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

Applications nos. 47375/99 and 17500/02
by Andrzej Sylwester POGORZELEC (2)
against Poland

The European Court of Human Rights (Fourth Section), sitting on 16 December 2003 as a Chamber composed of:

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

Having regard to the above application lodged with the European Commission of Human Rights on 12 October 1998,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Andrzej Sylwester Pogorzelec, is a Polish national, who was born in 1947 and lives in Zabrze, Poland.

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

I. COMPLAINTS INTRODUCED ON 12 OCTOBER AND 22 DECEMBER 1998

1. The proceedings against the "Zabrze" Steelworks

On 8 July 1997 the applicant lodged with the Katowice Regional Court (*Sąd Wojewódzki*) a civil action for compensation against the "Zabrze" Steelworks (*Huta Zabrze SA*).

In his action, the applicant complained that between July 1996 and April 1997 he had been receiving "malicious phone calls from the Steelworks". He stated: "they led to the lengthy hospitalisation of the claimant and caused stress for the claimant and his family". He sought PLN 150,000 in compensation.

The applicant simultaneously applied for exemption from the court-fees.

On 23 March 1998 the Katowice Regional Court exempted him from the court-fees above PLN 500. The court established that the applicant received disability benefit and that his wife ran a small business, therefore, his application for full exemption from the court-fees was manifestly ill-founded. In addition, the court took into consideration that the applicant was a vexatious litigant who introduced dozens of civil cases and that in all of them he requested exemption from the court-fees.

The applicant appealed against this decision.

On 10 June 1998 the Katowice Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal. The appellate court agreed with the Regional Court's assessment that the court-fees of PLN 500 would not be to the detriment for the applicant and his family.

Since the applicant failed to pay the fees, on 31 August 1998 the Katowice Regional Court returned the action to him.

2. The proceedings against Solidarność Trade Union

Between October 1994 and April 1995 the applicant had been writing to various institutions alleging that the Solidarność Trade Union (*NSZZ Solidarność*), *inter alia*, had breached its statute.

However, the prosecution service and the Minister of Justice failed to take action suggested by the applicant.

On 5 April 1995 the applicant lodged with the Warsaw Regional Court a civil action against the Solidarność Trade Union alleging infringement of his personal rights (*o ochronę dóbr osobistych*).

On 28 April 1995 the Warsaw Regional Court decided that the Gdańsk Regional Court was competent to examine the case.

However, on an unspecified date in 1996 the case was transferred to the Katowice Regional Court.

On an unspecified date in 1997 the trial court appointed for the applicant a lawyer under the legal aid scheme.

At a hearing held on 9 December 1997 the trial court asked the applicant to specify the object of his action.

In December 1999 the applicant was again requested by the court to specify what was the object of his action. In particular, he was asked to submit to the court the text of the apology which he wanted the defendant to publish in a newspaper. The Regional Court further decided that unless the applicant complied with this order the proceedings would be stayed.

The applicant submits that he complied with the court's order.

On 10 January 2000 the trial court stayed the proceedings.

On 20 April 2000 the applicant applied to resume the proceedings. On an unspecified date the proceedings were resumed.

On 20 March 2001 the Katowice Regional Court gave judgment in which it dismissed his action. The applicant appealed against it.

On 20 December 2001 the Katowice Court of Appeal dismissed his appeal.

The applicant did not lodge a cassation appeal with the Supreme Court and the judgment of the appellate court became final.

3. The proceedings against the Zabrze Hospital

On 29 August 1995 the applicant lodged with the Katowice Regional Court a civil action for compensation against the State Treasury - Zabrze Hospital. The applicant claimed that two doctors from that hospital had passed on to his former employer confidential information from his medical file which had led to his dismissal from work. He further submitted that the defendants were responsible for medical malpractice because on 3 September 1993 when he had suffered a heart attack they had not diagnosed his condition properly.

The applicant asked the court to appoint him a lawyer under the legal-aid scheme.

On 15 January 1998 the Katowice Regional Court dismissed his application for legal-aid.

Following the applicant's appeal, on 22 April 1998 the Katowice Court of Appeal, appointed for him a legal-aid lawyer.

On 31 March 1999 the Katowice Regional Court (*Sąd Okręgowy*) gave judgment in which it dismissed the applicant's action.

The applicant appealed against this judgment.

On 17 November 2000 the Katowice Court of Appeal quashed the impugned judgment and remitted the case to the first-instance court.

At the hearing held on 21 June 2001 the Katowice Regional Court stayed the proceedings.

