AS TO THE ADMISSIBILITY OF

Application No. 27916/95
by Janusz PODBIELSKI
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 15 April 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 31 March 1995 by Janusz PODBIELSKI against Poland and registered on 20 July 1995 under file No. 27916/95;

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 22 February 1996 and the observations in reply submitted by the applicant on 9 April 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1949, is a businessman residing in Swidnica.

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

In May 1992 the applicant filed an action with the Wroclaw Regional Court (S*d Wojewódzki) against the municipality of Swidnica, claiming payment due for construction works which the applicant's company had carried out for the municipality on the basis of a contract of 18 February 1991.

On 27 May 1992 the Wroclaw Regional Court partly exempted the applicant from the advance court fees.

On 7 September 1992 the Wroclaw Regional Court pronounced a

partial judgment in which it declared null and void certain clauses of the contract between the parties as being in breach of civil law.

Upon the applicant's appeal, on 6 November 1992 the Wroclaw Court of Appeal (S*d Apelacyjny) quashed this judgment and ordered the case to be reconsidered.

On 1 February 1993 the Wroclaw Regional Court allowed the applicant's action as regards the claim for payment and declared null and void another clause of the contract, pertaining to the penalties for delay in compliance with the contract.

On 27 April 1993 the Wroclaw Court of Appeal dismissed both the applicant's and the defendant's appeals.

On 25 June 1993 the Ombudsman (Rzecznik Praw Obywatelskich) filed an extraordinary appeal on the applicant's behalf, claiming that the judgment was in flagrant breach of the substantive civil law and unduly restricted the parties' freedom of contract.

On 7 October 1993 the Supreme Court (S*d Najwyzszy) dismissed the extraordinary appeal considering that, contrary to the legal opinion which had been established in the past against the background of planned economy, the Civil Code in fact allowed the parties to include clauses providing for pecuniary penalties for delay in compliance with pecuniary contract obligations. However, the Court found that in the present case the lower Court was justified in declaring the relevant clauses null and void as these penalties were excessive and disproportionate to the value of the contract.

The applicant filed a request for the reopening of the proceedings, claiming that after the Supreme Court's judgment new circumstances had come to light which he could not have adduced as evidence in the previous proceedings. His request was granted and on 28 January 1994 the Supreme Court partly altered its earlier judgment of 7 October 1993, ordering that the remaining claims be reconsidered by the first instance court. The Court stated, inter alia, that the previous judgments amounted to a violation of substantive law ("zostaly wydane z obraz* prawa materialnego").

On 6 June 1994 the Wroclaw Regional Court partly allowed and partly dismissed the applicant's request to be exempted from the advance court fees as he had not sufficiently shown that he could not afford to pay them.

On 20 July 1994 the Wroclaw Court of Appeal quashed the decision of the Regional Court and terminated the proceedings concerning exemption from the court fees. The Court considered that the partial exemption from the court fees granted in 1992 still remained in force.

On 20 February 1995 the Walbrzych Regional Court held that the defendant was obliged to pay pecuniary penalties to the applicant, but reduced their sum to 1.844.300.000 zlotys as it considered that the penalties as fixed in the contract were excessive and disproportionate to the value of the contract. The Court dismissed the applicant's claim for compensation for damage caused to his company by the delay in payment as it considered that the applicant had not shown that his company had suffered more extensive damages than those which would be covered by the pecuniary penalties to be paid by the defendant.

The applicant appealed against this judgment, claiming that the Court had failed to establish certain circumstances significant for the outcome of the case. In particular the Court had failed to establish whether the applicant's company had suffered extensive damage as a result of the defendant's failure to effect the payment on time.

On 12 April 1995 the Walbrzych Regional Court partly exempted the

applicant from the court fee due for his appeal and ordered him to pay a partial court fee of 40.000 zlotys.

On 1 May 1995 the applicant filed an appeal against this decision. On 25 May 1995 the Wroclaw Court of Appeal allowed the appeal, considering that the financial situation of the applicant's company justified such exemption.

On 31 August 1995 the Wroclaw Court of Appeal quashed the judgment of 20 February 1995 insofar as it had dismissed the applicant's claim for payment of 782.175,59 new zlotys and ordered that that part of the case be reconsidered. The Court stated, inter alia, that the Regional Court had wrongly formulated the questions to the accounting expert in that certain questions were too restrictive and that the Court had requested him to establish the causal link between the defendant's delay in payment and the damage sustained by the applicant company which was a matter for the Court to establish. The Court dismissed the remainder of the appeal.

On 23 October 1996 the Walbrzych Regional Court dismissed the applicant's claim as to 782.175,59 new zlotys. On 29 November 1996 the applicant's company filed an appeal against the judgment.

On 3 January 1997 the Walbrzych Regional Court exempted the applicant's company from the court fee for the appeal as regards the sum exceeding 20.000 zlotys and dismissed the remainder of the applicant's request for the exemption. The applicant lodged an appeal. On 13 February 1997 the Wroclaw Court of Appeal dismissed the appeal, considering that the applicant's company had in fact at its disposal sufficient financial means to pay the court fee.

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention about the length of the proceedings.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 31 March 1995 and registered on 20 July 1995.

On 18 October 1995 the Commission decided to communicate the application to the respondent Government pursuant to Rule 48 para. 2 (b) of its Rules of Procedure.

The Government's written observations were submitted on 22 February 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 9 April 1996.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the length of the civil proceedings.

Article 6 para. 1 (Art. 6-1), insofar as relevant, states:

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

a) The Government submit that the application, insofar as it relates to events prior to the date of recognition of the right of individual petition by Poland, is outside the competence ratione temporis of the Commission.

