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. 23362/02
by Adam WOJCIECHOWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 13 December 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 5 October 2001,

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 Adam Wojciechowski, is a Polish national who was born in 1962 and lives in Katowice. She was represented before the Court by his mother, Ms T. Wojciechowska.

A. The circumstances of the case

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

In 1981 the applicant was certified as being fit for military service.

On 28 October 1983, despite the fact that the applicant had medical certificates stating that he suffered from epilepsy, he was conscripted to regular service.

On 20 November 1984 the Military Medical Commission downgraded the applicant's health category and he was discharged from the army on 30 November 1984, after having served 13 months instead of the statutory 24 months.

Subsequently, the applicant was hospitalised several times and, at the age of 34, he had a heart attack.

On 5 May 1994 the applicant sued the State Treasury for damages. He maintained that the deterioration of his health and his invalidity resulted from his military service which he should not have done.

On 26 September 1994 the Katowice Regional Court partly exempted the applicant from the court fees and granted him legal aid.

On 7 November 1994 the Katowice Regional Bar appointed an ex officio attorney J.P. for the applicant.

On 16 February 1996 the Katowice Regional Court stayed the proceedings as the applicant's *ex officio* attorney had failed to submit the documents requested by the court.

On 11 June 1996 the applicant's mother complained to the Katowice Regional Bar about negligent conduct on the part of the applicant's *ex officio* attorney. She stated that the attorney was in possession of all the necessary documents and that therefore his failure to file them with the court was inexplicable.

On 11 June 1996 the applicant's attorney J.P. submitted the requested documents to the court.

On 20 June 1996 the Katowice Regional Court resumed the proceedings. A new judge was appointed. On the same date the Katowice Regional Bar appointed another *ex officio* attorney E.W. for the applicant.

At the hearing of 24 February 1997 the applicant petitioned the court to appoint a medical expert. The Katowice Regional Court appointed the medical expert and instructed the applicant to make an advance payment in respect of the expert's costs.

On 27 February 1997 the applicant requested the court to exempt him from that advance payment. On 14 March 1997 the exemption was granted.

On 11 April 1997 the Katowice Regional Bar appointed the next attorney (T.P.) for the applicant.

On 31 May 1997 the expert's report was submitted. In the meantime, the judge changed again.

At the hearing of 10 October 1997 the applicant, who was represented by a new *ex officio* attorney, requested an additional time-limit in order to submit evidence challenging the expert's report conclusions. It appears that the applicant failed to produce that evidence and, by a decision of 3 November 1997, the Regional Court stayed the proceedings.

On 11 February 1998 the applicant's attorney T.P. requested the court to resume the proceedings and to summon three medical experts for the hearing.

On 13 May 1998 the Warszawa-Praga District Court heard two of the experts, as it had been asked to do by the Katowice Regional Court.

The proceedings were resumed on 23 September 1998. At this hearing the Katowice Regional Court heard the third expert requested on 11 February 1998. The Regional Court also appointed additional court experts, specialists in neurology and psychiatry, and summoned the applicant to make an advance payment to cover their costs.

On 30 September 1998 the applicant's attorney T.P. requested the court to exempt the applicant from that advance payment. On 12 October 1998 the exemption was granted.

On 25 June 1999 the expert submitted his report to the court. At the hearing held on 8 October 1999 the applicant's attorney T.P. requested the court to order a supplementary expert report in psychiatry. The court decided to do so and it requested the applicant to pay in advance the costs of its preparation.

Since the applicant failed to make the payment, the proceedings were again stayed on 4 November 1999.

On 23 February 2001 the applicant's attorney T.P. requested the court to resume the proceedings and exempt the applicant from the advance payment for preparation of the expert opinion.

On 10 August 2001 the Regional Court resumed the proceedings and exempted the applicant from the obligation to make an advance payment in respect of the expert report. The case was assigned to a new judge.

On 22 November 2001 the expert report was submitted.

At the hearing of 8 January 2002 the applicant requested a supplementary expert report or the appointment of a new expert. The Katowice Regional Court decided to summon one of the experts to respond to additional questions.

The next hearing was held on 26 February 2002. Having heard the testimony of the court expert, the Katowice Regional Court decided that the evidence in the case was complete.

By a judgment of 12 March 2002 the Regional Court dismissed the applicant's claim. On 18 April 2002 the applicant's attorney filed an appeal.

At the hearing held on 13 February 2003 the Katowice Court of Appeal closed the trial.

On 24 February 2003 the applicant's mother as a plenipotentiary of her son requested the court to re-open the trial in order to submit new evidence - an expert report of the Łódź Medical University.

On 26 February 2003 the Katowice Court of Appeal decided to reopen the trial.

On 20 March 2003 the Katowice Court of Appeal quashed the first instance judgment and remitted the case for reconsideration. The court found that the defendant, the State Treasury, should have been represented by the Silesian Governor and not by the Chief of the Conscription Commission.

