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. 1427/03
by Zbigniew TOMCZYK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 3 November 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 28 August 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Zbigniew Tomczyk, is a Polish national who was born in 1964 and lives in Łódź.

A. The circumstances of the case

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

On 29 May 2001 the applicant was arrested on suspicion of burglary and obtaining money under false pretences using forged documents. On 31 May 2001 the Radomsko District Court remanded the applicant in custody for 3 months.

Subsequently, the applicant's pre-trial detention was prolonged on several occasions (in 2001: on 19 August, 25 October, 21 December; in 2002: on 27 February, 29 March, 16 April, 9 May, 27 June, 8 July, 14 August, 13 September and 28 October). The courts based their decisions on the fact that there was a reasonable suspicion that the applicant had committed the offence concerned and that it had been committed after he had been released from prison where he had served a sentence for a similar crime. His earlier going into hiding was also taken into account.

On 12 March 2003 the Radomsko District Court sentenced the applicant to four years and six months' imprisonment. On 22 August 2003 the Piotrków Trybunalski Regional Court upheld the judgment. The Attorney General refused to lodge a cassation appeal on behalf of the applicant.

B. Relevant domestic law and practice

On 17 June 2004 Polish Parliament adopted a new law "on a 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.

Article 2 of the Act provides for a special action by which a party can seek a declaration that his or her right to have the 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 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 concerned are still pending.

Article 5 of the Act reads, in so far as relevant:

> "1. A complaint about the unreasonable length of proceedings shall be lodged while the proceedings are pending. ..."

Pursuant to Article 12, 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 an amount not exceeding PLN 10,000.

Under Article 18, within six months after the entry into force of this 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.

COMPLAINTS

The applicant complains about the length of his pre-trial detention.

The applicant also complains that his right to a hearing within a "reasonable time" has been breached. He invokes Articles 6 § 1 and 14 of the Convention, as well as Article 1 of the Protocol 4.

THE LAW

1. The applicant complains that the length of the proceedings in his case was unreasonable. He relies on Article 6 § 1 and 14 of the Convention, as well as Article 1 of the Protocol 4. The Court will examine this complaint under Article 6 § 1 of the Convention, which provides, in so far as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

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.

On 1 March 2005 the Court gave decisions in two leading cases: *Charzynski v. Poland* no. 15212/03 (criminal proceedings) and *Michalak v. Poland* no. 24549/03 (civil proceedings), holding that persons complaining about the length of proceedings before the Polish courts were required by Article 35 § 1 of the Convention to lodge a complaint about the breach of the right to a trial within a reasonable time under the 2004 Act.

Under Article 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 the 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 their case.

In the light of the foregoing, the Court considers that the applicant was required by Article 35 § 1 of the Convention to lodge a complaint about a breach of the right to a trial within a reasonable time with the domestic court under the 2004 Act. However, he did not avail himself of this remedy.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. The applicant complains about the length of his pre-trial detention.

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.

For these reasons, the Court unanimously

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

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President