55 of the Code of Criminal Procedure, refused to entertain civil actions against L.G. within the framework of criminal proceedings, including the applicant's action.

On 8 February 1994 the applicant complained to the Minister of Justice that it had proved impossible for him to have the 1990 judgment enforced as the defendant did not possess any property, and about the length of the criminal proceedings against L.G.

On 16 March 1994, in reply to the applicant's complaint, the Warsaw Court of Appeal (S*d Apelacyjny) informed him that the criminal proceedings against L.G. were pending before the Regional Court and that an expert opinion of an auditing specialist had been ordered. The proceedings had been adjourned and no date had been fixed for the next hearing.

On 30 September 1994 the applicant again complained to the Minister of Justice about the length of the criminal proceedings against L.G. which made it impossible to have his civil claim decided, and of the impossibility to have the 1990 judgment enforced.

On 25 October 1994 the Warsaw Court of Appeal informed the applicant that the criminal case was complex and that the date for the next hearing would be set soon, the expert opinion having been prepared.

On 29 March 1996 the Warsaw Regional Court convicted L.G. of aggravated fraud committed from 17 November 1989 to 11 May 1990 and sentenced him to twelve years imprisonment and a fine. The Court also ordered L.G. to pay 801,811 zlotys as compensation to the estate in bankruptcy.

On 7 October 1996 the manager of the estate in bankruptcy paid to the applicant a sum of 781 zlotys (7,810,000 before the reform of Polish currency of 1 January 1996) to satisfy his claim against the "D." company registered on the creditor's list.

B. Relevant domestic law

Articles 52 to 60 of the Polish Code of Criminal Procedure set up a legal framework for civil claims to be ruled on in criminal proceedings. A person affected by a criminal offence may bring a civil action, concerning civil claims arising from the offence, to be ruled on by a court in criminal proceedings. Pursuant to Article 55, the court may allow the civil action or refuse to entertain it. If an action has been allowed, the injured person can join the proceedings as a plaintiff. In such proceedings the plaintiff may only put forward such evidence as is necessary to establish the circumstances on which his or her claim is based. In certain circumstances the court, when pronouncing judgment in the criminal proceedings, may decline to rule on the civil claim. If the court does so, the plaintiff can request within 30 days that the case be transferred to a civil court. The date of filing the civil claim with the criminal court will then be regarded

as the date on which the claim was filed with the civil court.

Regarding the determination of the civil claim, the provisions of the Code of Civil Procedure apply to the proceedings before the criminal court.

COMPLAINTS

The applicant complains under Article 6 of the Convention about the length of the criminal proceedings against L.G., in which he filed a civil claim against the accused. He submits that the superior court and the Ministry of Justice did not take any steps to accelerate the proceedings.

He complains that the court's failure to rule in the case against L. G. amounts to a lack of respect for his family life within the meaning of Article 8 of the Convention as he has been deprived of significant financial means.

Under Article 1 of Protocol No. 1 to the Convention he complains that he cannot enforce the judgment of 29 October 1990 against the "D." company as it has no property. He further submits that the State should have taken appropriate legislative measures in order to make it impossible for citizens to fall prey to fraud in such circumstances as in his case.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 August 1994 and registered on 20 March 1995.

On 15 May 1996 the Commission decided to communicate the applicant's complaint concerning the length of the proceedings to the respondent Government.

The Government's written observations were submitted on 16 September 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 13 November 1996.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention about the length of the criminal proceedings against L.G., in which he filed a civil claim against the accused.

Article 6 (Art. 6) of the Convention in its relevant part reads:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by (a)... tribunal..."

The Government submit that the applicant cannot claim to be a victim of the alleged violation of Article 6 para. 1 (Art. 6-1) of the Convention as regards the length of the criminal proceedings against L.G. This is so, firstly, as the criminal charges against L.G. concerned allegations of fraud committed to the detriment of the "D." company, not to the detriment of any individuals. Consequently, the applicant could not suffer any disadvantage by the alleged length of these proceedings. This argument applies with all the more force as the applicant's civil claim against the company has been dealt with in civil proceedings in which the court found in his favour and ordered the company to pay him the sums deposited with the company.

