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

FOURTH SECTION

CASE OF KRASUSKI v. POLAND

(Application no. 61444/00)

JUDGMENT

STRASBOURG

14 June 2005

FINAL

14/09/2005

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 Krasuski v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 21 September 2004 and on 31 May 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 61444/00) 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 Waldemar Krasuski ("the applicant"), on 15 February 2000.

2. The applicant was represented by Mr L. Cyrson, a lawyer practising in Poznań, Poland. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged that he had not had his case heard within a "reasonable time", as required under Article 6 § 1 of the Convention. He also alleged a breach of Article 13 of the Convention in that he had no effective domestic remedy in respect of the excessive length of the proceedings.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 18 November 2003 the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

8. On 21 September 2004 the Chamber invited the parties to submit further observations on the merits of the complaint under Article 13. The Government filed their observations on 23 November and 14 December 2004. The applicants' representative lodged pleadings on 8 November 2004 and 3 January 2005 respectively.

9. On 2 February 2005 the applicant's wife, Mrs Józefa Krasuska, informed the Court's Registry that the applicant had died on 30 December 2004. She stated that she wished to continue the proceedings before the Court in her late husband's stead.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1934. He died on 30 December 2004. He lived in Zielona Góra, Poland.

11. In July 1994 the applicant and his wife concluded a contract with E.W. and W.W., the owners of a company W. Under that contract the company was to carry out building work on the applicant's house. On 24 November 1994 the applicant, considering that the company was in breach of the contract, withdrew from it.

12. On 1 February 1996 the applicant and his wife ("the plaintiffs") sued E.W. and W.W. in the Zielona Góra Regional Court (*Sąd Wojewódzki*), seeking compensation for the serious damage to the house allegedly caused by the defendants.

13. On 13 March and 27 June 1996 the court held hearings and heard evidence from witnesses.

14. On 24 July 1996 the court instructed Poznań Technical University (*Politechnika Poznańska*) to prepare an expert report. The report was submitted to the court on 4 November 1996. The defendants challenged the report on 2 December 1996.

15. At a hearing on 23 December 1996 the Regional Court ordered the experts to revise their report. On 26 January 1997 they upheld their original conclusions.

16. On 17 July 1997 the plaintiffs modified their claim.

17. The court held a hearing on 29 October 1997.

18. On 31 March 1998 the court ordered the experts to supplement their report.

19. The parties filed their pleadings in March, April and October 1998.

20. On 4 November 1998 the court held a hearing. The Government maintained that in the course of the hearing the plaintiffs had modified their claim. The applicant contested this.

21. On 19 November 1998 the court gave judgment and dismissed the claim. The plaintiffs appealed.

22. On 18 May 1999 the Poznań Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case to the Regional Court.

23. On 30 September 1999 the Regional Court held a hearing. It decided to obtain a fresh expert report. In the meantime, the applicant had made two unsuccessful applications for his claim to be secured.

24. On 20 February 2000 the expert report was submitted to the court.

25. At the hearing held on 9 May 2000 the court heard evidence from the expert.

26. The Government submitted that on 16 May 2000 the plaintiffs had altered the amount of the damages they had sought. Subsequently, they applied for an exemption from the court fee due for the increased claim. On 12 October 2000 the court refused their application. That decision was later upheld by the Poznań Court of Appeal. The applicant denied that they had altered their claim.

27. On 28 February 2001 the plaintiffs again unsuccessfully applied for an exemption from payment of the court fee for the increased claim. Eventually, on 16 March 2001, the particulars of that claim were returned to them on account of their failure to pay the fee.

28. The Government maintained that at the hearing held on 8 May 2001 the plaintiffs had increased their claim and had stated that they would not seek an exemption from the court fee. However, on 4 June 2001 the particulars of the amended claim were again returned to them on account of their failure to pay the fee in question.

29. The applicant stated that this was not true. He maintained that, in a pleading of 11 May 2001, after the experts had again revised their valuation of the damage sustained, he had indeed extended the amount of the damages sought to 300,000 Polish zlotys (PLN), mostly because he had been forced to do so by the court. He had also sought an exemption from court fees since to do otherwise would have been illogical.

30. A hearing scheduled for 12 July 2001 was adjourned at the plaintiffs' request. A subsequent hearing was held on 6 September 2001.

