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. 10453/03
by Michał TURZYŃSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 22 November 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*

Having regard to the above application lodged on 19 March 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Michał Turzyński, is a Polish national who was born in 1955 and lives in Blizne.

A. The circumstances of the case

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

Between 25 August 1993 and 31 December 1993 the applicant concluded with the State Treasury's Agricultural Property Agency (*the Agency*) contracts of lease concerning nine farms and on 14 January 1994 a contract permitting use of another farm. The total land in his possession amounted to over 6,500 ha.

On 13 March 1995 the Agency terminated all contracts with the applicant without notice, on the grounds of his alleged failure to pay the rent for one year. The stocktaking was to take place on the following day. The information about the termination of the contracts and the date of the stocktaking was served on the applicant's authorised representative. On 14 March 1995 the Agency officials took over the property, in the presence of the applicant's representative, and the applicant was immediately evicted from all the farms. He was not present.

1. The first set of civil proceedings

On 17 June 1995 the applicant lodged a claim for repossession of the farms against the Agency. He claimed that his right to the peaceful enjoyment of possessions had been infringed because of an unlawful and hasty eviction. It was disputed by the parties whether the authorised representative had informed the applicant about the fact and date of taking over the property by the Agency and whether the applicant had consented to it. The amount of the rent in arrears was also in dispute.

On 14 March 2002 the Stargard District Court dismissed the claim. The court referred to Article 344 of the Civil Code. The District Court established that the authorised representative, having informed the applicant by phone about the stocktaking and the impending eviction and with the applicant's consent, had allowed the Agency officials to proceed with the taking over of the property. The applicant had allegedly confirmed his consent in writing. The representative had been empowered to carry out a wide range of legal and factual acts on the applicant's behalf. Therefore the District Court concluded that the interference had not been wilful or unlawful, as the applicant had been aware of and consented to all the actions of the Agency officials.

The District Court further established that the applicant had not fulfilled properly his obligations arising from the lease contracts and at the material time had had serious financial problems. Moreover, at the time of the court's judgment the applicant had not been working, lived on a small pension and all his immovable property had been seized by creditors. Therefore, the court considered that if it had made the repossession order in respect of the farms concerned, such an order would be in contradiction to Article 5 of the Civil Code. This provision stipulated that no one could exercise his or her right in a manner which would contradict its "socioeconomic purpose" or the "principles of community life". In his present financial condition the applicant could not ensure the proper

management of the agricultural property of such a considerable size and value. Also, at the time of the judgment, the Agency was no longer in possession of the property previously leased by the applicant, as some farms had meanwhile been leased to other persons and some had been sold.

The applicant appealed. On 20 September 2002 the Szczecin Regional Court dismissed the appeal. The court first emphasised the serious shortcomings of the lower court in the assessment of the evidence. The court found that the evidence in the possession of the District Court "absolutely" did not justify a conclusion that the applicant had been aware of and consented to the stocktaking of the property in question and to his eviction. The testimony of the authorised representative could not have reasonably led to such a conclusion. He had clearly testified that he had only spoken to a secretary, not to the applicant himself, and informed her that the applicant should come to the farm, without explaining the reason. Thus, the applicant could not have given his consent during the alleged phone conversation. Further, there was nothing in the applicant's letter relied on by the lower court that would indicate his written consent to the stocktaking and eviction. Moreover, the scope of the power of attorney given to the representative did not authorise him to give the farms away. The infringement of the applicant's possession was, therefore, wilful and unlawful and violated Article 342 of the Civil Code.

Nonetheless, the court dismissed the appeal, as it agreed with the final conclusion of the District Court's judgment regarding the application of Article 5 of the Civil Code. Restoring *de facto* possession of the property to the applicant would at that time be, according to the court, contradictory to the "socioeconomic purpose" of the applicant's right. It would also breach the so-called "principles of community life". The applicant was in a difficult financial situation and the farms had already long been in the possession of various third parties to whom the Agency had either sold or leased them. Hence, after the seven and a half years that had passed since the infringement of the applicant's possession, the legal and factual circumstances of the case had changed significantly. Consequently, a repossession order would have led to an infringement of third persons' ownership and other rights. For these reasons, and regardless of the infringement of the applicant's rights as a result of his eviction in March 1995, his repossession claim had to be dismissed. The length of the proceedings and reasons for which they had taken so long were of no importance at this point.