On 25 June 2002 the trial court resumed the proceedings.

At the hearing held on 16 July 2002 the court ordered preparation of an expert opinion.

At the hearing held on 5 December 2002 the Katowice Regional Court gave judgment. It again dismissed the applicant's action.

The applicant appealed against this decision.

On 25 April 2003 the Katowice Court of Appeal held a hearing.

The proceedings are pending before the appellate court.

4. The event of 17 November 1998

On 17 November 1998 the Zabrze District Court held a hearing in criminal proceedings against the applicant.

During that hearing, after the prosecutor submitted the bill of indictment, the applicant lost consciousness. The presiding judge called the emergency service and the applicant was taken to a hospital.

Subsequently, the applicant wrote letters to the Minister of Justice complaining that "at the hearing the presiding judge attempted to murder me". He also submitted that "the presiding judge tortured me and took away my belongings".

In the letter of 22 March 1999 the Ministry of Justice found the applicant's allegations manifestly ill-founded.

II. COMPLAINTS INTRODUCED ON 19 NOVEMBER 1999

5. The proceedings against the Zabrze District Court (the first set)

On 15 April 1995 the applicant lodged with the Katowice Regional Court a civil action for compensation against the State Treasury - Zabrze District Court.

He claimed damages in connection with the heart attack he had suffered at the hearing held on 3 September 1993 before the Zabrze District Court for which, according to the applicant, the presiding judge should be held liable. The hearing in question was held in the proceedings instituted by the applicant against his former employer.

On 18 November 1996 the Katowice Regional Court returned the action to the applicant because it did not comply with procedural requirements and the applicant failed to remedy the shortcomings.

In June 1997 the applicant asked the court for leave to lodge an appeal against this decision out of time. He argued that his counsel did not inform him that his action had been returned by the court.

On 12 November 1997 the Katowice Regional Court dismissed his application.

6. The proceedings against the Zabrze District Court (the second set)

On 16 June 1997 the applicant lodged an identical action as the one described in section 5 above claiming PLN 30,000 in compensation for the heart attack he had suffered at the hearing held on 3 September 1993. In addition to that, he sought PLN 5,000 in compensation because the presiding judge ordered his presence in person at the hearings held on 17 October 1996 and 20 January 1997 before the Zabrze District Court in the criminal proceedings against the applicant.

On an unspecified date the State Treasury represented by the President of the Katowice Regional Court was named as defendant.

On 22 August 1997 the Katowice Court of Appeal exempted the applicant from the court-fees.

On 2 September 1997 the applicant applied for a legal-aid lawyer.

On 27 November 1997 the trial court dismissed his application.

In February 1998 the applicant challenged all the Regional Court's judges.

In November 1998 the applicant extended his claim.

On 3 August 1999 the Katowice Regional Court received an expert opinion.

In 2000 the applicant asked for the case to be transmitted to another court on the grounds that his action was directed against the President of the trial court.

On 29 June 2000 the Katowice Court of Appeal dismissed his application.

On an unspecified date the applicant challenged a judge.

On 8 August 2001 the Katowice Regional Court dismissed his challenge.

The applicant appealed against this decision, but on 31 October 2001 the Katowice Court of Appeal dismissed the appeal.

On 25 January 2002 the trial court held the first hearing.

On 6 March 2002 the court appointed for the applicant a legal-aid lawyer.

On 26 March 2002 the Katowice Regional Court gave judgment. It dismissed the applicant's action.

On 18 December 2002 the applicant lodged an appeal against this judgment.

The proceedings are pending before the Katowice Court of Appeal.

III. COMPLAINT INTRODUCED ON 8 JANUARY 2000

7. The proceedings against the housing co-operative (the first set)

On 20 June 1995 the applicant lodged with the Katowice Regional Court a civil action for compensation claiming that the "Zabrzańska" housing co-operative violated his personal rights (*o ochronę dóbr osobistych*).

The applicant based his action on the fact that he had received a letter from the Council of the housing co-operative (*Rada Nadzorcza*) addressing a reprimand to him. The reason for the reprimand was a complaint lodged with the Council by all neighbours of the applicant, who complained that his vexatious nature made life in the same building unbearable and asked to exclude him from the co-operative. They complained that the applicant had been lodging against them an excessive number of vexatious complaints with the housing co-operative, courts, prosecution service and the police. Moreover, they complained that the applicant was aggressive and that criminal proceedings concerning assault of a neighbour's child were pending against him.

In September 1996 the applicant extended his claim. He requested PLN 20,000 in compensation.