31. On 4 October 2001 the court heard evidence from the parties and closed the trial. On 11 October 2001 it gave judgment, awarding the applicant PLN 50,000 plus statutory interest.

32. On 30 November 2001 the applicant appealed against the judgment. Shortly afterwards, on 10 December 2001, the Regional Court ordered him to rectify the formal shortcomings in his appeal.

On 8 January 2002 the applicant applied for an exemption from the court fees for lodging the appeal. The Regional Court rejected his application on 23 January 2002. The applicant unsuccessfully appealed against the refusal; eventually, he paid the court fees on 22 February 2002.

33. On 20 June 2002 the Poznań Court of Appeal heard, and dismissed, the applicant's appeal. Since the applicant refrained from lodging a cassation appeal (*kasacja*) with the Supreme Court, the judgment became final on that day.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The State's liability for torts committed by its officials

1. Provisions applicable before 1 September 2004

34. Articles 417 et seq. of the Civil Code (*Kodeks cywilny*) provide for the State's liability in tort.

In the version applicable until 1 September 2004, Article 417 § 1, which lays down a general rule, read as follows:

> "1. The State Treasury shall be liable for damage caused by a State official in the performance of the duties entrusted to him."

35. Article 418 of the Civil Code, as applicable until 18 December 2001 (see paragraphs 38-39 below), provided for the following exception in cases where damage resulted from the issuing of a decision or order:

> "1. If, in consequence of the issuing of a decision or order, a State official has caused damage, the State Treasury shall be liable only if a breach of the law has been involved in the issuing of the decision or order and if that breach is the subject of a criminal prosecution or a disciplinary investigation, and the guilt of the person who caused the damage in question has been established by a final conviction or has been admitted by the person's superior.
>
> 2. The fact that such guilt has not been established by means of a criminal conviction or a decision given in disciplinary proceedings shall not exclude the State Treasury's liability for damage if such proceedings cannot be instituted in view of a [statutory] bar to prosecution or disciplinary action."

2. Provisions applicable from 1 September 2004

36. On 1 September 2004 the Law of 17 June 2004 on amendments to the Civil Code and other statutes (*Ustawa o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw*) ("the 2004 Amendment") entered into force. While the relevant amendments were in essence aimed at enlarging the scope of the State Treasury's liability for tort under

Article 417 of the Civil Code – including the addition of a new Article 417[1] and provision being made for the State's tortious liability for its omission to enact legislation, a concept known as "legislative omission" (*zaniedbanie legislacyjne*) – they are also to be seen in the context of the operation of a new statute introducing remedies in respect of the unreasonable length of judicial proceedings (see paragraphs 38-41 below).

Following the 2004 Amendment, Article 417[1], in so far as relevant, reads as follows:

> "3. If damage has been caused by failure to give a ruling [*orzeczenie*] or decision [*decyzja*] where there is a statutory duty to do so, reparation for [the damage] may be sought after it has been established in the relevant proceedings that the failure to give a ruling or decision was contrary to the law, unless other specific provisions provide otherwise."

37. However, under the transitional provisions of section 5 of the 2004 Amendment, Article 417 as applicable before 1 September 2004 (see paragraph 34 above) applies to all events and legal situations that subsisted before that date.

B. The Constitutional Court's judgment of 4 December 2001

38. On 4 December 2001 the Constitutional Court (*Trybunał Konstytucyjny*) dealt with two constitutional complaints in which the applicants challenged the constitutionality of Article 417 and 418 of the Civil Code. They alleged, in particular, that those provisions were incompatible with Article 64 and Article 77 § 1 of the Constitution (see paragraphs 41-42 below).

On the same day the court gave judgment (no. SK 18/00) and held that Article 417 of the Civil Code was compatible with Article 77 § 1 of the Constitution in so far as it provided that the State Treasury was liable for damage caused by the unlawful actions of State officials in the performance of their duties. It further held that even though Article 418 of the Civil Code was compatible with Article 64 of the Constitution, it was contrary to Article 77 § 1 since it linked the award of compensation for such damage to the personal culpability, established in criminal or disciplinary proceedings, of the State official concerned.

