CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 232/02
by Zbigniew KACZMAREK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 24 May 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
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 on 5 December 2001,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Zbigniew Kaczmarek, is a Polish national who was born in 1940 and lives in Łódź, Poland. He is represented before the Court by Mr S. Janiszewski, a lawyer practising in Zgierz, Poland.

A. The circumstances of the case

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

On 28 September 1989 the applicant lodged a claim for the division of matrimonial property with the Łódź District Court (*Sąd Rejonowy*).

The proceedings are pending before the first-instance court.

B. Relevant domestic law and practice[1]

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.

Section 2 of the 2004 Act reads, in so far as relevant:

> "1. A party to proceedings may lodge a complaint that their right to a trial within a reasonable time has been breached [in the proceedings] if the proceedings in the case last longer than is necessary to examine the factual and legal circumstances of the case ... or longer than is necessary to conclude enforcement proceedings or other proceedings concerning the execution of a court decision (unreasonable length of proceedings)."

Section 5 reads, in so far as relevant:

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

Section 12 provides for measures that may be applied by the court dealing with the complaint. It reads, in so far as relevant:

> "1. The court shall dismiss a complaint which is unjustified.
>
> 2. If the court considers that the complaint is justified, it shall find that there was an unreasonable delay in the impugned proceedings.

1. For a more detailed rendition of the relevant domestic legal provisions see *Michalak v. Poland* (dec.), no. 24549/03, §§ 12-23, to be published in ECHR 2005-... – also available on the Court's Internet site (http://www.echr@coe.int).

> 3. At the request of the complainant, the court may instruct the court examining the merits of the case to take certain measures within a fixed time-limit. Such instructions shall not concern the factual and legal assessment of the case.
>
> 4. If the complaint is justified the court may, at the request of the complainant, grant ... just satisfaction in an amount not exceeding PLN 10,000 to be paid by the State Treasury. If such just satisfaction is granted it shall be paid out of the budget of the court which conducted the delayed proceedings."

Section 18 lays down transitional rules in relation to the applications already pending before the Court. It reads, in so far as relevant:

> "1. Within six months after the date of entry into force of this law persons who, before that date, had lodged a complaint with the European Court of Human Rights ... complaining of a breach of the right to a trial within a reasonable time guaranteed by Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ..., may lodge a complaint about the unreasonable length of the proceedings on the basis of the provisions of this law if their complaint to the Court had been lodged in the course of the impugned proceedings and if the Court has not adopted a decision concerning the admissibility of their case.
>
> ..."

On 18 January 2005 Supreme Court (*Sąd Najwyższy*) adopted a resolution (no. III SPP 113/04) in which it ruled that while the 2004 Act produced legal effects as from the date of its date of entry into force (17 September 2004), its provisions applied retroactively to all proceedings in which delays had occurred before that date and had not yet been remedied.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings in his case exceeded a "reasonable time" within the meaning of this provision.

THE LAW

The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings in his case exceeded a "reasonable time" within the meaning of this provision.

The Government considered that the complaint was manifestly ill-founded. They did not refer to the remedies introduced by the 2004 Act.

The applicant, for his part, maintained that those remedies were not effective and stated explicitly that he had no wish to lodge a complaint

about a breach of the right to a trial within a reasonable time under the relevant provisions.

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 observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic court and that they are still pending before the first-instance court.

It further observes that, pursuant to section 18 of the 2004 Act, it was open to persons such as the applicant in the present case whose case was pending before the Court to lodge, within six months from 17 September 2004, a complaint about the unreasonable length of the proceedings with the relevant domestic court, provided that their application to the Court had been lodged in the course of the impugned proceedings and that it had not yet been declared admissible. Moreover, given that the proceedings complained of are still pending, nothing prevents the applicant from lodging such a complaint even after the expiry of the time-limit set by the transitional rule, in accordance with the general provisions of the 2004 Act.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Michalak v. Poland* (dec.), no. 24549/03, §§ 37-43).

However, the applicant, despite having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under the 2004 Act, has chosen not to avail himself of this remedy.

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

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention;

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President