CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF MAŁASIEWICZ v. POLAND

(Application no. 22072/02)

JUDGMENT

STRASBOURG

14 October 2003

FINAL

14/01/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Małasiewicz v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 September 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22072/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Sławomir Małasiewicz ("the applicant"), on 25 May 2002.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of the Foreign Affairs.

3. On 17 December 2002 the Fourth Section declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1966 and lives in Częstochowa, Poland.

5. In June 1995, on his way to work, the applicant bought a bottle of sparkling mineral water. While he was opening it, the bottle exploded and its metal cap hit the applicant's left eye. The accident, despite the subsequent surgeries and medical treatment, resulted in the applicant's loss of vision in his left eye. He was declared an invalid and was granted a disability pension by the Social Security Board (*Zakład Ubezpieczeń Społecznych*).

6. In August 1997 the applicant instituted civil proceedings for compensation and pension against the producer of the mineral water. He

submitted medical certificates issued by the Częstochowa and Katowice Hospitals which treated his injury.

7. On 23 October 1997 the Częstochowa Regional Court (*Sąd Wojewódzki w Częstochowie*) exempted the applicant from the court fees.

8. On 15 November and 15 December 1997 the trial court held hearings.

9. In December 1997 the "S" assurance company joined the proceedings as an intervener.

10. In 1998 the trial court held four hearings at which it heard witnesses.

11. On 8 December 1998 the court, sitting *in camera*, ordered a medical expert opinion.

12. On 18 May 1999 the court received the opinion.

13. On 25 May 1999 the court, sitting *in camera*, ordered the Social Security Board to provide a copy of the applicant's file.

14. Between 24 November 1998 and 7 September 1999 no hearings were held.

15. At the subsequent hearings held on 8 September 1999, 12 January and 14 June 2000 the court heard witnesses and ordered the preparation of new expert opinions.

16. On 13 December 2000 the trial court held a hearing at which it asked for another expert medical opinion to be prepared.

17. On 10 April 2001 the court received the expert opinion. The intervener challenged it.

18. At the hearing held on 20 June 2001 the court requested an expert opinion concerning the applicant's pension.

19. The expert submitted the opinion on 31 January 2002. Again, the intervener challenged the opinion.

20. The next hearing, which was held on 20 March 2002, was adjourned *sine die*. The court ordered another expert opinion.

21. On 24 May 2002 the opinion was submitted to the court. Subsequently, the intervener challenged it.

22. On 27 September 2002 the trial court held a hearing.

23. On 30 September 2002 the Częstochowa Regional Court gave judgment. The defendant was found liable for the damage sustained by the applicant. The court awarded the applicant PLN 85,000 in compensation but dismissed his claim for pension.

24. Both parties appealed against this judgment.

25. On 4 April 2003 the applicant was exempted from the court-fees in the appeal procedure. The proceedings are pending before the Court of Appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

26. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement in Article 6 § 1 of the Convention, which reads as follows:

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

27. The Government contested that argument.

28. The period to be taken into consideration began in August 1997 and has not yet ended. It follows that the proceedings have lasted so far about six years and two months.

A. Admissibility

29. The Government submitted that the applicant had not exhausted all remedies available at the time of lodging his application with the Court. They noted that on 4 December 2001 the Polish Constitutional Court gave judgment, in consequence of which a remedy in respect of the excessive length of proceedings had been created. The Government pointed out that there had been a first decision of a domestic court applying the new remedy. Consequently, the Government requested the Court to stay the proceedings in the present case and suggested that the applicant initiate civil proceedings "so that in his case the remedy in question might also be tested".

30. The applicant contested the Government's arguments. In particular he submitted that the remedy proposed by the Government was of theoretical nature and not practical and effective.