No cassation appeal was available.

2. The second set of civil proceedings

On 14 June 1995 the applicant lodged a claim to have the termination of the aforementioned contracts declared null and void.

On 27 June 2001 the Szczecin Regional Court dismissed the applicant's claim as unfounded.

On 14 August 2002 the Poznań Court of Appeal dismissed his appeal. On 26 March 2003 the Supreme Court refused to entertain the cassation appeal.

3. The third set of civil proceedings

This set of proceedings does not concern the facts described above. On 15 November 1995 the applicant lodged a claim for payment against a certain company. On 6 March 1996 the Warsaw District Court refused to issue an order of payment. On 26 June 2000 the court decided to stay the proceedings. The applicant's appeal against the decision was dismissed by the Warsaw Regional Court on 18 January 2002. On 30 April 2002 the District Court resumed the proceedings. On 28 July 2004 the Regional Court found in the applicant's favour. The applicant submits that due to the length of the proceedings the enforcement of the sentence became impossible, as the company had become insolvent. However the applicant did not submit any evidence that he had instituted the enforcement proceedings.

B. Relevant domestic law and practice

1. Provisions concerning possession and restoration claim.

The Polish Civil Code, Book Two entitled *Ownership and Other Property Rights*, provides for various property-like rights for possessor in Title IV: *Possession*. The relevant Articles read, as far as relevant:

Article 336:

> The possessor of property is both the person who actually controls the property as an owner (an autonomous possessor) and the person who actually controls the property as a usufructuary, the holder of a lien, a lessee, or a tenant or who has other rights associated with certain control over another person's property (a dependent possessor).

Article 342:

> Possession shall not be wilfully infringed even if the possessor acted in bad faith.

Article 344:

> § 1. The possessor can claim the restoration of the previous state [repossession of the property] and abstention from infringements against the person who wilfully infringed possession as well as against the person who benefited from the infringement occurred. That claim shall not be dependent upon the good faith of the possessor not upon the compliance of possession with the law ...

> § 2. The [repossession] claim shall expire if not pursued within one year from the date of infringement.

One of the introductory provisions of the Polish Civil Code, Article 5, reads as follows:

> A person may not exercise his or her right in a manner which would contradict its socioeconomic purpose (*społeczno-gospodarcze przeznaczenie prawa*) or the principles of community life (*zasady współżycia społecznego*). Such act or omission on the part of the person entitled shall not be considered as the exercise of that right and shall not be protected by law.

2. Remedies against unreasonable length of proceedings

On 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act") entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings.

Article 2 of the Act provides for a special action by which a party can seek a declaration that his or her right to have a case heard within a reasonable time has been breached. The court shall take into consideration the following criteria: the conduct of the court before which the case is pending; the character of the case and the complexity of the legal and factual issues involved therein; what was at stake for the complainant, and the conduct of the parties. The length complaint must be lodged when the proceedings are still pending.

Pursuant to Article 2, if the court finds that the length complaint is well-founded, it shall give a ruling to this effect. If the complainant so requests, the court can also recommend that the court before which the case is pending takes certain procedural measures in the impugned proceedings. The court may also, award an appropriate amount of money to the complainant, in the amount not exceeding PLN 10,000.

Article 5 provides, in so far as relevant:

> "1. A complaint about the unreasonable length of proceedings shall be lodged while the proceedings are pending. ..."

Article 16 refers to proceedings that have been terminated and that do not fall under the transitional provision of Article 18:

> "A party which has not lodged a complaint about the unreasonable length of the proceedings under Article 5 (1) may claim – under Article 417 of the Civil Code ... – compensation for the damage which resulted from the unreasonable length of the proceedings after the proceedings concerning the merits of the case have ended.

