



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

FOURTH SECTION

**CASE OF MAJEWSKI v. POLAND**

*(Application no. 52690/99)*

JUDGMENT

STRASBOURG

11 October 2005

**FINAL**

*11/01/2006*

*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 Majewski v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO,

Ms L. MIJOVIĆ, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 20 September 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 52690/99) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Lech Majewski ("the applicant"), on 18 June 1998.

2. The Polish Government ("the Government") were represented by their Agent Mr. J. Wołásiewicz of the Ministry of Foreign Affairs.

3. On 24 August 2004 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in Szczecin, Poland.

#### **B. The first set of civil proceedings**

##### *1. Facts before 1 May 1993*

5. On 10 November 1990 the applicant lodged a civil action for compensation against the State Treasury - the Białystok Remand Centre with the Białystok District Court (*Sąd Rejonowy*). He alleged that upon his arrival in the Białystok Remand Centre, on 14 December 1989, he had been beaten and insulted by the prison guards and had subsequently not received proper medical care. The applicant claimed that in consequence of the excessive use of force against him he had sustained a spinal injury and suffered permanent disability.

At the first hearing held on 20 December 1990 the court appointed a lawyer under a legal aid scheme for the applicant and ordered a copy of the case-file concerning the criminal investigation concerning the events of December 1989.

On 31 January 1991 the court held a hearing at which the applicant's court-appointed lawyer, Mr B.Z., was present. The court stayed the proceedings.

On 17 July 1992 the Białystok District Court resumed the proceedings. However, on 12 August 1992 it decided to stay them again in view of the fact that the criminal proceedings against the Governor of the Białystok Remand Centre were pending.

##### *2. Facts after 1 May 1993*

6. On 29 May 1995 the Białystok District Court resumed the proceedings. The court further decided that the Białystok Regional Court (*Sąd Wojewódzki*) was competent to deal with the case.

7. On 18 January 1996 the Białystok Regional Court held the first hearing. In January 1997 the applicant was heard before the Trzcianka District Court. Between 18 September and 18 November 1997 the trial court held four hearings.

8. On 27 November 1997 the Białystok Regional Court gave judgment. It partly allowed the applicant's action. The court acknowledged that the applicant had suffered moral damage as a result of the illegal actions of the state agents and awarded him compensation. The Regional Court dismissed

the applicant's allegations that the incident had caused a spinal injury and dismissed the remainder of his claims for compensation.

9. On 7 May 1998 the Białystok Court of Appeal (*Sąd Apelacyjny*) held a hearing and examined the appeal lodged by the State Treasury. The appellate court gave judgment in which it allowed the State Treasury's appeal, quashed the impugned judgment, and dismissed the applicant's action.

10. Subsequently, the applicant's court-appointed lawyer refused to lodge a cassation appeal against this judgment on his behalf as he apparently found no legal grounds for it.

## **B. The second set of civil proceedings**

### *1. Facts before 1 May 1993*

11. On 28 January 1991 the applicant lodged a civil action for compensation against the State Treasury- Szczecin Remand Centre with the Szczecin Regional Court (*Sąd Wojewódzki*). He claimed PLN 2,500 in compensation for an accident which had occurred in 1983, during his detention in the Szczecin Remand Centre. The applicant further complained that the medical treatment he had received at the material time had been inadequate.

### *2. Facts after 1 May 1993*

12. On 11 March 1994 the trial court held the first hearing. The applicant, who had been in detention since 1977, was not present at the hearing because he had failed to return to prison from leave. At that hearing, the court stayed the proceedings on the grounds that the applicant's address could not be established.

13. On 20 November 2000 the Szczecin Regional Court resumed the proceedings.

14. On 24 April 2001 the trial court held a hearing at which it ordered that an expert opinion be obtained. On 13 December 2001 the court held a second hearing at which it decided that the applicant would be heard by another court since he had been transferred to a different prison. On 11 February 2002 the applicant was heard before the Trzcianka District Court. On 26 March and 7 May 2002 the Szczecin Regional Court held hearings.

15. On 24 May 2002 the trial court gave judgment. It dismissed the applicant's action. The applicant's court-appointed lawyer lodged an appeal against that judgment.

16. On 13 November 2002 the Poznań Court of Appeal allowed his appeal, quashed the Regional Court's judgment and remitted the case to the first-instance court.

17. On 9 June 2004 the Szczecin District Court held a hearing at which it heard the applicant.

18. On 21 June 2004 the court, sitting in camera, decided that an expert opinion be prepared. The expert opinion was submitted to the trial court on 27 October 2004.