39. On 18 December 2001, the date on which the Constitutional Court's judgment took effect, Article 418 was repealed. The Constitutional Court's opinion on the consequences of the repeal read, in so far as relevant:

> "The elimination of Article 418 of the Civil Code from the legal system ... means that the State Treasury's liability for the actions of a public authority consisting in the issuing of unlawful decisions or orders will follow from the general principles on State liability as laid down in Article 417 of the Civil Code. This, however, does not rule out the application in the present legal system of other principles on State liability, as laid down in specific statutes, and not necessarily only those listed in the Civil Code."

C. Relevant constitutional provisions[1]

40. Article 45 § 1 of the Constitution states:

> "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court."

41. Article 64 of the Constitution reads:

> "1. Everyone shall have the right to ownership, other property rights and the right of succession.
>
> 2. Everyone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession.
>
> 3. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right."

42. Article 77 § 1 of the Constitution reads:

> "Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law."

D. The Law of 17 June 2004

43. 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.

A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length under section 2 read in conjunction with section 5(1) of the 2004 Act.

Section 2, in so far as relevant, reads as follows:

> "1. Parties to proceedings may lodge a complaint that their right to a trial within a reasonable time has been breached [in the proceedings] if the proceedings in the case last longer than is necessary to examine the factual and legal circumstances of the case ... or longer than is necessary to conclude enforcement proceedings or other proceedings concerning the execution of a court decision (unreasonable length of proceedings)."

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. ..."

1. As rendered in the official translation made for the Bureau of Research of the Lower House of the Polish Parliament (*Sejm*).

44. Section 16 refers to proceedings that have been terminated and that do not fall under the transitional provision of section 18 (see paragraph 46 below) in the following terms:

> "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."

45. 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 three years following the date on which the claimant learned of the damage and of the persons liable for it. However, the claim shall in any case lapse ten years following the date on which the event causing the damage occurred."

46. Section 18 of the 2004 Act lays down the following transitional rules in relation to applications already pending before the Court:

> "1. Within six months after the date of entry into force of this law, persons who, before that date, had lodged a complaint with the European Court of Human Rights ... complaining of a breach of the right to a trial within a reasonable time, as guaranteed by Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms ..., may lodge a complaint about the unreasonable length of the proceedings on the basis of the provisions of this law if their complaint to the Court had been lodged in the course of the impugned proceedings and if the Court has not adopted a decision concerning the admissibility of their case.
>
> 2. A complaint lodged under subsection 1 shall indicate the date on which the application was lodged with the Court.
>
> 3. The relevant court shall immediately inform the Minister of Foreign Affairs of any complaints lodged under subsection 1."

THE LAW

I. THE APPLICANT'S WIDOW'S STANDING

47. The applicant's wife wished to continue the proceedings before the Court in her late husband's stead.

The Government, who had been asked to submit comments on her request, did not address that issue.

48. The Court, noting that the applicant's wife was a plaintiff in the impugned proceedings (see paragraph 12 above), considers that she is entitled to obtain a ruling as to whether in those proceedings the

"reasonable-time" requirement laid down in Article 6 § 1 of the Convention was complied with and whether the applicant had an "effective remedy" in respect of their allegedly undue length, as required by Article 13 of the Convention (see, for example, *X v. France*, judgment of 31 March 1992, Series A no 234-C, p. 89, § 26; and *Goc v. Poland* (dec.), no. 48001/99, 23 October 2001).

Accordingly, Mrs Józefa Krasuska has standing to continue the proceedings before the Court in the applicant's stead.

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

49. The applicant complained that he had not had his case heard within a "reasonable time" and alleged a breach of Article 6 § 1 of the Convention, the relevant part of which provides:

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

A. The parties' submissions

1. The applicant

50. The applicant first of all stressed that his case had not required any lengthy judicial examination because it had not been complex. It had concerned an ordinary claim for damages based on a breach of contract. The Regional Court had not needed to consider any complicated issues of fact or law but only to hear evidence from several witnesses and obtain expert evidence.

Despite that fact, the Regional Court had conducted the proceedings – both the original ones and those following the remittal of the case – exceptionally slowly. For instance, it had frequently adjourned the trial *sine die* and only after several months had it fixed a subsequent hearing date. It had adjourned many procedural decisions. It had, in the applicant's opinion unnecessarily and without good cause, allowed the defendants' motions for fresh evidence from experts to be taken.

