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. 52043/99
by Ewelina WASILEWSKA and Others
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 April 1999,

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 partial decision of 4 November 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Ewelina Wasilewska (hereinafter: "the first applicant"), Ms Bożena Wasilewska ("the second applicant") and Mr Maciej Wasilewski ("the third applicant"), are Polish nationals, who

were born in 1976, 1955 and 1978 respectively and live in Jelenia Góra, Poland.

A. The circumstances of the case

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

The second applicant is the mother of the first and third applicants.

On 13 May 1994 the applicants filed with the Jelenia Góra Regional Court an action against an insurance company P. in which they claimed compensation and supplementary pensions relating to the death of L. Wasilewski, the second applicant's husband and the other applicants' father.

On 25 April 1996 the court gave judgment. It awarded compensation to the applicants and dismissed their claims for pensions. They appealed.

On 19 December 1996 the Wrocław Court of Appeal amended the appealed judgment in that it increased the amount of compensation. On 15 April 1997 the applicants lodged a cassation appeal against the Court of Appeal's judgment.

On 26 November 1997 the Court of Appeal decided to reinstate the time limit for lodging a cassation appeal.

On 9 January 1998 the first and third applicants withdrew their claims for supplementary pensions, limiting their appeals to the issue of compensation. They submitted that, despite the partial exemption, the fee they had to pay for their cassation appeal was excessive. The applicants therefore decided to limit the overall value of their claims, in consequence of which the proportional fee was reduced and they could afford to pay it.

On 12 October 1999 the Supreme Court gave a judgment. It discontinued the proceedings as far as they concerned the first and third applicants' claims for pensions, since they had withdrawn those claims and it was bound by their decision. The court quashed part of the judgment of the Court of Appeal and remitted that part of the case for re-examination. It dismissed the remainder of the cassation appeal.

On 27 January 2000, having re-examined the case, the Court of Appeal amended the judgment of the Regional Court as far as it concerned the first and third applicant. It quashed the part relating to the second applicant and remitted the case in that part for re-examination.

The Jelenia Góra Regional Court held hearings on 13 September 2000, 12 January, 5 February, 21 May, 6 August, 18 September and 28 September 2001.

On 8 October 2001 the Jelenia Góra Regional Court gave a judgment. It awarded the second applicant a supplementary pension, as well as overdue pension payments. She appealed.

On 8 February 2002 the Court of Appeal amended the appealed judgment.

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 applicants complain 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 applicants have chosen not to avail themselves 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 remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President