AS TO THE ADMISSIBILITY OF

Application No. 38857/97
by Zdzisław PIECHOWICZ
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 21 October 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
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 9 June 1997 by Zdzisław Piechowicz against Poland and registered on 3 December 1997 under file No. 38857/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1911, resides in Wieliczka.

The facts of the case, as submitted by the applicant, can be summarised as follows:

a) Proceedings concerning the applicant's civil claim for payment

On 20 June 1995 the Kraków-Krowodrza District Court (Sąd Rejonowy) dismissed the applicant's civil claim for payment against Z. C.

On 8 December 1995 the Kraków Regional Court (Sąd Wojewódzki) dismissed the applicant's appeal against this judgment, finding that the lower court had correctly assessed the evidence, had not established the facts of the case in an arbitrary manner and had not committed any errors of procedural or substantive law.

On 19 February 1996 the applicant requested the Minister of Justice to lodge a cassation appeal against this judgment on his behalf.

On 20 May 1997 the Minister of Justice refused to do so, considering that the judgment was in conformity with the law.

b) Proceedings concerning the applicant's claim against the State Treasury

On 16 October 1995 the applicant lodged a civil claim against the State Treasury with the Kalisz District Court. He claimed damages of 2,120,054 old Polish zlotys (PZL) in respect of alleged mistakes made by the courts in calculating certain sums of child maintenance due from him, the relevant proceedings having taken place in 1993-94 before the Kluczbork District Court, and, on appeal, the Opole Regional Court.

On 18 April 1997 the Kalisz District Court dismissed the applicant's action. The court found that in 1993 the applicant had lodged an action with the Kluczbork District Court, seeking, inter alia, a declaration that his maintenance obligations towards his daughter had ceased to exist due to the fact that she had come of age. By a judgment of 19 November 1993 the Kluczbork District Court had ruled that the applicant had not been obliged to pay maintenance to his daughter from 1 January 1993 to 31 July 1993, and had dismissed the remainder of the claim. Following the applicant's appeal, on 19 January 1994 the Opole Regional Court had upheld the judgment of the first-instance court. The applicant had requested the Minister of Justice to lodge an extraordinary appeal on his behalf against this judgment. The Minister had lodged the extraordinary appeal with the Supreme Court (Sąd Najwyższy). By a judgment of 30 June 1994 the Supreme Court had quashed the judgments of 19 November 1993 and of 19 January 1994 insofar as they had concerned the applicant's claim that his maintenance obligations had ceased to exist, and

ordered that the case be reconsidered. By a judgment of 29 March 1995 the Kluczbork District Court had ruled that the applicant's maintenance obligations had ceased to exist on 1 January 1993.

The Kalisz District Court observed that, since the judgment of 19 November 1993 had been enforced, the applicant had sustained damage in the sum of PLZ 2,120,054. The court further found that no disciplinary or criminal proceedings had been conducted against any of the judges who had given the judgments quashed by the Supreme Court and no decision in this respect had been given. Accordingly, as the requirements for the State Treasury liability laid down by Article 418 of the Civil Code, had not been complied with, no civil liability on the part of the State arose. Consequently, the court dismissed the applicant's compensation claim.

On 2 June 1997 the applicant lodged an appeal against this judgment, submitting that his claim against the State should be allowed in full.

On 4 September 1997 the Kalisz Regional Court dismissed the applicant's appeal. The court observed that the lower court had found that neither the disciplinary nor the criminal liability of any of the judges sitting in the maintenance proceedings had been established by any decision. Under Article 418 of the Civil Code, for the civil liability of the State to arise following an unlawful decision issued by one of its agencies, the unlawfulness of such decision had to be confirmed by either a criminal or a disciplinary decision rendered in proceedings against the persons who had acted as agents of the State. Therefore the lower court had correctly considered that the conditions of the liability of the State, laid down by Article 418 of the Civil Code, had not been fulfilled in the present case. Accordingly, the Regional Court upheld the contested judgment, finding that no errors of fact or law had been committed in the proceedings before the first-instance court.