51. The applicant disputed the Government's assertion that he had caused delays in the proceedings (see paragraph 53 below). He maintained that, on the contrary, he had done everything to avoid lengthy litigation – something which had, indeed, been in his best interests. In that regard, he stressed that the particulars of his original claim had been very carefully prepared; he had even produced an expert report to facilitate the process of obtaining evidence. All the subsequent modifications to his claim had been inevitable since they had resulted from the differing conclusions of the

experts, who had made varying estimates of the value of the damage sustained by him.

In sum, the applicant considered that he could not be blamed for any delay in the proceedings and that the authorities had been fully responsible for their excessive length.

2. *The Government*

52. The Government considered that the courts' handling of the applicant's case had complied with the "reasonable-time" requirement. The case had been of a certain degree of complexity and, given the fact that only pecuniary matters had been at stake in the proceedings, the courts had not been obliged to act with special diligence. They had displayed a normal degree of diligence and had proceeded to examine the case without any significant delays.

53. In the Government's submission, it had essentially been the conduct of the applicant that had delayed the determination of his claim. He had contributed to the prolongation of the proceedings by, among other things, asking the Regional Court to obtain fresh evidence from the experts, modifying his claim on several occasions, making numerous applications for an exemption from court fees and failing to pay the court fees for the increased claim.

In conclusion, the Government asked the Court to find that there had been no violation of Article 6 § 1 in the present case.

B. The Court's assessment

1. *Period to be taken into consideration*

54. The court observes that the proceedings started on 1 February 1996, when the applicant lodged his claim with the Zielona Góra Regional Court, and that they were terminated by the judgment given by the Poznań Court of Appeal on 20 June 2002 (see paragraphs 12 and 33 above). Accordingly, the period to be considered is six years and nearly five months.

2. *Reasonableness of the period in issue*

55. The Court will examine the reasonableness of that period 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).

56. As regards the nature of the case, the Court agrees with the Government that, given that the determination of the claim involved the need to obtain expert evidence and that the Regional Court had to obtain fresh expert reports at least twice (see paragraphs 14 and 23 above), it was of a certain complexity.

However, it does not share the Government's opinion that the applicant contributed to the length of the proceedings. Admittedly, it appears that he altered his claims and, at various stages of the proceedings, sought exemptions from court fees (see paragraphs 16, 27-29 and 32 above), but those modifications and his ensuing applications for exemptions essentially resulted from the experts' revised valuations of the damage sustained (see paragraphs 16 and 29 above). It cannot therefore be said that the applicant abused his procedural rights; rather, he engaged in legitimate procedural activity in asserting his claims.

57. As regards the conduct of the judicial authorities, the Court observes that during the period under consideration the case was heard by the courts at four levels of jurisdiction. The hearings were held at regular intervals and the only delays in the proceedings – which, moreover, were not inordinate – occurred in connection with the taking of expert evidence (see paragraphs 14-15 and 23-24 above). Consequently, the Court considers that the authorities displayed due diligence in handling the applicant's case.

58. In view of the foregoing, and having regard to the overall length of the proceedings, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. The applicant also alleged a breach of Article 13 of the Convention in that he had no effective remedy in respect of the protracted length of the proceedings. Article 13 reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The applicant

60. The applicant maintained that neither when the proceedings had been pending nor after their termination had he had any effective remedy enabling him to obtain redress for the alleged violation of his right to a "hearing within a reasonable time".

Referring to the remedy suggested by the Government, namely a claim for damages under section 16 of the 2004 Act, read in conjunction with Article 417 of the Civil Code (see paragraph 63 below), the applicant submitted that he agreed with the Government on all points but one: the effectiveness of such an action.

61. It was true, he admitted, that the remedy was available to him; indeed, section 16 of the 2004 Act explicitly stated that parties to judicial proceedings which had ended could seek damages under the general rule of the law of tort laid down in Article 417 of the Civil Code. It was also true that the limitation period in respect of such a claim was three years, a term which had not yet expired in his case.

More importantly, there was no dispute about the fact that the 2004 Amendment, which considerably extended the scope of State's tortious liability to cover its failure to give a ruling within a period prescribed by law, did not apply in his case. In the applicant's opinion, this element was important for assessing his legal position, especially as he could only seek damages for the delay in the proceedings under the less favourable, general rules.

