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. 43397/98
by Roman MOCHEJSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 23 October 2001 as a Chamber composed of

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr I. CABRAL BARRETO,
Mrs N. VAJIĆ,
Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 21 February 1998 and registered on 10 September 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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 is a Polish national, born in 1948. He is a lawyer and lives in Warsaw.

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

On 27 July 1993 the applicant filed with the Warsaw District Court (*Sąd Rejonowy*) an action against the Ministry of Foreign Affairs for which he used to work as a vice-consul at the Polish Consulate General in New York until 31 August 1992. He claimed compensation for the airplane tickets he had purchased for himself and his family in order to return from New York to Poland.

On 5 August 1993 the applicant's case was transferred to the Second Civil Section of the Warsaw District Court. On 2 December 1993 the Second Civil Section decided that the case should be transmitted to the Labour Section of the Warsaw District Court as it concerned a claim based on labour law. On 23 March 1994 the case was received by the registry of the Labour Section.

The first hearing was fixed for 23 June 1994. On 22 June 1994 the defendant requested the court to postpone the hearing as its counsel was on leave and the applicant's written submissions were extensive. During the hearing held on 23 June 1994 the court decided to adjourn it until 6 October 1994.

On 6 October 1994 the hearing was adjourned until 12 January 1995 as the presiding judge was on sick leave.

On 17 October 1994 the court requested the defendant to submit a reply to the applicant's statement of claim.

During the hearing held on 12 January 1995 the court decided that a certain M.B., an employee of the defendant, should be heard as a witness and adjourned the hearing until 20 April 1995. At the same time the court instructed the defendant to provide it with the address of M.B.

On 24 January 1995 the defendant informed the court that M.B. was living in New York where he had been appointed as a consul at the Consulate General of the Republic of Poland.

The hearing held on 20 April 1995 was adjourned as the witness M.B. was not present.

On 11 September 1995 and 11 October 1996 the District Court requested the Department of International Law of the Ministry of Justice to take evidence from M.B. In a letter of 15 January 1997 the Ministry of Justice informed the President of the District Court that it faced difficulties in taking evidence from M.B. It also advised the President that he might wish to prepare another request for taking evidence from that witness and submit it directly to the concerned Polish diplomatic mission in the United States.

On 9 July 1997 the District Court again requested the Ministry of Justice to assist it in taking evidence from M.B.

On 22 July 1997 the defendant submitted a duly certified written statement made by M.B.

On an unspecified date in 1997 M.B. returned to Warsaw, where he continued to work for the defendant.

The next hearing held on 10 December 1997 at 11 a.m. was adjourned after the counsel for the defendant informed the court that M.B. could not attend since he was on vacation outside Warsaw. The applicant submits that in the afternoon of that day he made a phone call to M.B. who was in his office in Warsaw and who informed him that although formally he was on leave, he had nevertheless come to work on that day.

The hearing held on 8 April 1998 was adjourned after the court took evidence from M.B. and requested the applicant to submit copies of insurance policies which he had purchased before his departure from the United States.

The hearing held on 25 May 1998 was adjourned due to the illness of the presiding judge.

On 28 September 1998 the last hearing before the first-instance court took place.

On 5 October 1998 the Warsaw District Court delivered a judgment dismissing the applicant's action.

On 3 November 1998 the applicant was served with the reasoned judgment of the District Court.

On 4 November 1998 the applicant lodged with the Warsaw Regional Court an appeal against the judgment of the District Court. On 10 November 1998 the applicant's appeal was transmitted to the defendant. On 5 January 1999 the defendant submitted to the Warsaw Regional Court its reply.

On 7 January 1999 the Regional Court held a hearing. On 21 January 1999 the court delivered a judgment in which it awarded the applicant USD 1,789 together with interest and dismissed the remaining part of his claim.

On 22 April 1999 the applicant lodged with the Supreme Court (*Sąd Najwyższy*) a cassation appeal. On 22 July 1999 the Supreme Court rejected the appeal because such a remedy was not provided in the applicant's case since his claim was below the PLN 5,000 threshold set by the legislation for cassation appeals. In addition, the court observed that the cassation appeal had been lodged by the applicant instead of qualified counsel.

On 31 December 1999 the applicant lodged with the Supreme Court a further appeal challenging the decision rejecting his cassation appeal. On 23 March 2000 the Supreme Court rejected the appeal because such a remedy was not provided by law.

THE LAW

The applicant complained that the length of the civil proceedings was in breach of Article 6 § 1 of the Convention, which in so far as relevant provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Government contended that the facts of the present case did not disclose a violation of Article 6 § 1.

The Court firstly notes that none of the parties to the proceedings made any submissions on the applicability of Article 6 § 1 to the impugned proceedings in the light of the Court's case-law on that subject (see *Pellegrin v. France* [GC], no. 28541/95, ECHR 1999). However, in the particular circumstances of the instant case, the Court considers that it is not called to decide that question since the application is anyway inadmissible for the following reasons.

The Court will assess the reasonableness of the length of the impugned proceedings in the light of the particular circumstances of the case having regard to its complexity, the conduct of the applicant and that of the authorities dealing with the case (see, among other authorities, *Malinowska v. Poland*, no. 35843/97, 14.12.2000, § 38).

The Court notes that the impugned proceedings began on 27 July 1993, when the applicant filed his action with the Warsaw District Court, and ended on 23 March 2000, when the Supreme Court finally rejected the applicant's cassation appeal (see, *mutatis mutandis*, the Proszak v. Poland judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2771, § 25). They thus lasted about six years and eight months before the courts at three instances.

The Court considers that although the subject matter of the litigation was not complex, the case involved a degree of procedural complexity on account of the fact that the only witness in the case lived overseas.

Furthermore, the Court finds that the conduct of the applicant significantly contributed to the length of the proceedings. In particular, after the second-instance court decided the case on 21 January 1999, the applicant lodged with the Supreme Court a cassation appeal which was not provided for in domestic law. What is more, on 31 December 1999 the applicant lodged a further appeal against the Supreme Court's decision of 22 July 1999 rejecting his cassation appeal, in spite of the fact that the Supreme Court had clearly indicated that domestic law had not provided for such a remedy in the applicant's case. The appeal lodged on 31 December 1999 was also rejected because it was not provided for in domestic law. It follows that the delay of one year and three months caused by the

applicant's recourse to remedies to which he was not entitled under domestic law, must be attributed to him.

With respect to the conduct of the national authorities, the Court firstly observes that eleven months elapsed between the date on which the applicant lodged his claim and the date of the first hearing. During that period the applicant's action was transmitted to the Labour Section of the Warsaw District Court. However, this delay was to a certain degree caused by the applicant who had failed to address his action to a proper court.

Furthermore, the Court notes that between 20 April 1995 and 10 December 1997 no hearing took place. During that period the trial court made efforts to take evidence from the only witness in the case, who lived overseas. In particular, the court on three occasions asked the Ministry of Justice to assist it in taking evidence from the witness. Although the conduct of the proceedings during that period does not reveal a particularly active or effective approach on the part of the trial court, the fact remains that the delay was to a large extent due to the aforesaid procedural complexity caused by the absence of the witness.

In sum, within the overall length of about six years and eight months, the applicant contributed at least to the delay of one year and three months. In the light of the conduct of the applicant and the procedural complexity of the case, the Court considers that the impugned proceedings do not disclose an unreasonable delay within the meaning of Article 6 § 1 of the Convention.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President