On an unspecified date the trial court appointed for the applicant a legal-aid lawyer.

Subsequently, the applicant on several occasions extended his claim and requested the court to call as a co-defendant Mr T.D. - the President of the Council of the housing co-operative.

On 6 May 1998 the Katowice Regional Court dismissed his action.

The applicant appealed against this judgment.

Subsequently, the applicant further extended his claim to PLN 100,000.

On 13 July 1999 the Katowice Court of Appeal dismissed his appeal.

The applicant did not lodge a cassation appeal and the judgment became final.

Subsequently, the applicant unsuccessfully attempted to reopen the proceedings. Finally, on 10 August 2001 the Katowice Court of Appeal dismissed his application for re-opening.

IV. COMPLAINT INTRODUCED ON 2 NOVEMBER 2000

8. The administrative proceedings (the first set)

On 5 November 1999 the applicant asked the Zabrze District Planning Inspector (*Powiatowy Inspektor Nadzoru Budowlanego w Zabrzu*) to remove two parking spaces built next to his apartment building, allegedly illegally, by the housing co-operative. His application concerned also another parking space situated nearby.

It appears that the Planning Inspector failed to take any action.

In April 2000 the applicant lodged with the Supreme Administrative Court a complaint about this inactivity.

On 13 April 2000 the Zabrze District Planning Inspector gave a decision with regard to two parking spaces.

The applicant appealed against this decision.

On 2 June 2000 the Śląski Regional Planning Inspector *(Śląski Wojewódzki Inspektor Nadzoru Budowlanego)* dismissed his appeal.

The applicant lodged a complaint with the Supreme Administrative Court against this decision.

On 2 August 2000 the Supreme Administrative Court examined the applicant's complaint about the inactivity of the Planning Inspector lodged in April 2000 and ordered the District Planning Inspector to give a decision with respect to the whole of the applicant's application.

Since the Planning Inspector failed to give a decision concerning the third parking space, the applicant applied to the Supreme Administrative Court to fine him.

On 24 August 2001 the Supreme Administrative Court rejected his application because it was lodged in breach of the administrative procedure.

On 4 June 2002 the Supreme Administrative Court examined the applicant's complaint against decisions of the District and Regional Planning Inspectors and quashed both decisions.

It appears that the proceedings are pending before the District Planning Inspector.

V. COMPLAINTS INTRODUCED ON 8 MARCH 2001 AND 4 NOVEMBER 2003

9. Five complaints against the Social Security Board

a) In February 1999 the applicant wrote to the Social Security Board (*Zakład Ubezpieczeń Społecznych*) in Zabrze a letter in which he asked to amend his "disabled person's social security book" (*legitymacja*

uprawniająca do świadczeń zdrowotnych dla emerytów i rencistów) so as to name his daughter as a person authorised to receive social security benefits.

It appears that he did not receive a reply.

On 27 July 1999 he complained about it to the Katowice Regional Court asking it to give a decision.

On 30 July 1999 the court transmitted his application to the Social Security Board. Subsequently, the applicant was informed by the court that the Social Security Board was competent to examine his application.

The applicant submitted that no decision had been given yet.

b) In May 2000 the applicant informed the Social Security Board that in the following month he would be staying in a hospital and asked the Board to send his disability benefit to the hospital's address.

On 15 June 2000 a postman delivered his benefit to the hospital but the applicant refused to pay a PLN 3 fee and the money had to be sent back to the Social Security Board.

Finally, the applicant received his disability benefit on 27 June 2000.

Subsequently, he wrote a letter to the Social Security Board asking for interest for the delay but received no reply.

On 30 July 2000 he complained about it to the Katowice Regional Court.

On 3 August 2000 the court transmitted his application to the Social Security Board.

The applicant submitted that no decision had been given yet.

c) The applicant was unhappy about his disability category assessed by the Social Security Board.

On an unspecified date, he wrote to the Social Security Board and asked to be placed in the highest category of disability. It appears that the applicant did not receive a reply.

On 31 July 2000 he complained about it to the Katowice Regional Court.

On 3 August 2000 the court transmitted his application to the Social Security Board.

The applicant submitted that no decision had been given yet.

d) In September 2000 the applicant received his monthly disability benefit but considered that it was PLN 38.9 lower then usual.

It appears that he subsequently complained about it to the Social Security Board but received no reply.

On 13 September 2000 the applicant complained about it to the Katowice Regional Court.

On 20 September 2000 the court transmitted his application to the Social Security Board.

