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. 20484/02
by Leszek ŚWIĘTOCHOWSKI
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 15 May 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 and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Leszek Świętochowski, is a Polish national who was born in 1945 and lives in Kraków. The respondent Government were represented by Mr K. Drzewicki, of the Ministry of the Foreign Affairs and, subsequently, by Mr J. Wołąsiewicz, of the Ministry of the Foreign Affairs.

A. The circumstances of the case

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

On 8 May 1989 the applicant filed with the Warsaw District Court a statement of claim against a certain E.J. He requested payment in respect of renovation works that he had carried out in E. J.'s apartment.

On 3 December 1990 the Warsaw District Court stayed the proceedings as the defendant passed away. On 19 December 1990 the applicant requested the court to resume the proceedings on the merits. He indicated the address of the defendant's daughter (Y.M.) in the United States and that of her attorney in Poland. On 29 September 1994, Y.M., being temporarily in Poland, confirmed that she should be considered the party to the proceedings and designated her new attorney.

On 1 December 1998 the applicant filed another pleading in which he requested the court to resume the proceedings. On 28 May 1999 the court decided to resume the proceedings. On 2 August 1999 the applicant extended his claim in the way that he demanded not only payment but also apartment at issue as compensation for the destruction of 30 pages of his doctor's thesis.

On 31 October 2002 the Warsaw Regional Court found itself incompetent to deal with the case and referred it to the Warsaw District Court. On 29 April 2003 the court requested the Gdynia District Court and the Polish Consular Office in New York for judicial assistance and taking evidence from two witnesses.

Apparently, the case is still pending before the first instance court.

On 15 May 2000, when the domestic proceedings were still pending, the applicant introduced his application, complaining about the excessive length of these proceedings. The application was registered on 27 May 2002.

On 2 June 2003 the Court communicated the application to the respondent Government.

On 19 January 2004 the Government's comments on the applicant's claims for just satisfaction were forwarded to the applicant, but he did not reply.

By a letter of 15 October 2004 the Registry of the Court informed the applicant that it was open to him to avail himself of domestic remedy in respect of length of proceedings, as provided for by Article 18 of the 2004 Act.

The applicant failed to reply and has not informed the Registry whether he availed himself of this remedy.

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

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

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 has 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, having been duly informed about the possibility of lodging a complaint about the length of judicial proceedings with competent domestic courts, failed 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