COMPLAINTS

As regards the civil proceedings for payment, the applicant complains in substance under Article 6 para. 1 of the Convention that the courts committed serious errors of fact and law and, as a result, he sustained serious damage.

As regards the civil proceedings against the State Treasury, the applicant complains that the courts acted in a conspiracy to let the judges who had given unlawful decisions in the proceedings concerning his maintenance obligations evade liability, and that, as a result, his compensation claim could not be examined on the merits. He submits that the judges were not found liable by any disciplinary authority or criminal court, despite the fact that as a result of their decisions he suffered damage.

THE LAW

1. As regards the civil proceedings, the applicant complains in substance under Article 6 para. 1 of the Convention that the courts committed serious errors of fact and law and that he sustained serious damage.

The Commission observes that the applicant requested the Minister of Justice to lodge a cassation appeal on his behalf against the judgment of the Kraków Regional Court of 8 December 1995. In this respect it notes that the request to the Minister of Justice to have a cassation appeal lodged on the applicant's behalf cannot be regarded as an effective remedy for the purposes of Article 26 of the Convention, since the decision of the Minister of Justice in this respect is of a discretionary character (No. 14545/89, Dec. 9.10.90, D.R. 66, p. 238). The Commission further observes that the individual has no right to have such an appeal lodged by the Minister. Consequently, the final decision in the present case was that given by the Kraków Regional Court on 8 December 1995, which is more than six months before the date on which the application was lodged with the Commission.

It follows that this part of the application must be rejected on the basis of Articles 26 and 27 para. 3 of the Convention.

2. As regards the proceedings against the State Treasury, the applicant complains that the courts acted in a conspiracy to let the judges evade liability for their wrongful decisions, and that, as a result, his compensation claim could not be examined on the merits.

The Commission examined the applicant's complaint under Article 6 of the Convention which, insofar as relevant, reads:

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Commission recalls that the right of access to the courts secured by Article 6 para. 1 of the Convention may be subject to limitations in the form of regulation by the State. In this respect the State enjoys a certain margin of appreciation. However, the Convention organs must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (Eur. Court HR, Fayed v. the United Kingdom judgment of 21 September 1994, Series A no. 294-B, pp. 49-50, para. 65).

The Commission observes that in the present case the applicant's civil claim was dismissed by the Kalisz District Court on the ground that the disciplinary or criminal liability of agents of the State for the decisions which had caused damage to the applicant had not been established as required by Section 418 of the Civil Code.

The Commission further observes that the applicant has not shown that, prior to lodging the civil claim with the Kalisz District Court, he had taken any steps in order to have the judges' liability so established, by lodging a request to have either disciplinary

proceedings or a criminal investigation instituted against the judges who had sat in the proceedings in the Kluczbork District Court and the Opole Regional Court in the case concerning the applicant's maintenance obligations.

Thus, the Commission does not find it established that the public authorities deprived the applicant of access to a court competent to entertain his civil claim against the State Treasury, by refusing in an arbitrary or unjustified manner to institute either disciplinary or criminal proceedings against the judges who took the decisions in the maintenance proceedings. Therefore the Commission, leaving open the question of whether, in abstracto, the legal conditions for civil liability of the State Treasury laid down by Article 418 of the Civil Code restrict or reduce access to a court in such a way or to such an extent that the very essence of the individual's right is impaired, considers that in the present case the applicant failed to ensure compliance with the relevant requirements that the domestic law attaches to the civil liability of the State Treasury.

In the Commission's opinion, it cannot therefore be said that the fact that the court, having examined whether the applicant's claim complies with the applicable requirements, found against him, impaired the very essence of the applicant's right of access to a court within the meaning of Article 6 para. 1 of the Convention.

It follows that this part of application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	J.-C. GEUS
Secretary	President
to the Second Chamber	of the Second Chamber