The applicant submitted that no decision had been given yet.

e) On 3 June 2002 the applicant wrote to the Social Security Board submitting that due to the deterioration of his health the Board should order his medical examination and reassess his invalidity category.

He submitted that he had received no reply.

On 17 June 2002 the applicant complained to the Katowice Regional Court about this inactivity.

The applicant submitted that the Social Security Board had given no decision.

V. COMPLAINTS INTRODUCED ON 27 DECEMBER 2001

10. The civil proceedings against the neighbours

On 18 September 1997 the applicant lodged with the Katowice Regional Court a civil action against three of his neighbours, alleging a violation of his personal rights (*o ochronę dóbr osobistych*). He requested PLN 60,000 in compensation.

In his action the applicant claimed that the defendants had been damaging his good name by circulating false information about him. In particular, he submitted that one of the defendants had informed the prosecution service that the applicant's dog had bitten her granddaughter. The applicant claimed that those allegations were examined by the Misdemeanour Board and the District Court which acquitted him.

It appears that in 2000 the applicant wrote to the court asking what had happened to his action.

On 13 February 2001 the Katowice Regional Court decided to reconstruct the case-file since it was apparently lost.

Subsequently, the applicant applied for exemption from the court-fees.

On 14 August 2001 the Katowice Regional Court dismissed his application for exemption from the court-fees. The court noted, *inter alia*, the considerable amount of compensation sought by the applicant and the fact that recently he had been awarded PLN 50,000 by the European Court of Human Rights. The Regional Court concluded that in these circumstances to pay PLN 4,000 court-fees would not be to the detriment of the applicant and his family.

The applicant appealed against this decision.

On 7 December 2001 the Katowice Court of Appeal partly allowed his appeal. The court re-evaluated the personal situation of the applicant and ordered him to pay PLN 300 in respect of court-fees.

On 18 February 2002 the court returned the action to the applicant because he failed to pay the court-fees.

The applicant lodged an appeal against this decision but on 15 April 2002 the Katowice Regional Court rejected it because he had failed to pay fees for the appeal in the amount of PLN 900.

11. The proceedings against the applicant's counsel

On 10 July 1998 the applicant lodged with the Katowice Regional Court a civil action for compensation against his former counsel appointed under the legal-aid scheme. He complained that the lawyer did not inform him about the court's decision to return the action to him given on 18 November 1996 in the proceedings described in section 5 above.

On 10 September 1998 the Katowice Regional Court gave judgment in which it dismissed his action.

The applicant appealed against this judgment.

On 26 May 1999 the Katowice Court of Appeal dismissed his appeal.

On 13 July 1999 the applicant lodged a cassation appeal with the Supreme Court.

On 12 October 2001 the Supreme Court refused to examine the cassation appeal relying on the amended Code of Civil Procedure allowing it to leave without examination cassation appeals which were manifestly ill-founded or where no serious legal issue arose.

VII. COMPLAINTS INTRODUCED ON 1 JULY 2002

12. The proceedings against the "UPC" Cable Television

On 23 October 2000 the applicant lodged with the Katowice District Court a civil action for payment against the "UPC" Cable Television Company. He based his action on the fact that the defendant did not send him one issue of a monthly magazine "Twoja Wizja". The applicant sought PLN 50 in compensation.

On 8 November 2000 the Katowice District Court returned the action to the applicant because he had failed to lodge it on a form as provided by the law at the material time. The court informed him that according to the domestic law, if he failed to remedy the formal shortcomings, the next action would be considered as a new one.

On 27 November 2000 the applicant lodged his claim on the prescribed form.

On 4 December 2000 the Katowice District Court returned the action to the applicant for formal reasons.

The applicant lodged the action for the third time.

On 28 February 2001 the Katowice District Court again returned the action to him for procedural reasons.

The applicant lodged his action for the fourth time.

On 2 April 2001 the Katowice District Court again returned the action to the applicant as it did not comply with procedural requirements.

Subsequently, the applicant for the fifth time lodged his action.

On 11 June 2001 the Katowice District Court returned the action to him for procedural reasons.

The applicant lodged the sixth action.

On 8 November 2001 the court again returned the action to the applicant for formal reasons. In particular, the applicant had failed to properly name the defendant and had not signed the form.

The applicant lodged an amended action for the seventh time.

On 11 January 2002 the Katowice District Court returned the action to the applicant for formal reasons.

On 28 February 2002 the applicant lodged his action against the UPC Cable Television for the eighth time.

Subsequently, the Katowice District Court on several occasions requested the applicant to provide information concerning his financial standing in connection with his application for exemption from court fees and to provide other documents.