62. What was more, the Government had not referred to any example from the national courts' practice to show that the remedy suggested by them had any reasonable prospects of success. They had merely stated that the remedy should provide him with adequate redress for the alleged violation that had already occurred. That, in his view, was unrealistic because the effectiveness of a claim for damages had not yet been tested before the Polish courts. Accordingly, it was a purely theoretical remedy and could not be regarded as "effective" for the purposes of Article 13.

2. The Government

63. The Government maintained that since 17 September 2004, the date of the entry into force of the 2004 Act, the applicant had had at his disposal an "effective remedy" within the meaning of that provision.

In particular, under section 16 of the 2004 Act, read in conjunction with Article 417 § 1 of the Civil Code, he could sue the State Treasury for damages on account of the unreasonable length of the proceedings. Section 16 explicitly referred to proceedings that had ended before the enactment of the new legislation and was specifically designed for persons who, like the applicant in the instant case, did not seek acceleration of the proceedings but redress for the delay that had already occurred.

Pursuant to Article 442 § 1 of the Civil Code, the limitation period in respect of such a claim was three years from the termination of the proceedings. It was therefore still open to the applicant, in whose case that term was to expire on 20 June 2005, to take full advantage of the new remedy.

64. Referring to the principles established in the case of *Kudła v. Poland* ([GC], no. 30210/96, ECHR 2000-XI), the Government further submitted that the action for damages fully satisfied the requirement of "adequate redress" for any violation that had already occurred of the right to a hearing within a reasonable time.

In sum, they considered that there had been no breach of Article 13 in the present case.

B. The Court's assessment

1. General principles deriving from the Court's case-law

65. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, among other authorities, *Kudła*, cited above, § 157).

66. The means available to an applicant in domestic law for raising a complaint about the length of the proceedings are "effective", within the meaning of Article 13 of the Convention, if they "prevent the alleged violation or its continuation, or provid[e] adequate redress for any violation that has already occurred". Article 13 thus offers an alternative: a remedy is "effective" if it can be used either to expedite a decision by the courts dealing with the case or to provide the litigant with adequate redress for delays that have already occurred. The fact that a given remedy is of a purely compensatory nature is not decisive, regardless of whether the proceedings in question have been terminated or are still pending (see *Kudła*, cited above, §§ 158-159; *Caldas Ramirez de Arrellano v. Spain* (dec.), no. 68874/01, ECHR 2003-I; *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII; and *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII).

2. Application of the above principles in the present case

(a) Applicability of Article 13

67. There has been no dispute over the applicability of Article 13 in the present case. The parties agreed that the applicant's complaint under

Article 6 § 1, which had been declared admissible by the Court, satisfied the test of "arguability" for the purposes of Article 13.

(b) Compliance with Article 13

68. In previous similar cases before the Court the Polish Government have been unsuccessful in pleading that a civil action under Article 417 of the Civil Code created an effective remedy in length-of-proceedings cases. In particular, their arguments have been rejected as being unsupported by any documentary evidence but merely based on the Polish Constitutional Court's *obiter dictum* interpretation of that provision in its judgment of 4 December 2001 (see paragraphs 38-39 above) and not on any relevant judicial practice (see, for instance, *Małasiewicz v. Poland*, no. 22072/02, § 32, 14 October 2003).

69. However, in view of the recent developments at domestic level, most notably the entry into force of the 2004 Act, the Court sees good reason to reconsider its previous position.

To begin with, the Court finds that section 16 of the 2004 Act created a completely new legal situation in comparison to that subsisting previously. Unlike before, the possibility of seeking damages under Article 417 of the Civil Code for the protracted length of judicial proceedings which have ended now has an explicit legal basis. Furthermore, merely from reading section 16 it is clear that the hitherto existing ambiguity as to the application of Article 417 to cases involving compensation for a breach of the right to a hearing within a reasonable time has been removed.

70. The Court does not find any prima facie evidence in support of the applicant's argument that the remedy in question would be "unrealistic" in this case. The applicant did not contest the availability of that remedy but confined himself to a bare statement that the remedy would not be effective, without substantiating his assertion in any way (see paragraphs 61-62 above). Given that the 2004 Act entered into force on 17 September 2004, the absence of established judicial practice in respect of Article 417 is not decisive (see, *mutatis mutandis*, *Charzyński v.* Poland (dec.), no. 15212/03, § 41, ECHR 2005-...). Nor does the fact that he cannot base his action on the – in his view more favourable – amended provisions of Article 417 make his possible attempt to seek damages futile or purposeless.