Article 442 of the Civil Code sets out limitation periods in respect of various claims based on tort. That provision applies to situations covered by Article 417 of the Civil Code. Article 442, in so far as relevant, reads:

"1. A claim for compensation for damage caused by a tort shall lapse 3 years following the date on which the claimant learned of the damage and the persons liable for it. However, the claim shall in any case lapse 10 years following the date on which the event causing the damage had occurred."

COMPLAINTS

1. The applicant complains under Article 6 of the Convention about the excessive length of civil proceedings.
2. The applicant complains that due to the length of the third set of proceedings the enforcement of the judgment became impossible as the respondent company had become insolvent by the time the sentence was issued.
3. He further complains, invoking various Articles of the Convention, that the first and second set of proceedings were unfair and that the courts judgments were intended only to protect the financial interests of the State.
4. The applicant also complains that the State Treasury's Agricultural Property Agency unlawfully deprived him of all his possessions by evicting him from the farms he had been leasing and that the judgments given by the courts in the first set of civil proceedings countenanced the unlawful actions taken by the Agency. In this regard he argues that his claim for repossession eventually failed and that the courts relied on the length of the repossession proceedings as one of the grounds for their decisions dismissing his claim for repossession.

THE LAW

1. The applicant complains that the second and third set of proceedings he was involved in were not conducted within a reasonable time, in breach of Article 6 § 1 of the Convention.

However, pursuant to Article 35 § 1 of the Convention:

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

The Court notes in respect of the proceedings that they came to an end respectively on 26 March 2003 and 28 July 2004, i.e. less than three years before 17 September 2004, the date on which the 2004 Act came into force.

It further observes that, pursuant to Article 16 of the 2004 Act, it was open to persons such as the applicant in the present case to seek compensation in tort from the State Treasury, relying on Article 417 of the

Civil Code for damage caused by the allegedly excessive length of proceedings in which a judicial decision on the merits of the case had already been given.

The Court has already examined whether the civil action for damages brought under Article 16 of the 2004 Act read together with Article 417 of the Civil Code was an effective remedy in respect of the length of judicial proceedings. It held, having regard to the characteristics of these remedies and notwithstanding the absence of established judicial practice in respect of such claims, that these remedies were effective in respect of persons who on 17 September 2004, when the 2004 Law entered into force, could still lodge such an action with the competent domestic court (*Krasuski v. Poland*, judgment of 14 June 2005, §§ 69-72).

However, the applicant, despite having been informed by the Registry of the possibility of lodging a complaint about the length of the proceedings under Article 16 of the 2004 Act read together with Article 417 of the Civil Code, has chosen not to avail himself of this remedy with regard to all the impugned proceedings.

It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicant complains that due to the length of the third set of proceedings the enforcement of the judgment became impossible as the respondent company had become insolvent by the time the decision was rendered.

The Court notes that the applicant has not provided a sufficient factual basis for his complaints. In particular he has not submitted copies of the decisions given in this case that would suffice for the establishment of relevant facts. It is therefore impossible to establish the events relevant for this part of the application.

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

3. The applicant further alleges that the first and second set of proceedings were unfair in that the courts sought to protect the interest of the State's Agency.

The Court notes that apart from submitting certain press cuttings concerning his judicial proceedings and describing a difficult situation for agriculture in the 1990s the applicant has not submitted any arguments or evidence to substantiate his complaint about the courts lacking impartiality or independence in his cases.

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

4. The applicant also complains that the State Treasury's Agricultural Property Agency unlawfully deprived him of all his possessions by evicting him from the farms he had been leasing and that the judgments given by the courts in the first set of civil proceedings countenanced the actions taken by the Agency. He argues that his claim for repossession eventually failed and that the courts relied on the length of the repossession proceedings as one of the grounds for their decisions dismissing his claim for repossession.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the alleged infringement of his right to the peaceful enjoyment of his possessions;

Declares the remainder of the application inadmissible.

Françoise Elens-Passos
Deputy Registrar

Nicolas Bratza
President