The proceedings introduced on 28 February 2002 are pending before the trial court.

13. The proceedings against the applicant concerning eviction

On 29 October 2000 the Zabrzańska housing co-operative lodged with the Zabrze District Court a civil action concerning eviction of the applicant and his wife from the apartment occupied by them.

The housing co-operative submitted that in June 1999 the applicant had been excluded from the co-operative and therefore his right to occupy the apartment had been revoked. Despite this, the applicant refused to move out.

At the hearing held on 12 December 2000, the court stayed the proceedings because the applicant instituted another set of proceedings concerning annulment of the decision which excluded him from the co-operative. On 7 November 2001 the Katowice Regional Court quashed the impugned decision and reinstated the applicant as a member of the co-operative.

Since the reason for staying the eviction proceedings had ceased to exist, the applicant applied to resume them.

On an unspecified date the proceedings were resumed and on 4 March 2003 the Zabrze District Court gave judgment. It dismissed the action of the housing co-operative.

It appears that the claimant did not lodge an appeal and the District Court's judgment became final.

VIII. COMPLAINTS INTRODUCED ON 19 AUGUST 2002

14. The proceedings against the applicant concerning payment (the first set)

On 6 March 1998 the Zabrzańska housing co-operative lodged with the Zabrze District Court a civil action for payment against the applicant. The co-operative claimed payment of overdue maintenance costs for the applicant's apartment.

On 6 April 1998 the court allowed the action and gave an order for payment against the applicant (*nakaz zapłaty*).

The applicant appealed against it.

At the hearing held on 23 August 2000 the Zabrze District Court decided to stay the proceedings because another set of proceedings concerning the same apartment was pending.

The housing co-operative appealed against this decision but on 7 November 2000 the Katowice Regional Court dismissed the appeal.

The proceedings remain stayed.

15. The proceedings against the applicant concerning payment (the second set)

On 18 March 1999 the Zabrzańska housing co-operative lodged with the Zabrze District Court a second civil action for payment of overdue maintenance costs against the applicant.

On 13 September 1999 the court allowed the action and gave an order for payment against the applicant (*nakaz zapłaty*).

The applicant appealed against this decision.

At the hearing held on 4 December 2000 the Zabrze District Court decided to stay the proceedings for the same reason as in the case described in section 14 above.

The proceedings remain stayed.

16. The proceedings against the applicant concerning payment (the third set)

On 7 February 2002 the Zabrzańska housing co-operative lodged with the Zabrze District Court a third civil action for payment of overdue maintenance costs against the applicant.

On 15 May 2002 the court allowed the action and gave an order for payment against the applicant (*nakaz zapłaty*).

The applicant appealed against this decision.

On 3 February 2003 the Zabrze District Court held the first hearing.

The proceedings are pending.

IX. COMPLAINTS INTRODUCED ON 27 OCTOBER 2002

17. The proceedings against the Regional Police (the first set)

On 11 November 1999 the applicant lodged with the Katowice Regional Court a civil action for compensation against the State Treasury - the Katowice Regional Police for his detention in 1981.

On 6 September 2000 the court ordered the applicant to pay the court-fees for his action.

Since he failed to pay the fees, on 20 September 2000 the Katowice Regional Court returned the action to the applicant.

18. The proceedings against the Regional Police (the second set)

On 20 February 2001 the applicant lodged with the Katowice Regional Court a new civil action for compensation against the State Treasury - the Katowice Regional Police in respect of his detention in 1981. He sought PLN 50,000 in compensation.

On 26 March 2001 the Katowice Regional Court exempted him from court-fees.

On 24 October 2001 the trial court gave judgment. It dismissed the applicant's action due to the statute of limitation in civil cases.

The applicant's court-appointed lawyer appealed against this judgment but on 2 July 2002 the Katowice Court of Appeal dismissed the appeal.

The applicant did not lodge a cassation appeal with the Supreme Court.

X. COMPLAINTS INTRODUCED ON 30 JANUARY AND 13 MARCH 2003

19. The private prosecution proceedings against the applicant's neighbours

On 22 May 1995 the applicant lodged with the Zabrze District Court an application for private prosecution for libel against his seven neighbours. In his action the applicant claimed that during previous five months his neighbours had been giving false information about him to various local newspapers which damaged his good name.

At the hearing held on 1 October 1997 the parties reached a friendly settlement. Accordingly, the Zabrze District Court discontinued the proceedings. However, subsequently the applicant appealed against this decision.

On 19 November 1997 the Katowice Regional Court dismissed his appeal and upheld the decision concerning the discontinuation of the proceedings.

