CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF NOWAK v. POLAND

(Application no. 27833/02)

JUDGMENT

STRASBOURG

5 October 2004

FINAL

30/03/2005

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 Nowak v. Poland,

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

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

Having deliberated in private on 14 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 27833/02) 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 Artur Nowak ("the applicant"), on 17 July 2002.

2. The Polish Government ("the Government") were represented by their Agents, Ms S. Jaczewska, and subsequently, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. On 5 June 2003 the President of the Fourth Section 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 was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1976 and lives in Piotrków Trybunalski, Poland.

5. In December 1993 the applicant, at that time seventeen years old, was hit by a car driven by a certain Mr R.Z. As a consequence of the accident, his left leg had to be amputated.

6. On 17 June 1994 the applicant, represented by his mother, lodged with the Piotrków Regional Court (*Sąd Wojewódzki*) a civil action against the State Insurance Company (*Powszechny Zakład Ubezpieczeń*). He

claimed 800,000,000 old zlotys in compensation for pecuniary and non-pecuniary damage.

7. On 18 June 1994 the trial court exempted the applicant from payment of court-fees.

8. On 24 August 1994 the first hearing was held. The trial court requested the applicant's medical file from a hospital and ordered an expert opinion.

9. At the next hearing held on 1 February 1995 the court heard an expert witness and requested a second expert opinion.

10. Between 2 February and 21 November 1995 no hearings were held.

11. At the hearing held on 22 November 1995 the trial court gave the parties a time-limit for reaching a friendly settlement.

12. Subsequently, hearings were held on 11 March and 27 November 1996. At those hearings the court heard the applicant's mother and an expert witness.

13. The hearing scheduled for 26 February 1997 was cancelled due to illness of the applicant's counsel.

14. On 27 February 1997 the applicant modified his claim. He in addition sought a monthly allowance.

15. Afterwards, hearings were held on 5 March and 9 April 1997. Mr. R.Z., the driver responsible for the accident, joined the proceedings as an intervener.

16. Between 10 April 1997 and 10 September 1998 no hearings were held.

17. On 11 September and 9 October 1998 the trial court held hearings at which it heard an expert witness and the applicant.

18. On 2 December 1998 the Piotrków Trybunalski Regional Court gave judgment. The trial court awarded the applicant compensation and a monthly pension.

19. On 28 January 1999 the defendant lodged an appeal against this judgment.

20. On 16 April 1999 the Łódź Court of Appeal (*Sąd Apelacyjny*) held a hearing and gave judgment. It amended the first-instance judgment regarding interest and ordered the applicant to reimburse the costs of the proceedings incurred by the defendant.

21. On 1 June 1999 the applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

22. On 23 January 2002 the Supreme Court held a hearing and gave judgment. The Supreme Court partly allowed his cassation appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

23. 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..."

24. The Government contested that argument.

25. The period to be taken into consideration began on 17 June 1994 and ended on 23 January 2002. It thus lasted seven years, seven months and six days.

A. Admissibility

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. The Court will therefore declare it admissible.

B. Merits

27. 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 following criteria: the complexity of the case, the conduct of the applicant and 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). Finally, the Court agrees that some delays in the procedure before the Supreme Court could be explained by the fact that, during the material time the Supreme Court had to deal with an increased workload and that subsequently the authorities had taken remedial actions (see, *Kepa v. Poland* (dec), no. 43978/98, 30 September 2003). Nevertheless, in the present case, the applicant's cassation appeal lay dormant in the Supreme Court for thirty-two months which constitutes an unreasonable delay.

28. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

29. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of

persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF AN UNFAIR TRIAL

30. The applicant complained of a violation of Article 6 in that he did not have a "fair trial."

31. However, the Court finds that the applicant's assertion about the violation of the above provision of the Convention is wholly unsubstantiated.

32. It follows that this part of the application is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 174,600 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

35. The Government submitted that this claim was excessive.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant 3,600 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

37. The applicant also claimed PLN 8,287 for the costs and expenses incurred before the domestic courts.

38. The Government contested this claim.

39. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court dismisses this claim.

C. Default interest

40. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;

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

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 3,600 (there thousand six hundred 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 5 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President