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. 75304/01
by Jan ROSIK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 18 October 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 11 April 2000,

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,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jan Rosik, is a Polish national who was born in 1948 and lives in Piastów, Poland.

A. The circumstances of the case

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

On 22 December 1994 the applicant lodged a claim for reinstatement with the Warsaw District Court (*Sąd Rejonowy*). The case was subsequently transferred to the Warsaw Regional Court (*Sad Wojewódzki*). On 17 January 1996 the Warsaw Regional Court gave judgment.

On 5 February 1997 the Minister of Justice lodged a cassation appeal with the Supreme Court on behalf of the applicant. On 21 March 1997 the Supreme Court quashed the first and the second instance judgments and remitted the case to the Regional Court. On 17 November 1998 and 2 December 1999 respectively, the Regional Court and the Court of Appeal gave judgments.

The proceedings were terminated on 20 November 2000 by the Supreme Court. On 11 April 2000, the date on which the application was lodged with the Court, they were pending before the Supreme Court.

On 9 November 2004 the applicant filed a complaint under the 2004 Law with the Supreme Court. On 29 November 2004 the Supreme Court rejected his complaint for non-compliance with procedural requirements attached to that remedy. The Court held that according to art. 393^2 of the Code of Civil Procedure, as applicable at the material time, motions filed with the Supreme Court should be signed by a lawyer. Therefore, the complaint under the 2004 Law should also have been filed through a lawyer.

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. 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).

"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 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.

On 16 November 2004 Supreme Court adopted a resolution (no. III SPP 42/04) in which it held that article 393^2 of the Code of Civil Procedure, as in force at the material time, applies also to complaints lodged under the 2004 Law. Therefore, a person alleging a breach of reasonable time requirement

in the proceedings before the Supreme Court is required to file such a complaint through a lawyer.

COMPLAINT

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

The Government pleaded non-exhaustion of domestic remedies in that the applicant had not made use of the remedies provided for by the 2004 Act.

The applicant argued that he had exhausted the domestic remedies.

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 has already occurred (see *Michalak v. Poland* (dec.), no. 24549/03, §§ 37-43).

The applicant, after having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under

the 2004 Act, availed himself of this remedy. However, when filing his complaint with the Supreme Court he failed to comply with the procedural requirements attached to that remedy. In particular, he failed to submit his application through a lawyer as required under the Code of Civil Procedure.

The Court reiterates that domestic remedies cannot be said to be exhausted when an appeal has been rejected or not allowed because of a procedural mistake by the appellant (*Eur. Comm. HR, no. 18079/91, Dec. 4.12.1991, D.R. 72, p. 268*).

In this connection, the Court notes that the applicant's complaint about the length of the proceedings was rejected by the Supreme Court as he had failed to comply with the procedural requirements attached to that remedy.

It follows that the applicant has not complied with the requirement under Article 35 § 1 of the Convention as to the exhaustion of domestic remedies, and, therefore, this application must be rejected in accordance with Article 35 § 4 of the Convention.

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