The applicant submits that, subsequently, he complained to the court that the settlement was not enforced.

On 7 January 2003 the President of the Zabrze District Court replied to the applicant's letter of 19 December 2002 and informed him about the procedural requirements of an application for enforcement.

20. The proceedings against former employer

On 15 February 2001 the applicant lodged with the Zabrze District Court a civil action against his former employer *(Przedsiębiorstwo Trasportu Kolejowego i Gospodarki Kamieniem Sp. z o.o.).* In his action the applicant, who had ceased to work for the defendant in 1994, sought an allowance from the company's social fund to finance his daughter's winter holidays.

It appears that on 2 April 2001 the Zabrze District Court decided to join the case with another set of proceedings against the same defendant.

The proceedings are pending.

21. The civil proceedings against the Social Security Board (the first set)

On 8 April 2000 the applicant applied to the Social Security Board to increase the amount of his disability benefit.

Since the Social Security Board failed to give a decision, the applicant lodged a complaint with the Gliwice Regional Court.

It appears that on 5 October 2001 the court ordered the Social Security Board to give a decision in the applicant's case.

On 29 January 2002 the Social Security Board gave a decision in which it decreased the amount of the applicant's disability benefit.

On 30 January 2002 the applicant appealed against this decision and the proceedings are pending before the Gliwice Regional Court.

22. The proceedings against the Social Security Board (the second set)

On 5 March 2002 the applicant lodged with the Gliwice Regional Court a civil action for payment against the Social Security Board. He stated that the decision reducing his benefit (see section 21 above) was a "malicious action of the Social Security Board directed against me which is aimed at depriving me of proper medical treatment".

At the hearing held on 8 May 2002 the court stayed the proceedings.

XI. COMPLAINTS INTRODUCED ON 12 JUNE 2003

23. The proceedings against the Regional Police (the third set)

On 4 June 2002 the applicant lodged with the Katowice Regional Court a civil action for compensation against the Katowice Regional Police. He claimed that during the communist regime in Poland the police had illegally controlled his correspondence.

On 12 June 2002 the Regional Court decided that the Katowice District Court would be competent to examine the case.

The case is pending before the Katowice District Court and no hearing has been scheduled yet.

24. The proceedings against the housing co-operative (the second set)

On 18 October 2002 the applicant lodged with the Zabrze District Court a civil action for compensation against the Zabrzańska housing co-operative for flooding his cellar. He claimed PLN 200 in compensation.

The applicant submits that no hearing has been scheduled yet.

25. The administrative proceedings (the second set)

The case is related to the administrative proceedings described in section 8 above which concerned the removal of two parking spaces built next to the applicant's house and used by his neighbours.

On 19 October 2000 the applicant's neighbours applied to the Zabrze President (*Prezydent Miasta Zabrze*) to obtain a permission to use the parking places.

On 21 March 2001 the Zabrze President allowed their application.

The applicant appealed against this decision.

On 11 April 2001 the Śląski Governor (*Wojewoda Śląski*) upheld the impugned decision.

The applicant lodged a complaint with the Supreme Administrative Court.

On 7 April 2003 the Supreme Administrative Court quashed the Śląski Governor's decision.

It appears that the proceedings are pending.

XII. COMPLAINTS INTRODUCED ON 20 OCTOBER 2003

26. The proceedings against the applicant instituted by his former employer

On 10 August 2001 the applicant's former employer *(Przedsiębiorstwo Transportu Kolejowego i Gospodarki Kamieniem Sp. z o.o.)* lodged with the Zabrze District Court a civil action for payment against the applicant.

On 19 October 2001 the applicant applied for a legal-aid lawyer.

On 19 June 2002 the trial court dismissed his application. It appears that the applicant appealed against it.

On 25 June 2002 the District Court asked the applicant to reply to the plaintiff's statement of claim.

On 29 August 2002 the applicant complied with this order.

The proceedings are pending before the Zabrze District Court.

XIII. COMPLAINTS RELATING TO THE COURT'S JUDGMENT OF 17 JULY 2001; INTRODUCED ON 8 JANUARY 2000 AND 22 JULY 2002

27. The proceedings against the Zabrze City Council

On 17 May 1993 the applicant lodged with the Zabrze District Court a civil action against the City Council (*Rada Miejska*) alleging a violation of his personal rights. Subsequently, the case was transferred to the Katowice Regional Court.

On 3 December 1998 the Katowice Regional Court dismissed the applicant's action.