The Government further emphasise that the applicant was not a party to the criminal proceedings against L.G. either as a plaintiff

or as a private prosecutor. This was so as the Warsaw Regional Court refused to entertain his civil action in these proceedings, pursuant to Article 55 of the Code of Criminal Procedure. The Court considered that the indictment against L.G. had charged him with fraud to the detriment of the "D." company and not to the detriment of any individuals. There was, therefore, no plausible causal link between any damage suffered by any individuals and the charges which were to be examined in the criminal proceedings. The Government contend that, consequently, the outcome of these proceedings could not affect in any manner the applicant civil rights. The same holds true for the length of these proceedings, regardless of their actual duration, which, in any event, was not excessive.

The Government note that the claims against an estate in bankruptcy are subject to a separate regulation and that the applicant's civil claim as confirmed by the Warsaw Regional Court's judgment of 29 October 1990 was submitted to the court in such proceedings concerning the "D." company. Such proceedings constitute a relevant remedy as regards the applicant's civil claim.

The Government conclude that this complaint should be declared inadmissible for being incompatible ratione personae with the Convention.

The applicant submits that the Government's argument as to the application's incompatibility ratione personae with the Convention is unacceptable as it sanctions impractical and defective legal regulations which, in particular, make individuals vulnerable to fraud in circumstances similar to the L.G. case. The law should primarily aim at compensation of damage suffered by an individual as a result of such fraud. Consequently, the Government should not base their argument on formal considerations. Under relevant Polish regulations he did not have effective access to a court which would rule on his civil claim as the Warsaw Regional Court refused to entertain his civil action in the criminal proceedings against L.G. He was thus deprived of a forum where he could personally present his arguments and submissions to a court. Consequently, he was deprived of a possibility of claiming satisfaction and the right to peaceful enjoyment of property was infringed.

The applicant further submits that even though he was not a party to the proceedings against L.G., he had a practical legal interest in their ending promptly. He maintains that the Government's reasoning condones the incompatibility of Polish law with international conventions, and with the European Convention of Human Rights in particular. As the Polish constitutional order does not expressly provide for direct applicability of international instruments by the courts, regardless of the Constitutional Court's judgment of 7 January 1992, the legal system does not ensure respect for human rights.

The applicant complains that his financial claim was not satisfied, either in the criminal proceedings against L.G. or in any other proceedings which were conducted before the Polish courts.

The applicant finally submits that the Government's submissions are theoretical and that they fail to take into account the particularities of his individual situation.

The Commission first recalls that even if criminal proceedings concern in the first place the determination of a criminal charge against a third person, their result could in this case be directly decisive for establishing the applicant's right to the compensation claimed (see Eur. Court HR, Moreira de Azevedo v. Portugal judgment of 23 October 1990, Series A no. 189, p. 16 et seq., para. 66).

However, the Commission observes that it has been established in the present case that the Warsaw Regional Court, pursuant to Article

55 of the Code of Criminal Procedure, refused to entertain the applicant's civil claim. Consequently, the applicant could not join the proceedings as a plaintiff and was not a party thereto. Accordingly, the proceedings at issue did not concern his civil rights and obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Therefore this provision is not applicable.

It follows that this part of the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains that the court's failure to rule in the criminal case against L.G. amounts to a lack of respect for his family life within the meaning of Article 8 (Art. 8) of the Convention as he has thereby been deprived of significant financial means.

The Commission considers that in the light of its above findings as to the applicant's lack of legal interest in the conduct and outcome of the criminal proceedings against L.G., no interference with the applicant's right to respect for his family life can be found in this respect. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Under Article 1 of Protocol No. 1 (P1-1) to the Convention he complains that he cannot enforce the judgment of 29 October 1990 against the "D." company as it has no property.

Article 1 of Protocol No. 1 (P1-1) reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission observes that on 7 October 1996 the manager of the estate in bankruptcy paid to the applicant a sum of 781 zlotys to satisfy his claim against "D." company lodged with the Warsaw Regional Court on 7 May 1993 in accordance with the legal rules concerning bankruptcy proceedings. It is true that this sum was smaller than that which the applicant had paid in 1990 to the "D." company. However, even assuming that the acts of the manager of bankruptcy acting as a representative of public interest and appointed by a court could entail the responsibility of the State, the fact that it was impossible to satisfy all creditors in the bankruptcy proceedings due to the lack of assets on the part of the bankrupt company does not infringe the applicant's right to peaceful enjoyment of property within the meaning of Article 1 of Protocol No. 1 (P1-1) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber