AS TO THE ADMISSIBILITY OF

Application No. 27092/95
by Wlodzimierz ZAWOLUK
against Poland

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

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

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 17 January 1995 by Wlodzimierz ZAWOLUK against Poland and registered on 24 April 1995 under file No. 27092/95;

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 17 July 1996 and the observations in reply submitted by the applicant on 22 October 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Polish citizen born in 1959, is currently serving a prison sentence in Jastrz*bie Zdrój prison.

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

In 1992 the applicant was detained in Starogard psychiatric hospital. On 23 June 1992 a police team was requested to come to the hospital to restrain the applicant, who refused to take injections. During the police action the applicant sustained an injury. As a result of this incident, he subsequently underwent hospital treatment and eventually lost one eye.

On 16 September 1992 the applicant filed an action against the State Treasury with the Gdansk Regional Court (S*d Wojewódzki), claiming compensation for loss of his eyesight.

On 15 October 1992 the Starogard Public Prosecutor instituted

criminal investigations concerning the applicant's injury.

On 16 October 1992 the Starogard police, acting on behalf of the State Treasury, requested that the civil proceedings be suspended as the outcome of the criminal investigations was of decisive importance for the further conduct of the civil case.

In a letter of 6 November 1992 the applicant submitted that the request of the police to have the proceedings suspended should be dismissed.

By a letter of 6 November 1992 the Starogard police informed the Court that criminal proceedings had been instituted.

On 18 November 1992 the Prosecutor ordered that an expert opinion be prepared as to what injuries the applicant had sustained during the police intervention on 23 June 1992 and whether they could have originated from the acts of the police.

On 23 November 1992 the Gdansk Regional Court suspended the civil proceedings, considering that the outcome of the criminal investigations was of decisive importance for the State Treasury's liability for the applicant's injury.

On 2 December 1992 this decision was served on the applicant.

On 26 March 1993 a further expert opinion was ordered as to whether the injury of the applicant's eye could have been caused by a cardboard cap of a "smoke-glare" bullet, which the police had fired twice during the June 1992 intervention.

On 29 April 1993 the criminal investigations were suspended as the second expert opinion of the forensic medicine specialist was still outstanding.

On 21 October 1993, in reply to the applicant's complaint, the Ombudsman informed him that he had requested the Starogard District Prosecutor to inform him about the progress in the investigations.

On 7 December 1993 the District Prosecutor informed the applicant that the investigations were still suspended as the expert opinion had not been submitted.

On 7 March 1994 the District Prosecutor informed the applicant that the proceedings were still suspended as the second expert opinion had not been submitted.

On 28 June 1994 the Starogard Gdanski District Court (S*d Rejonowy) convicted the applicant of assaulting a doctor and one of the policemen during the events on 23 June 1992 and sentenced him to one year's imprisonment.

On 6 January 1995 the applicant complained to the President of the Gdansk Regional Court that there was no progress in the civil proceedings. In reply, the President informed him on 27 January 1995 that the civil proceedings would be resumed after the criminal investigations had come to an end.

On 24 January 1995 the Forensic Medicine Department of the Gdansk Medical Academy submitted the expert opinion.

On 1 February 1995 the Starogard Gdanski Public Prosecutor terminated the criminal proceedings, finding that on 23 June 1992 the applicant had refused to be transferred to another ward. He had menaced medical staff with a knife and a metal pole and hit a doctor several times, breaking his hand, causing a cut wound of his elbow and an injury of the abdomen. The hospital director had called the police.

A team of four policemen had tried to negotiate with the applicant, who had refused to cooperate and stated that he was "ready for anything". As the director had refused to have tear gas used in the hospital, an anti-terrorist police squad had been called, which first had undertaken negotiations with the applicant and, after the negotiations failed, had used a net to overpower the applicant and twice fired a "smoke-glare" bullet in his direction. As the police had approached the applicant afterwards to handcuff him, blood had been found on his hands. The Prosecutor concluded that the use of force in the case had been legitimate and justified by the applicant's aggressive behaviour; that the police had not overstepped the limits set out in the legal provisions concerning the use of force and, consequently, that no offence had been committed.

On 4 May 1995 the Gdansk Regional Public Prosecutor dismissed the applicant's appeal against this decision, considering that it was based on extensive evidence which had been assessed in a meticulous and logical way.

On 22 June 1995 the applicant complained to the Minister of Justice about the length of the civil proceedings. On 1 July 1995 the Ministry informed him that his complaint had been transferred for reply to the President of the Gdansk Regional Court.

On 7 July 1995 the civil proceedings were resumed and a date for a hearing was fixed for 2 October 1995. The Court requested the applicant to submit within 14 days his request for evidence to be taken. By a letter of 17 July 1995 the applicant requested the court to grant an extension of this time-limit. The Court accordingly prolonged the time-limit until 20 August 1995.

By a letter of 19 September 1995 the applicant extended his claim, but he did not submit any specified sums.

A hearing was to be held on 2 October 1995. The hearing was adjourned as the witness requested by the applicant, a paramedic who had seen the police intervention in 1992, failed to appear, and a date of the next hearing was set for 20 November 1995.

On 3 October 1995 the applicant complained to the President of the Gdansk Regional Court that he had not received in time the information about the hearing of 2 October 1995.

On 9 October 1995 the Katowice Regional Court refused to suspend further execution of the applicant's penalty, considering that the applicant's wish to take part personally in the civil proceedings did not constitute a relevant ground for release.

On 20 October 1995 the Gdansk Regional Court informed the applicant that his presence at the hearing on 2 October 1995 had not been required by law and had not been necessary because the hearing of the applicant himself had not been foreseen on this date. The questioning of the parties was to be taken as concluding evidence and, given that the applicant was in prison, the court might consider having this evidence taken by another court.

On 6 November 1995, in reply to the court's letter of 20 October 1995, the applicant again complained about the length of the proceedings.

At a hearing of 20 November 1995 the witness requested by the applicant again failed to appear. The Court imposed a fine on him and adjourned the proceedings.

By a letter of 12 December 1995 the Court requested the applicant to submit evidence and reminded him that the burden of proof lay on the party who wished to prove the relevant circumstances.

A hearing which was to be held on 15 January 1996 was adjourned by the Court and the Court requested the police to check whether the address of the witness given by the applicant was correct.

The next hearing was held on 6 May 1996. The Court heard four witnesses. As the witness requested by the applicant failed to appear, the Court again imposed a fine on him. The date for the next hearing was fixed for 27 June 1996.

On 17 May 1996 the Gdansk Regional Court requested the Jastrz*bie District Court to hear the applicant, who served his sentence in Jastrz*bie prison, in the framework of the compensation case. At a hearing on 10 June 1996 the applicant refused to be heard. He stated that he was not prepared to be heard by the Court, that he was not in a hurry any more as the case was before the European Commission of Human Rights and that at this stage the case, which had remained pending for four years, should be decided by the European Commission of Human Rights.

On 27 June 1996 the Gdansk Regional Court dismissed the applicant's compensation claim.

COMPLAINTS

The applicant complains of the length of the civil proceedings concerning his compensation claim.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 17 January 1995 and registered on 24 April 1995.

On 12 April 1996 the Commission decided to communicate the applicant's complaint about the length of the proceedings concerning the compensation claim to the respondent Government and to declare the remainder of the application inadmissible.

The Government's written observations were submitted on 17 July 1996, after an extension of the time-limit fixed for that purpose. The applicant replied on 22 October 1996.

THE LAW

The applicant complains of the length of the civil proceedings concerning his compensation claim. The Commission has examined his complaint under Article 6 para. 1 (Art. 6-1) of the Convention, which, 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). 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) As regards the substance of the complaint, the Government contend that the case was very complex. This is reflected, inter alia, in the fact that three sets of proceedings were instituted in respect of the events of 23 June 1992: the criminal proceedings against the applicant, the criminal proceedings concerning the use of force by the police and the proceedings relating to the applicant's compensation claim. In particular, the issue of the causal link between the intervention of the police and the applicant's injury warranted detailed examination. This issue was to be established in the proceedings against the police and was of crucial importance for the further course of the civil proceedings. Therefore the Regional Court's decision to suspend the civil proceedings was justified as it would not be reasonable to conduct two parallel sets of proceedings in order to establish the same facts. They further observe that the applicant never filed an appeal against the decision to suspend the proceedings. Moreover, the circumstances of the case required that expert opinions in ballistics and forensic medicine be prepared.