The applicant's appeal against this judgment was dismissed on 28 September 1999 by the Katowice Court of Appeal.

On 9 November 1999 the applicant's counsel was notified about this judgment.

The applicant did not lodge a cassation appeal with the Supreme Court and on 9 December 1999 the Court of Appeal's judgment became final.

Subsequently, the applicant lodged an application to re-open the proceedings.

On 31 August 2001 the Katowice Court of Appeal dismissed his application for re-opening.

28. The proceedings against the housing co-operative (the third set)

On 25 July 1983 the applicant lodged with the Zabrze District Court a civil action against the Zabrzańska housing co-operative. He sought

compensation and requested that he be provided with a new apartment (*o wymianę lokalu i zapłatę*). In his action the applicant claimed that the apartment which he had bought in 1980 was of poor standard and had many flaws which the co-operative had failed to repair.

On 21 May 1992 the Gliwice District Court dismissed his action.

The applicant appealed against this judgment and on 23 March 1993 the Katowice Regional Court quashed it and remitted the case to the first-instance court.

The trial court held several hearings and on 10 March 1995 appointed a legal-aid lawyer to represent the applicant.

On 27 November 1996 the court stayed the proceedings.

On an unspecified date the proceedings were resumed.

On 19 November 1999 the trial court decided to hold a view of the apartment.

On 18 April 2003 the Gliwice Regional Court dismissed the applicant's action.

On 15 May 2003 the applicant lodged an appeal against this judgment.

The proceedings are pending before the Katowice Court of Appeal.

29. The proceedings concerning the event of 3 September 1993

In September 1993 the applicant lodged with the Zabrze District Court a civil action concerning several work-related issues against his former employer *(Przedsiębiorstwo Transportu Kolejowego i Gospodarki Kamieniem Sp. z o.o.)*.

It appears that on 28 September 1995 the applicant withdrew his action.

On 4 October 1995 the applicant lodged with the Zabrze District Court a new action for compensation. He also sought a declaration that his heart attack on 3 September 1993 was work-related (*o uznanie za wypadek w drodze do pracy oraz o jednorazowe odszkodowanie*). The action was directed against his former employer.

At the first hearing held on 8 July 1996 the applicant challenged all judges of the Zabrze District Court. His application was dismissed on 28 December 1996.

On 7 October 1996 the trial court decided that the Katowice Regional Court was competent to examine the case.

On 31 January 1997 the Regional Court decided that the Zabrze Social Security Board was competent to examine the applicant's claim and give a decision.

Since the Board failed to give a decision the applicant lodged a complaint with the District Court.

On 6, 19 and 25 May 1998 the Social Security Board gave decisions regarding the applicant's claim.

The applicant lodged an appeal against these decisions.

On 5 October 2001 the Gliwice Regional Court gave judgment in which it dismissed the applicant's appeal.

The applicant appealed against the judgment and the case is pending before the Katowice Court of Appeal.

COMPLAINTS

1. With respect to the proceedings referred to in sections 5, 7, 18 and 27 it appears that the applicant alleges a breach of Article 6 § 1 in that he did not have a "fair trial" and that he was discriminated against.

2. With respect to the proceedings referred to in sections 7 and 27 he complains that the proceedings were not re-opened.

3. With respect to the proceedings referred to in section 11 he complains about the Supreme Court's refusal to examine his cassation appeal and that the amendment to the Code of Civil procedure providing for the possibility to leave the cassation appeal without examination came into force after his cassation appeal was lodged with the Supreme Court.

4. With respect to the proceedings referred to in sections 1, 10 and 17 the applicant complains that he was deprived of the right of access to a court because he was unable to pay the court fees for lodging his claims.

5. With respect to the event of 17 November 1998 described in section 4, the applicant complains that he was subjected to torture.

6. With respect to the proceedings referred to in sections 2, 3, 6, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28 and 29 the applicant complains under Article 6 § 1 of the Convention about the unreasonable length of the proceedings.

THE LAW

1. The applicant complains about unfairness of the proceedings described in sections 5, 7, 18 and 27.

However, the Court notes that in the set of proceedings described in section 5, the final domestic decision within the meaning of Article 35 § 1 of the Convention was given by the Katowice Regional Court on 12 November 1997 and thus more than six months before the date on which this complaint was submitted to the Court.

As regards three sets of proceedings described in sections 7, 18 and 27 the Court finds that the applicant failed to lodge cassation appeals with the Supreme Court and therefore he has not exhausted the remedies available under Polish law.

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.

