CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45994/99
by Tadeusz STRZELECKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 25 October 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 December 1998,

Having regard to the partial decision of 14 January 2003,

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 Tadeusz Strzelecki, is a Polish national who was born in 1946 and lives in Dąbrowa Gornicza, Poland. He is represented before the Court by Mr Zbigniew Cichoń, a lawyer practising in Kraków, Poland.

THE FACTS

A. The circumstances of the case

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

On 18 October 1993 the applicant lodged with the Katowice Regional Court (*Sąd Wojewódzki*) a claim in which he asked for remuneration from a certain company B. for the use of a patent and invention. The court held several hearings and obtained three expert opinions.

On 25 October 2001 the Regional Court gave judgment. On 18 September 2002 upon the applicant's appeal the Katowice Court of Appeal (*Sąd Apelacyjny*) partly quashed the judgment and remitted the case. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*) against this judgment. It was rejected by the Supreme Court on 16 May 2003 on procedural grounds.

Following the remittal the proceedings are pending before the Katowice Regional Court.

B. Relevant domestic law and practice

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.
>
> 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.

COMPLAINT

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 under Article 13 that he did not have an effective remedy to complain about the excessive length of the proceedings.

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.

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 did not address that issue.

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 and that they are still pending following remittal of the case.

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 has 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 the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicant also complained that he had no effective domestic remedy at his disposal for his complaint under Article 6 § 1 of the Convention, as required under Article 13 of the Convention. That provision reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court has already found that the 2004 Act does provide the applicant with an effective remedy in respect of the complaint about the length of the proceedings. That finding is valid in the context of the complaint under Article 13 of the Convention (see also *Michalak*, cited above, § 46).

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

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention;

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President