19. On 3 November 2004 the applicant lodged with the Szczecin Regional Court a complaint alleging that his right to have his case examined within a reasonable time had been breached. He submitted that he had lodged a civil action on 28 January 1991 and despite the fact that he had not contributed to their length, the proceedings were still pending before the District Court. The applicant relied on the 2004 Act on complaints about a breach of the right to a trial within a reasonable time. At that time, the proceedings were pending before the District Court following the remittal of the case by the appellate court in 2002. According to the 2004 Act the Regional Court – being the court above the one conducting the impugned proceedings - was competent to examine the complaint (Section 4 § 1 of the 2004 Act, see the *domestic law part* below).

20. On 7 January 2005 the Szczecin Regional Court dismissed his complaint. The court examined only the course of the proceedings after the remittal of the case by the appellate court on 13 November 2002 and found no delays on the part of the District Court. As result, the court found that during this period the District Court had not violated the applicant's right to have his case heard within a reasonable time. The Regional Court considered that it could not examine the part of the proceedings that had been pending between 1991 and 2002 before the Regional Court as this part of proceedings had already ended. The court stated:

“...The District Court cannot be held responsible for possible delays that might have occurred before the Regional Court during the period between 24 May 1991 when the case was transferred to it and 14 May 2002 when the court gave a judgment...

According to the provisions [of the 2004 Act] the Regional Court examining the complaint lodged by [the applicant] that the proceedings in his case before the District Court exceeded a reasonable time is not entitled to examine the course of the proceedings before the Szczecin Regional Court...”

21. It appears that the civil proceedings in this case are pending before the Szczecin District Court.

## II. RELEVANT DOMESTIC LAW

### 1. *State's liability for a tort committed by its official*<sup>1</sup>

22. 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 course of carrying out the duties entrusted to him.”

23. 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 have in essence been aimed at enlarging the scope of the State Treasury's liability for tort under Article 417 of the Civil Code – which included adding a new Article 417<sup>1</sup> and the institution of the State's tortious liability for its omission to enact legislation (the so-called “legislative omission”; “*zaniedbanie legislacyjne*”) – they are also to be seen in the context of the operation of a new statute introducing remedies for the unreasonable length of judicial proceedings (see paragraphs 25 below).

Following the 2004 Amendment, Article 417<sup>1</sup> was added which, in so far as relevant, reads as follows:

“3. If damage has been caused by a failure to give a ruling (*orzeczenie*) or decision (*decyzja*) where there is a statutory duty to give them, 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 otherwise provided for by other specific provisions.”

However, under the transitional provision of section 5 of the 2004 Amendment, Article 417 as applicable before 1 September 2004 (see paragraph 22 above) shall apply to all events and legal situations that subsisted before that date.

24. Under Article 442 of the Civil Code the claim for redress of damage caused by a tort becomes time-barred after the lapse of three years from the day on which the person who suffered the damage learns about the damage and about persons or entities liable to make reparation for it. However, in any case the claim expires after the lapse of ten years from the day on which the event that caused the damage occurred.

That provision applies to situations covered by Article 417 of the Civil Code.

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<sup>1</sup> For a more detailed rendition of the relevant domestic legal provisions see *Ratajczyk v. Poland* (dec.), no. 11215/02

## 2. *The 2004 Act*<sup>1</sup>

25. 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 2004 Act reads, in so far as relevant:

“1. A party 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 4 provides, in so far as relevant:

“1. The complaint shall be examined by the court immediately above the court conducting the impugned proceedings.

2. If the complaint concerns an unreasonable delay in the proceedings before the Court of Appeal or the Supreme Court it shall be examined by the Supreme Court. ...”

Section 5 reads, in so far as relevant:

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

Section 12 provides for measures that may be applied by the court dealing with the complaint. It reads, in so far as relevant:

“1. The court shall dismiss a complaint which is unjustified.

2. If the court considers that the complaint is justified, it shall find that there was an unreasonable delay in the impugned proceedings.

3. At the request of the complainant, the court may instruct the court examining the merits of the case to take certain measures within a fixed time-limit. Such instructions shall not concern the factual and legal assessment of the case.

4. If the complaint is justified the court may, at the request of the complainant, grant ... just satisfaction in an amount not exceeding PLN 10,000 to be paid by the State Treasury. If such just satisfaction is granted it shall be paid out of the budget of the court which conducted the delayed proceedings.”

Section 18 lays down transitional rules in relation to the applications already pending before the Court. It reads, in so far as relevant:

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1. For a more detailed rendition of the relevant domestic legal provisions see *Michalak v. Poland* (dec.), no. 24549/03, §§ 12-23, to be published in ECHR 2005-... – also available on the Court’s Internet site (<http://www.echr@coe.int>).

“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 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.

...”

On 18 January 2005 Supreme Court (*Sąd Najwyższy*) adopted a resolution (no. III SPP 113/04) in which it ruled that while the 2004 Act produced legal effects as from the date of its date of entry into force (17 September 2004), its provisions applied retroactively to all proceedings in which delays had occurred before that date and had not yet been remedied.