2. The applicant further complains that the civil proceedings described in sections 7 and 27 were not re-opened. However, the Court notes that the right relied on is not a right included in the rights and freedoms guaranteed by the Convention.

Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

3. The applicant complains about the Supreme Court's decision refusing to examine his cassation appeal in the proceedings described in section 11.

The Court notes that in the light of its case law (see *Zmalinski v. Poland*, decision of 16 October 2001, application no. 52039/99) this complaint is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

4. The applicant also complains that he was deprived of the right of access to a court because of he was unable to pay the court fees for lodging his claims in proceedings described in sections 1, 10 and 17.

As regards the complaints referring to proceedings described in sections 1 and 10, the Court notes that the right to a court is not absolute and States enjoy a certain margin of appreciation. In the present cases the domestic courts partly exempted the applicant from the court fees and diligently assessed his financial situation and the nature of his claims. The courts took also into account the fact that the applicant sought compensation of a considerable amount. The Regional Courts as well as the Courts of Appeal gave reasoned decisions. Accordingly, the Court considers that the court fees imposed in both cases constituted a legitimate restriction on the individual's access to a court and that, in the circumstances of these cases, this form of regulating access to courts cannot be seen as being contrary to Article 6 of the Convention (see the *Kreuz v. Poland*, judgment of 19 June 2001, *Reports of Judgments and Decisions* 2001-VI).

With regard to the proceedings described in section 17, the Court notes that the final domestic decision within the meaning of Article 35 § 1 of the Convention was given by the Katowice Regional Court on 20 September 2000 and thus more than six months before the date on which this complaint was submitted to the Court.

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.

5. The applicant further complains, with respect to the event of 17 November 1998 described in section 4, that he was subjected to torture.

However, the Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention as established in the case-law of the Convention organs. Having examined the material submitted, the Court finds no evidence that the event complained of gives rise to an issue under this provision of the Convention.

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

6. Finally, the applicant complains under Article 6 § 1 of the Convention that the length of the proceedings referred to in sections 2, 3, 6, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28 and 29 exceeded a reasonable time.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

a) As regards the proceedings described in section 3, the Court considers that it cannot, on the basis of the file, determine the admissibility of the 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.

b) As regards the complaint about the unreasonable length of proceedings referred to in sections 2, 6, 8, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28, and 29, the Court notes that the length of the proceedings ranges from thirteen months (see section 24) to six years and eight months (see section 2). With regard to the case described in section 12, the Court notes that it consists of several sets of civil proceedings, the length of which ranges from several weeks to eighteen months. In addition, as regards the case described in section 19, the Court notes that the final domestic decision within the meaning of Article 35 § 1 of the Convention was given on 19 November 1997 and thus more than six months before the date on which this complaint was submitted to the Court. The applicant had failed to provide any evidence that the enforcement proceedings in this case are pending.

The Court observes that the above mentioned cases involved a certain degree of complexity. The Court considers that the domestic courts faced an unusually difficult situation in the examination of over thirty separate proceedings, the large majority introduced by the applicant, which were

closely interrelated as they often concerned the same parties and originated from the same events. For instance, in connection with the heart attack the applicant suffered on 3 September 1993, he introduced several sets of proceedings directed against his doctors and the hospital, the District Court, and his former employer. Such connection between the proceedings often led to them being stayed pending the determination of related claims lodged by the applicant (see sections 2, 14, 15, 16 and 22 above).

As regards the conduct of the applicant, the Court is of the opinion that he delayed the examination of the cases. The applicant failed to comply with court orders (see section 2 above) and on several occasions challenged judges and extended his claims which contributed to the overall length of the proceedings (see section 6 above).

With regard to the conduct of the domestic authorities, and in the light of the above finding regarding the complexity of the cases, the Court is of the opinion that the applicant failed to provide any *prima facie* evidence of significant periods of inactivity for which the domestic courts or administrative authorities can be held responsible.

Finally, as regards what was at stake for the applicant, the Court is of the opinion that the majority of the proceedings in question were of a pecuniary nature solely and of minor importance. In this connection the Court would observe that the majority of the applicant's actions were vexatious.

In consequence, the Court considers that, in the particular circumstances of these cases, the length of the proceedings had not exceeded a reasonable time.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

c) Finally, as regards the cases described in section 9, the Court is of the opinion that the applicant had failed to provide any *prima facie* evidence that any proceedings "in the determination of his civil rights and obligations" have been instituted by the applicant and are pending before the domestic authorities.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides **to join** the applications;

Decides **to adjourn** the examination of the applicant's complaint that the length of the proceedings described in section 3 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