31. The Court reiterates that Article 35 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

32. The Court observes that the Government's objection is confined to a mere assertion that the judgment of the Constitutional Court created a new remedy and that a domestic court gave a decision in an individual case. Neither further information about this decision nor a copy of it has been provided. In the absence of such evidence and having regard to the

above-mentioned principle, the Court finds that the Government have failed to substantiate their contention that the remedy at issue is an effective one. As long as there is no case-law of the Supreme Court adduced before the Court or, at least, of appellate courts applying the Constitutional Court's judgment to individual cases also with respect to facts which had occurred before that judgment, the Court cannot conclude that the Constitutional Court's interpretation of Article 417 of the Civil Code created an effective remedy in length of proceedings cases (see *Skawinska v Poland* (dec), no. 42096/98, 4 March 2003).

33. Furthermore, the Court refers to its case-law to the effect that no specific remedy in respect of the excessive length of proceedings exists under Polish law (see, in respect of criminal proceedings, *Kudła v. Poland* [GC], no. 30210/96, § 159, ECHR 2000-XI, in respect of civil proceedings *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82-A, p. 76 and *Witczak v. Poland* (dec.), no. 47404/99, 23 October 2001).

34. For these reasons, the Court finds that the application cannot be rejected for non-exhaustion of domestic remedies. It further notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. The Court will therefore declare the case admissible.

B. Merits

1. The submissions before the Court

35. The Government submitted that the case was "rather complex" which was showed by the number of prepared expert opinions and witnesses heard by the trial court.

36. With regard to the conduct of the applicant the Government submitted that he partly contributed to the length of the proceedings. In particular, they noted that the applicant had once challenged an expert opinion and had not been present at one medical examination because of his illness. The Government acknowledged that the defendant and the intervener were also responsible for the length of the proceedings because they had challenged in total five expert opinions which resulted in the appointment of new experts by the court.

37. As regards the conduct of the domestic authorities, the Government submitted that they showed due diligence in examining the case and that there were no substantial periods of inactivity for which the trial court could be held responsible. The Government further acknowledged that between November 1998 and September 1999 no hearings were held, but maintained that during that period the trial court was not inactive because it ordered an expert opinion.

38. Finally, the Government were of the opinion that what was at stake for the applicant was of a pecuniary nature only and that no special diligence was required from the domestic authorities.

39. The applicant submitted that the case was not complex. He claimed that the facts and the medical background were rather simple and similar to other cases examined by the same court.

40. The applicant further argued that he did not in any way contribute to the length of the proceedings. In particular, he stated that since lodging his action in 1997 he had not modified his claim. The applicant further submitted that the trial court ordered a number of unnecessary expert opinions and was solely responsible for the length of the proceedings.

41. Referring to what was at stake for him, the applicant submitted that his civil action was of crucial importance to him as it was meant to compensate him for his disability and to provide him with resources to pay for his medical treatment. However, not only did he not obtain justice but, by prolonging the procedure, the court caused him additional stress and financial hardship. In the applicant's opinion, the proceedings increased his feeling of defeat and injustice and contributed to the deterioration of his psychological health.

2. The Court's assessment

42. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

43. The Court considers that the case involved a certain degree of complexity as the facts of the case had to be assessed against the expert evidence. However, the overall length of the proceedings cannot be explained by their complexity. Moreover, the Court notes that the information before it does not indicate that the applicant by his behaviour contributed in a significant way to the overall length of the proceedings.

44. The Court is of the opinion that the conduct of the trial court which examined the case for over five years contributed to the delay in the proceedings (see paragraphs 6 - 23 above). In particular the Court notes two long periods between hearings lasting about nine months each (see paragraphs 14, 18 and 20 above).

45. The Court notes that the applicant's action concerned compensation and pension for an accident which made him an invalid and diminished the quality of his life. Therefore the Court agrees that what was at stake in the litigation in issue was undoubtedly of crucial importance to the applicant

and required that the domestic courts show special diligence in handling his case.

46. The Court considers that, in particular circumstances of the instant case, a period of about six years and two months without a final decision having been reached yet exceeds a reasonable time.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

48. The applicant claimed 33,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

49. The Government submitted that the applicant's claim was excessive.

50. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

51. On the other hand, the Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the instant case and deciding on equitable basis, the applicant should be awarded EUR 5,000 in respect of non-pecuniary damage.

B. Default interest

52. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the proceedings admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President