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. 59444/00
by Dariusz KANIA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 13 September 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 15 November 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Dariusz Kania, is a Polish national who was born in 1962 and lives in Wroclaw, Poland.

A. The circumstances of the case

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

1. Claim for payment and subsequent proceedings

In October 1970 the applicant, at that time a schoolboy, was a victim of an accident in his primary school as a result of which he lost his sight in the right eye. In 1983 a court granted him compensation and a monthly pension.

On 12 August 1994 the applicant lodged with the Wrocław Regional Court (*Sąd Wojewódzki*) a civil action in which he sought to increase the amount of the pension and to receive compensation in connection with further deterioration of his health. The applicant submitted that the amount of the monthly pension that he had been receiving is presently 0.2 Polish zlotys (PLN).

Subsequently, the applicant was exempted from the court fees and granted legal aid.

The trial court held several hearings and on 17 December 1998 it gave judgment. The Regional Court partly allowed the action and awarded the applicant a monthly pension in the amount of PLN 1,220 and PLN 43,000 in compensation.

The applicant lodged an appeal against this judgment with the Wrocław Court of Appeal (*Sąd Apelacyjny*).

On 18 May 1999 the Court of Appeal partly allowed the appeal in that it quashed the part of the judgment which dismissed the remainder of the applicant's claims and remitted this part of the case.

On 21 December 1999 the Wrocław Regional Court (Sąd Okręgowy) after reconsideration of the case gave judgment. It partly allowed the applicant's action and awarded him a further PLN 8,000 in compensation. The applicant appealed.

On 11 April 2000 the Wroclaw Court of Appeal gave judgment in which it dismissed the appeal. The court further withdrew the exemption from the court fees and the grant of legal aid and ordered the applicant to pay PLN 5,000 for the court fees in the appellate proceedings and PLN 4,000 for the legal aid lawyer's fee.

2. Application for an exemption from court fees for proceeding with his cassation appeal

On 13 July 2000 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*). In the cassation appeal the applicant complained about the dismissal of his claim for compensation and about the withdrawal of the exemption from the court fees and the grant of legal aid.

On 26 July 2000 the Wroclaw Court of Appeal ordered the applicant to pay PLN 26,000 in court fees in the cassation proceedings.

On the same date the applicant lodged an application for exemption from the court fees. He argued that he could not bear such costs as his only income was the monthly pension ordered by the Regional Court in the amount of PLN 1,220. He further submitted that the compensation ordered by the same court in 1998 had been spent on buying an apartment in which he and his family have been living. The applicant, handicapped as a result of the accident, was married and had three children. His wife was unemployed. In consequence, the applicant submitted that he could not bear the court fees without serious harm to the well-being of his family.

On 8 August 2000 the Wrocław Court of Appeal dismissed the application for exemption from the court fees in the cassation proceedings. The court gave no reasons for the decision.

The applicant lodged an appeal. However, it appears that domestic law did not provide any remedy against such a decision and that the appeal has never been examined.

On 20 September 2000 the Wrocław Court of Appeal rejected the applicant's cassation appeal on the grounds that the applicant had failed to pay the court fee.

The applicant lodged an appeal against this decision.

Subsequently, the Court of Appeal ordered the applicant to pay PLN 5,320 in court fees for lodging this appeal.

On 17 October 2000 the applicant applied for exemption from the fees, reiterating his personal situation and arguing that he could not bear such costs.

On 17 November 2000 the Wrocław Court of Appeal rejected the applicant's appeal against the decision rejecting his cassation appeal on the grounds of the failure to pay the court fees pertaining to that appeal.

B. Relevant domestic law 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 prawy 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. Parties 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.
>
> 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

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).

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.

COMPLAINTS

1. 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.

2. He further complained that the excessive court fees required for proceeding with his cassation appeal had amounted to a disproportionate restriction on his access to a court since they prevented him from lodging a cassation appeal with the Supreme Court. The applicant alleged a breach of Articles 13 and 14 of the Convention.

THE LAW

1. 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.

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 observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic 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.

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 had 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 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 further complained that the excessive court fees required for proceeding with his cassation appeal amounted to a disproportionate restriction on his access to a court. The Court considers that this complaint should be examined under Article 6 § 1 of the Convention.

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 that his right of access to a court was breached;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President