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. 1007/04
by Marian ZDROJEWSKI
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 20 December 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 partial decision of 29 June 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr. Marian Zdrojewski, is a Polish national, who was born in 1929 in Łódź where he currently lives.

A. The circumstances of the case

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

On 3 February 2000 the Veterans' and Persecuted Office informed the applicant that the Office had *ex officio* instituted proceedings in order to verify, whether under the legislation in force, he was entitled to maintain his veteran's status, awarded by a decision given previously.

By a decision of 12 May 2000 the Director of the Office took away the applicant's veteran's status. The decision was based on the fact that the applicant had served in the Civil Militia and, under the amended legislation, this no longer constituted grounds for being granted veteran's status.

The applicant appealed against that decision.

On 24 July 2000 the Director of the Office, having reconsidered the applicant's case, upheld the decision of 12 May 2000.

The applicant lodged an appeal with the Supreme Administrative Court.

On 7 October 2003 the Supreme Administrative Court rendered a judgment by which it dismissed the applicant's appeal.

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 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.

Section 5 provides, in so far as relevant:

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

Section 16 refers to proceedings that have been terminated and that do not fall under the transitional provision of Section 18:

> "A party which has not lodged a complaint about the unreasonable length of the proceedings under section 5 (1) may claim – under Article 417 of the Civil Code ... – compensation for the damage which resulted from the unreasonable length of the proceedings after the proceedings concerning the merits of the case have ended.

Article 442 of the Civil Code sets out limitation periods in respect of various claims based on tort. That provision applies to situations covered by Article 417 of the Civil Code. Article 442, in so far as relevant, reads:

> "1. A claim for compensation for damage caused by a tort shall lapse 3 years following the date on which the claimant learned of the damage and the persons liable for it. However, the claim shall in any case lapse 10 years following the date on which the event causing the damage had occurred."

COMPLAINT

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

THE LAW

The applicant complains that the proceedings in his case were not conducted within a reasonable time, in breach of Article 6 § 1 of the Convention.

However, 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 notes in respect of the proceedings before the Supreme Administrative Court that they came to an end on 7 October 2003, i.e. less than three years before 17 September 2004, the date on which the 2004 Act came into force.

It further observes that, pursuant to section 16 of the 2004 Act, it was open to persons such as the applicant in the present case to seek compensation in tort from the State Treasury, relying on Article 417 of the Civil Code for damage caused by the allegedly excessive length of proceedings in which a judicial decision on the merits of the case had already been given.

The Court has already examined whether the civil action for damages brought under section 16 of the 2004 Act read together with Article 417 of the Civil Code was an effective remedy in respect of the length of judicial proceedings. It held, having regard to the characteristics of these remedies

and notwithstanding the absence of established judicial practice in respect of such claims, that these remedies were effective in respect of persons who on 17 September 2004, when the 2004 Law entered into force, could still lodge such an action with the competent domestic court (see, *Krasuski v. Poland*, judgment of 14 June 2005, §§ 69-72).

However, the applicant, despite having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under section 16 of the 2004 Act, has chosen not to avail himself of this remedy. It follows that this part of the applicant's complaint 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