71. It is true that the effectiveness of the remedy depends on the Polish civil courts' ability to handle such actions with special diligence and attention, especially in terms of the length of time taken for their determination. It is also true that the level of compensation awarded at domestic level may constitute an important element for the assessment of the adequacy of the remedy (see, *mutatis mutandis*, *Paulino Tomás*, cited above). However, mere doubts as to the effective functioning of a newly created statutory remedy does not dispense the applicant from having

recourse to it. It cannot be assumed by the Court that the Polish courts will not give proper effect to the new provision.

72. Having regard to the foregoing, the Court considers that from 17 September 2004, the date on which the 2004 Act entered into force, an action for damages under Article 417 of the Civil Code acquired a sufficient level of certainty to become an "effective remedy" within the meaning of Article 13 of the Convention for an applicant alleging a violation of the right to a hearing within a reasonable time in judicial proceedings in Poland.

73. There has accordingly been no violation of Article 13 in the present case.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that the applicant's widow has standing to continue the present proceedings in his stead;

2. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* unanimously that there has been no violation of Article 13 of the Convention;

Done in English, and notified in writing on 14 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS — Nicolas BRATZA
Deputy Registrar — President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mr Pavlovschi is annexed to this judgment.

N.B.
F.E.P.

PARTLY DISSENTING OPINION OF JUDGE PAVLOVSCHI

I agree with the majority that there has been no breach of Article 13 in the present case. At the same time I find it difficult to share the view that there has been no violation of Article 6 § 1 of the Convention.

I consider that the existence of a violation of Article 6 § 1 in the case before us is self-evident.

Let me briefly present my view of the situation.

The period to be taken into consideration was six years and nearly five months (see paragraph 54 of the judgment)

From the circumstances of the case many different periods of delays can be identified:

– from 13 March to 27 June 1996 – three and a half months (see paragraph 13);

– from 24 July to 4 November 1996 – three months (see paragraph 14);

– from 26 January to 17 July 1997 – five and a half months (see paragraphs 15 and 16);

– from 17 July to 29 October 1997 – three and a half months (see paragraphs 16 and 17);

– from 29 October 1997 to 31 March 1998 – five months (see paragraphs 17 and 18);

– from 19 November 1998 to 18 May 1999 – six months (see paragraphs 21 and 22);

– from 30 September 1999 to 20 February 2000 – five months (see paragraphs 23 and 24);

– from 16 May 2000 to 12 October 2000 – five months (see paragraph 26);

– from 22 February 2002 to 20 June 2002 – four months (see paragraphs 32 and 33).

The total delay was therefore more than three years and four months.

In my view, the fact that these delays accounted for more than three years and four months out of the overall length of proceedings of six and a half years is inconsistent with the finding that "... the authorities displayed due diligence in handling the applicant's case..." (see paragraph 57 of the judgment).

With all due respect to the position taken by the majority, I think that the length of proceedings in the present case cannot be considered reasonable and both the overall length of the proceedings and the periods of delay were incompatible with the "reasonable length of proceedings" requirement.

This conclusion becomes even clearer if one compares the length of the proceedings which occurred in the present case with the lengths of proceedings in other cases against Poland where violations of Article 6 § 1 were found.

Let me mention just a few examples:

– case of *Krzak v. Poland* (application no. 51515/99) – length of proceedings: **5 years and 8 months** – violation found;

– case of *Krzewicki v. Poland* (application no. 37770/97) – overall length of proceedings: 4 years and 7 months, out of which **3 years and 10 months** within the Court's jurisdiction – violation found;

– case of *Guzicka v. Poland* (application no. 55383/00) – length of proceedings: **4 years and 9 months** – violation found;

– case of *Irena Pieniazek v. Poland* (application no. 62179/00) – length of proceedings: **3 years and 6 months** – violation found,

– case of *Romanow (Barańska) v. Poland* (application no. 45299/99) – length of proceedings: **4 years and 8 months** – violation found.

All the judgments in the above-mentioned cases are final and binding.

And this list could be continued.

All these reasons and arguments lead me to the conclusion that there has been a violation of Article 6 § 1 of the Convention in the present case.