The Commission recalls that Poland has recognised the competence of the Commission to receive 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". It follows that the Commission is not competent to examine complaints relating to violations of the Convention by acts, decisions or events that have occurred prior to this date.

The Commission further recalls that in cases where it can, by reason of its competence ratione temporis, only examine part of the proceedings, it can take into account, in order to assess the length, the stage reached in the proceedings at the beginning of the period under consideration (see No. 7984/77, Dec. 11.7.79, D.R. 16, p. 92). In the present case the proceedings started in May 1992 and are currently pending before the Court of Appeal. They have thus lasted four years and eleven months, out of which three years and eleven months after the recognition of the Commission's competence to examine applications against Poland. It follows that the Commission is competent ratione temporis to examine the applicant's complaint insofar as it relates to the proceedings after 30 April 1993, taking into consideration the stage of the proceedings reached at this date.

b) The Government further submit that the applicant is not a victim of the alleged violation within the meaning of Article 25 (Art. 25) of the Convention as it was the applicant's company "Polpure" which had signed the contract from which originated the subsequent proceedings and filed the court action. It was also the company which suffered the alleged financial difficulties arising out of the execution of the contract.

The applicant submits that he is the sole shareholder of the company and that therefore he is the victim of the violation of the Convention. The financial difficulties of the company due to the excessive length of the proceedings also caused a significant deterioration of his personal financial situation.

The Commission observes that the applicant's company is a limited liability partnership with legal personality, owned entirely by the applicant. The Commission considers that the applicant, given his shareholding in the company and his position as managing director, can claim to be a victim of an alleged breach of the Convention, affecting the rights of his company (No. 10259/83, Dec. 10.12.84, D.R. 40, p. 170).

c) Under Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted.

The Government contend that the applicant cannot be regarded as having exhausted available domestic remedies with regard to the complaint about the length of the proceedings. The Government submit that there is no single general remedy available under Polish law to complain about the length of proceedings. However, they submit that the usual judicial remedies, i.e. appeals against procedural and substantive court decisions, could be employed in this respect. The applicant has not shown that he relied on the length of proceedings in the appeals which he had filed against various judgments on the merits of the case. Neither has he complained about the length of the proceedings in his appeals against the procedural decisions.

The applicant submits that he exhausted all possible domestic remedies in the civil proceedings as he filed appeals against the judgments of the merits. Moreover, he complained to the Minister of Justice and to the Ombudsman about the length of the proceedings. However, none of those remedies proved to be effective.

The Commission recalls in this respect its finding that there is no effective remedy under Polish law to complain about the length of civil proceedings (No. 24559/94, Dec. 6.9.95, D.R. 82-B, p. 76). Therefore the Commission finds that it has not been established that the applicant had any effective remedy at his disposal which would have enabled him to submit his complaints under Article 6 para. 1 (Art. 6-1) of the Convention to the domestic authorities. Accordingly, the application cannot be declared inadmissible for non-exhaustion of domestic remedies.

2. As regards the substance of the complaint, the Government first contend that the case was highly complex as to its legal contents. In particular, the contract concluded by the applicant's company and the defendant was unclear as regards the rights and obligations of the parties in respect of pecuniary penalties for delay in compliance with pecuniary contract obligations. The complexity of the case is shown by the fact that the case has been examined four times by the first instance court and eight judgments were pronounced in the case, including two of the Supreme Court and three of the Wroclaw Court of Appeal. Moreover, several expert opinions had to be taken.

The Government further contend that the applicant's conduct contributed considerably to the prolongation of the proceedings. They submit that after the Supreme Court's judgment of 7 October 1993 the applicant submitted a new claim for compensation of damages caused by the delay in the defendant's compliance with the terms of the contract. In the course of the proceedings the applicant several times requested adjournments of hearings, usually for one month, for the purposes of negotiations regarding a possible friendly settlement, which finally was not concluded. The applicant's lawyer practised in Lódz, approximately three hundred kilometres from Swidnica. Due to his being ill several times during the proceedings, the service of certain decisions was delayed. The applicant on numerous occasions appealed against the decisions concerning the court costs. He further called into question the soundness of the expert opinions and his objections had to be communicated to the experts for reply.

The Government further state that the prolongation of the proceedings cannot be attributed to the conduct of the courts which were particularly diligent in the handling of the case.

The Government conclude that the case was dealt with within a reasonable time.

The applicant contests this. He submits that it is the striking feature of the case that the judgments on the merits of the case were flawed by flagrant breaches of law, as shown by the judgments of the appellate courts. It was mostly those legal shortcomings which contributed to the length of the proceedings as these decisions were subsequently quashed and the case had to be reconsidered. The case was not particularly complex as it involved only a determination of the obligations of the parties to an ordinary civil contract. The clauses of the contract were in fact clear in this respect and cannot be regarded as ambiguous.

The applicant further states that, contrary to the Government's submissions, only one expert opinion was prepared in the case. The applicant emphasises that the Government's observations contain general and vague statements as to the conduct of the case and do not provide concrete details in this regard. In particular, he submits that there was only one opinion of an accounting specialist prepared in the course of the proceedings, not several as submitted by the Government, and that it contained 44 obvious arithmetical errors. Likewise, they had not substantiated their statement as to the delays in the service of certain court decisions which should be attributed to the applicant's representative. He further states that he did not request the adjournment of certain hearings.

The Commission considers that the applicant's above complaint raises serious issues of fact and law under the Convention the determination of which should depend on an examination of the merits. It follows that this part of the application cannot be dismissed as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber