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. 37175/02
by Mieczysław RESZKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 15 November 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 19 September 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 Mieczysław Reszka, is a Polish national who was born in 1940 and lives in Brwinów.

A. The circumstances of the case

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

The applicant had constructed a building on a plot of land which he and his wife jointly owned. On 1979 the applicant divorced. Subsequently, his former mother-in-law successfully challenged the applicant's title to the land.

On 25 May 1984 the applicant instituted a civil action before the Grodzisk District Court. He claimed that, considering that the building had been constructed in good faith and that the value of that building significantly exceeded the value of the land, the ownership should pass to him and to his former wife as they had been spouses at the relevant time and all the expenditures had been incurred jointly by them.

Several hearings were held in 1984 and 1985. On 21 February 1986 the court admitted in evidence an expert report.

On 26 February 1986 the court decided to stay the proceedings pending the outcome of the proceedings for the division of marital property between the applicant and his former wife. The applicant appealed. He maintained that the outcome of the proceedings for the division of marital property was not decisive for the outcome of this case. He argued that it was rather to the contrary, as the proprietary rights - if established - could be relevant for the outcome of the proceedings for the division of property. On 3 April 1986 the court rejected the applicant's appeal for procedural reasons. The applicant appealed. On 21 May 1986 the Warsaw Regional Court allowed his appeal and quashed the decision to stay the proceedings. That court accepted the applicant's argument that the outcome of the proceedings concerning proprietary rights should be relevant for the outcome of the proceedings for the division of marital property and not the other way around.

Several hearings were held in November and December 1987 and in April, May and June 1988. Two expert opinions were admitted, which were followed by an update of these opinions. By a judgment of 28 June 1988 the District Court dismissed the applicant's action. The court found that although the applicant's expenditure to build his house had been considerable it had not significantly exceeded the value of the land. The applicant appealed. On 24 November 1989 the Warsaw Regional Court quashed the first instance judgment and remitted the case for reconsideration.

The Warsaw District Court held several hearings in 1990 and in 1991. Another expert's opinion and an update of a previously-given opinion were submitted. On 12 April 1991 the Warsaw District Court delivered a partial judgment by which it ruled that the ownership of a fraction of the land

should pass to the applicant and to his former wife. The applicant appealed to the Warsaw Regional Court.

The Warsaw Regional Court held two hearings in 1991 and subsequently stayed the proceedings at issue as other proceedings were pending which were of relevance for the outcome of the present case. On 27 May 1993 the Warsaw Regional Court resumed the proceedings. On 25 June 1993 the Warsaw Regional Court quashed this judgment and the case was remitted to the first instance court.

The Grodzisk Mazowiecki District Court held several hearings in 1996 and 1997. It ordered an update of an opinion. On 25 February 1998 the proceedings were stayed until the question of the division of the inheritance after the applicant's former mother-in-law had been settled. The proceedings were resumed on 3 February 2000. Several hearings were held in 2000, 2001 and 2002. A supplementary expert opinion was ordered. On 29 November 2992 the Grodzisk Mazowiecki District Court delivered a judgment dismissing the applicant's action. The applicant appealed.

On 14 May 2003 the Warsaw Regional Court delivered its judgment dismissing the appeal.

B. Relevant domestic law and practice

On 17 June 2004 Polish Parliament adopted a new law "on complaint about a breach of a right to have one's case heard within a reasonable time". The act entered into force on 17 September 2004.

Section 2 of the Act provides for a special action by which a party can seek a declaration that his or her right to have a case heard within a reasonable time has been breached. The court shall take into consideration the following criteria: the conduct of the court before which the case is pending; the character of the case and the complexity of the legal and factual issues involved therein; what was at stake for the complainant, and the conduct of the parties. The length complaint must be lodged when the proceedings are still pending.

Pursuant to Section 2, if the court finds that the length complaint is well-founded, it shall give a ruling to this effect. If the complainant so requests, the court can also recommend that the court before which the case is pending takes certain procedural measures in the impugned proceedings. The court may also, award an appropriate amount of money to the complainant, in the amount not exceeding PLN 10,000.

Under Section 18, within six months after the entry into force of the Act, that is, from 17 September 2004, anyone who had lodged an application with the European Court of Human Rights in due time complaining of a violation of the "reasonable-time" requirement contained in Article 6 § 1 of the Convention was entitled to lodge a length complaint provided for by the Act, if the application to the Court had been lodged when the proceedings

were still pending and if it had not yet been declared admissible by the European Court.

COMPLAINT

The applicant complains under Article 6 § 1 of the Convention about excessive length of judicial proceedings.

THE LAW

Article 6 § 1, insofar as relevant reads:

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

The Court observes that 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 ("the 2004 Act") entered into force.

Under Section 18 of this Act, it was open to persons who had brought a complaint about length of proceedings to the Court to lodge, within six months from 17 September 2004, a complaint provided for by Section 5 of that Act with a competent domestic court, provided that their application to Strasbourg Court had been lodged in the course of the proceedings concerned and that the Court had not yet adopted a decision on the admissibility of the case.

The Court recalls that it had held that this remedy provided by Polish law was effective in respect of excessive length of judicial proceedings as 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).

The Court observes that the applicant has chosen not to avail himself of this remedy, which the Court held to be effective within the meaning of Article 13 of the Convention.

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