On 1 July 2004 the Katowice Regional Court gave a judgment in which dismissed the action. The applicant appealed.

On 14 April 2005 the Katowice Court of Appeal upheld the judgment.

On 6 December 2004 the applicant lodged a complaint about a breach of the right to a trial within a reasonable time under the Act of 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"). In the complaint the applicant referred mainly to the merits of the case, addressing the alleged procedural errors of the courts and errors in assessment of evidence. He vaguely referred to the allegedly excessive length of the proceedings, not specifying why he claims the proceedings were excessive and in which parts. His complaint on this issue was restricted to one sentence which reads: "The hearings were fixed at quite long intervals, various legal-aid lawyers and judges were appointed"

On 8 December 2004 the Katowice Court of Appeal rejected the applicant's complaint for non-compliance with procedural requirements set out in the 2004 Act. It found that the applicant had failed to substantiate his complaint, neither stating the reasons why he found the proceedings excessively lengthy nor stating the period in which he claimed the delays had persisted nor even stating what he requested.

B. Relevant domestic law

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 entered into force.

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 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 Article 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.

Pursuant to Article 6 item 1 a complaint about the excessive length of judicial proceedings should comply with the requirements for pleadings. The requirements are set out in Article 126 of the Code of Civil Procedure of 1964. It provides that pleadings should include, *inter alia,* the nature of the motion submitted to the court, followed by evidence and arguments in support thereof.

Pursuant to Article 6 item 2 of the 2004 Law, a complaint about the excessive length of judicial proceedings should include a request to the court to declare that the proceedings were conducted in breach of the "reasonable time" requirement. The complainant should also put forward arguments to support this request by referring to circumstances justifying the request.

Under Article 18 of the 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 Article 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 LAW

The applicant complains about the excessive length of the civil proceedings, which began on 5 May 1994 and ended on 14 April 2005.

Article 6 § 1, insofar as relevant reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... within a reasonable time by [a] ... tribunal ..."

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.

The Court recalls that it has 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).

Pursuant to Article 6 item 1 a complaint about the excessive length of judicial proceedings should comply with the requirements for pleadings. The requirements are set out in Article 126 of the Code of Civil Procedure of 1964. It provides that pleadings should include, *inter alia,* the nature of the motion submitted to the court, followed by evidence and arguments in support thereof.

Pursuant to Article 6 item 2 of the 2004 Law, a complaint about the excessive length of judicial proceedings should include a request to the court to declare that the proceedings were conducted in breach of the "reasonable time" requirement. The complainant should also put forward arguments to support this request by referring to circumstances justifying the request.

The Court observes that on 6 December 2004 the applicant lodged a complaint under the 2004 Act. He referred mainly to the merits of the case, addressing the alleged procedural errors of the courts and errors in assessment of evidence. He vaguely referred to the allegedly excessive length of the proceedings, not specifying why he was of the view that the proceedings were excessive or during which periods.

On 8 December 2004 the Katowice Court of Appeal rejected the applicant's complaint for non-compliance with the procedural requirements set out in the 2004 Act. It found that the applicant had failed to substantiate his complaint, having neither stated why he considered that the proceedings were excessively lengthy nor specified the period in which he claimed that the delays had persisted nor even stated what he requested.

The Court reiterates that under Article 35 of the Convention, it may only deal with applications after all domestic remedies have been exhausted. It notes that the Convention institutions have consistently taken the view that that condition is not satisfied if a remedy has been declared inadmissible for failure to comply with a formal requirement (see *Ben Salah Adraqui and Dhaime v. Spain* (dec.), no. 45023/98, decision of 27 April 2000, ECHR 2000-IV; *Merger and Cros v. France* (dec.), no. 68864/01, decision of 11 March 2004*; Le Compte v. Belgium*, application no. 6878/75, Commission decision of 6 October 1976, Decisions and Reports (DR) 6, p. 79, and *T. v. Switzerland*, application no. 18079/91, Commission decision of 4 December 1991, DR 72, p. 263).

The Court further reiterates that when the problem of interpretation of domestic law occurs, it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts of appeal and of first instance, to resolve problems of interpretation of domestic legislation, also when the relevant provisions concern the admissibility of remedies provided for by domestic law (see, among many other authorities: *Brualla Gómez de la Torre v. Spain*, 19 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2955, § 31; *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, *Reports* 1998-I, p. 290,

§ 33). The role of the Court is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of rules of a procedural nature (see, *mutatis mutandis*, the *Tejedor García*, p. 2796, § 31).

In the present case the domestic court found that the complaint did not comply with procedural requirements set out in the law because the applicant had failed to specify the period of proceedings to which his complaint related, to submit relevant argumentation supporting the allegation as to the excessive length of proceedings and to state precisely what he requested.

In the light of the circumstances of the case the Court finds that there is nothing in the case file to render the domestic court's reasoning unreasonable or arbitrary.

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