The Government further submit that the applicant's conduct after 1 May 1993 contributed to the prolongation of the proceedings. They submit that the applicant serves a prison sentence in a prison located far from Gdansk, which prolonged the transmission of the correspondence. The witness requested by the applicant repeatedly failed to appear before the court, despite the fines imposed on him. At the hearing on 10 June 1996 before the Jastrz*bie District Court the applicant refused to cooperate and to be heard as a party. He stated expressly that he was not in a hurry to have the case resolved. Further, in July 1995 he requested prolongation of the time-limit to submit requests for evidence to be taken. In September 1995 he extended his claim, but failed to submit any specified sums.

The Government finally submit that there were no shortcomings in the proceedings before the Gdansk Regional Court for which the Court could be held responsible. There were no periods of inactivity other than those caused by objective reasons and the dates of hearings were fixed at the shortest possible intervals.

The Government conclude that the length of the proceedings complied with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention. The application should thus be declared manifestly ill-founded.

The applicant submits that his psychiatric internment was unjustified and contests the veracity of the Government's submissions.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and with the help of the following criteria: the complexity of the case, the conduct of the parties and the conduct of the authorities dealing with the case (Eur. Court HR, Vernillo v. France judgment of 20 February 1991, Series A no 198, p. 12, para. 30).

The Commission also recalls that in civil cases the exercise of the right to a hearing within a reasonable time is subject to diligence

being shown by the party concerned (Eur. Court HR, Pretto and others v. Italy judgment of 8 December 1983, Series A no 71, pp. 14 et seq., paras. 33 et seq.).

The Commission observes that the proceedings began on 16 September 1992, the date on which the applicant filed his compensation claim with the Gdansk Regional Court, and ended on 27 June 1996, when this Court dismissed his claim. It has to be noted, however, that the court adjourned the civil proceedings on 23 November 1992 to await the outcome of the criminal investigations concerning the use of force by the police. These investigations ended on 4 May 1995, the date on which the Gdansk Regional Public Prosecutor dismissed the applicant's appeal against the decision to terminate them. They are relevant here, however, only in so far as they had a bearing on the course of the civil proceedings, which were resumed on 7 July 1995 two years and seven months after the adjournment.

The Commission further notes that the case was complex as it necessitated establishing facts which had occurred during a violent incident at the psychiatric hospital, involving a significant number of people. Moreover, to this must be added the intertwining of two sets of criminal and civil proceedings, which made the tasks of the court more difficult (cf. Eur. Court HR, Lechner v. Austria judgment of 23 April 1987, Series A no 118, p. 17, para. 44).

As regards the conduct of the applicant, the Commission observes that after the proceedings were resumed in July 1995, the applicant requested an extension of the time-limit to submit requests for evidence to be taken. The Commission considers that after two years and seven months during which the proceedings had remained suspended he could have had such requests ready by that time. The applicant extended his claim in September 1995, but did not submit any specific sums which he claimed. The witness requested by the applicant failed to appear before the Court four times. Finally, the applicant refused to be heard as a party at the session of the Jastrz*bie District Court on 10 June 1996.

With regard to the conduct of the authorities in the period within its temporal competence, the Commission finds that there were certain periods in which there was no progress in the criminal proceedings and that the civil proceedings were resumed two months after the criminal proceedings came to an end. However, the Commission finds that the conduct of the authorities after the civil proceedings were resumed is not open to criticism as the authorities dealt with the case speedily.

In the light of the criteria established by the case-law and having regard to the circumstances of the present case, the Commission concludes that the length of the proceedings complied with the criteria established by Article 6 para. 1 (Art. 6-1) 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