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. 32849/04
by Marian MUCHA
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 17 June 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Marian Mucha, is a Polish national who was born in 1954 and lives in Sosnowiec, Poland.

A. The circumstances of the case

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

On 21 August 2001 the applicant was arrested by the police.

On 22 August 2001 the Katowice District Court (*Sąd Rejonowy*) decided to detain the applicant on remand in view of the reasonable suspicion that he had been involved in drug trafficking and drug production in an organised group.

On 20 December 2001 the applicant's pre-trial detention was prolonged by the Katowice Regional Court (*Sąd Okręgowy*). The court held that keeping the applicant in detention was justified by the need to secure the proper conduct of the investigation.

On 8 April 2002 the Regional Court further prolonged the applicant's detention. In addition to the grounds that were given in the previous decisions, the court relied on the risk of collusion.

Subsequently, the Regional Court on several occasions prolonged the applicant's detention, considering in particular that the severity of the anticipated sentences that might be imposed on the applicant and his co-accused justified holding him in custody.

In appears that the applicant and his 14 co-accused were indicted before the Bielsko-Biała Regional Court in November 2002. The trial court held the first hearing in November 2003.

As the length of the applicant's detention reached the statutory time-limit of 2 years laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*) the District Court made several applications to the Katowice Court of Appeal (*Sąd Apelacyjny*) asking for the applicant's detention to be prolonged beyond that term. On 6 August 2003 the Court of Appeal granted such request. The court noted, however, that the trial court had not started to examine the merits of the case for eight months. As regards the need to prolong the applicant's detention the court noted as follows:

> "...The [Regional Court] rightly pointed to Articles 249 § 1 and 258 § 2 of the Code of Criminal Procedure to justify the continuation of the detention on remand in order to secure the proper conduct of the proceedings, and there is no need to further discuss that.
>
> It should be underlined that, given the number of co-accused and the type of offences they had been charged with, the present case is particularly complex.

> Therefore, it is necessary to further prolong the detention in order to carry out the proceedings, in particular to take evidence from 16 accused and 11 witnesses...
>
> It should be also noted that, as the proceedings advance, the Regional Court should consider whether it was still necessary to extend the [detention on remand] with respect to all accused."

On 17 December 2003 and 23 June 2004 the Court of Appeal further prolonged the applicant's detention. The court pointed to the complexity of the case and the advanced stage of the proceedings before the trial court.

The applicant's numerous applications for release and appeals against the decision prolonging his detention were to no avail.

On 16 December 2004 the Bielsko-Biała Regional Court gave judgment. It convicted the applicant and sentenced him to eight years' imprisonment.

The applicant submitted that he lodged an appeal against this judgment and that the proceedings are pending before the Court of Appeal.

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. 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.

1. For a more detailed rendition of the relevant domestic legal provisions see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 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.

COMPLAINTS

1. The applicant complains under Article 5 § 3 of the Convention about the length of his pre-trial detention.

2. He further complains under Article 6 § 1 of the Convention about the length and unfairness of the proceedings.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention that his detention on remand was inordinately lengthy.

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.

2. The applicant also complains under Article 6 § 1 of the Convention that he did not have his case heard within a "reasonable time" and that he did not have a "fair trial".

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..."

With regard to the complaint concerning alleged unfairness of the proceedings, the Court notes that the criminal proceedings against the applicant are pending before the Katowice Court of Appeal. Accordingly, the applicant still can, and should, put the substance of the complaint before the domestic authorities and ask for appropriate relief.

As regards the complaint about the unreasonable length of the proceedings, 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 following the applicant's appeal.

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 had already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

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.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of his pre-trial detention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President