## THE LAW

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

26. The applicant complained that the length of both sets of the civil proceedings had been incompatible with the “reasonable time” requirement, provided 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 in respect of the first set of proceedings. The Government failed to address the issue of the allegedly unreasonable length of the second set of proceedings.

28. With regard to the first set of proceedings the period to be taken into consideration began not on 10 November 1990, when the applicant started the proceedings, but only on 1 May 1993 when the recognition by Poland of the right of individual petition took effect. The period in question ended on 7 May 1998. It follows that the first set of proceedings lasted five years.

29. With regard to the second set of the proceedings the period to be taken into consideration also began on the date when the recognition of Poland of the right of individual petition took effect and not in 1991 when the applicant initiated the proceedings. The proceedings are still pending. The period to be taken into consideration as regards the second set of proceedings is thus twelve years and over [four months].

In assessing the reasonableness of the time in question the Court will have regard to the state of both cases on 1 May 1993.

## A. Admissibility

### 1. First set of proceedings

30. The Court first observes, with respect to the requirement of exhaustion of the domestic remedies in the first set of proceedings, that the applicant cannot avail himself of the remedies pursuant to Section 2 read together with Section 5, nor Section 18 of the 2004 Act as the civil proceedings in his case came to end on 7 May 1998, while he lodged his application with the Commission on 18 June 1998. What is more, the Court has already held that a civil action for compensation provided for by Article 417 of the Civil Code read together with Section 16 of the 2004 Act cannot be regarded as an effective remedy if, as in the applicant's case, more than three years elapsed between the date of the final decision and the entry into force of the 2004 Act, on 17 September 2004 (see, *Ratajczyk v. Poland*; (dec), 11215/02, 31 May 2005).

### 2. Second set of proceedings

31. With respect to the requirement of exhaustion of the domestic remedies in the second set of proceedings, the Court notes that the Government did not address this issue. Nevertheless, the Court notes that the applicant made use of the remedy provided for by the 2004 Act and lodged a complaint about the unreasonable length of the second set of the proceedings. The Szczecin Regional Court dismissed his complaint.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of the complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that 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 *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

32. Accordingly, the Court finds that the applicant exhausted domestic remedies in respect of his complaint under Article 6 § 1 of the Convention.

33. The Court notes that the applicant's complaint under the 2004 Act failed. Therefore he can still claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of his right to a hearing within a reasonable time. The Court reiterates that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004, with further references).

34. The Court notes that the national authorities are in principle better placed than an international court to evaluate the facts of the case. In addition, the Court accepts that the domestic courts enjoy a certain margin of appreciation in assessing whether the length of proceedings in the case before them exceeded a reasonable time. Nevertheless, in their assessment and appreciation they must apply standards which are in conformity with the principles embodied in the Convention as developed in the case-law of the Court. In this connection the Court reiterates that the criteria laid down in the Court's case-law as regards the reasonableness of the length of proceedings are, in particular, the complexity of the case, the conduct of the applicant and that of the relevant authorities, and the importance of what was at stake for the applicant in the litigation.

35. The Court has already indicated on a great number of occasions, that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case taken as a whole. The Court's approach consists in examining the overall length of proceedings and in covering all stages of the proceedings. In the present case the Court notes that the Szczecin Regional Court examined only the period of time after the remittal of the case by the appellate court, i.e. after 13 November 2002. The domestic court did not take into consideration the overall period of the examination of the case by the domestic courts as required by the constant case-law of the Convention organs. In particular, the Szczecin Regional Court did not consider the period between January 1991, when the proceedings started, and May 2002, when the first-instance judgment was given by the domestic court. Despite the fact that the Regional Court noted that there might have been delays at the earlier stage of the proceedings, nevertheless, it dismissed the applicant's complaint that the proceedings in his case exceeded reasonable time as it established that it was called to examine only the conduct of the court before which the proceedings were pending at the time of examination of the complaint.

36. The Court was in a previous decision satisfied that the domestic court had acknowledged the infringement of the Convention, even if it formally limited its examination to a certain period of time. However, it took into account the state of the proceedings at that time and found a violation of the applicant's right to a hearing without unjustified delay (see *Dubjakova v. Slovakia*, (dec), no 67299/01, 19 October 2004). On another occasion, the Court found that the domestic court offered sufficient acknowledgement of the infringement of the right under the consideration, despite the fact that the latter examined separately different stages of the proceedings. Nevertheless, the examination covered all stages of the domestic proceedings (see *Bako v Slovakia*, (dec), no 60227/00, 15 March 2005).

That was not the case in the instant proceedings. Therefore, the Court considers that the Szczecin Regional Court in examining the applicant's

complaint that the length of the proceedings in his case exceeded a reasonable time, failed to apply the standards which were in conformity with the principles embodied in the Court's case-law. Finally, the Court notes that it is not necessary to establish whether the Regional Court's approach resulted from an error of interpretation or from the construction of the 2004 Act since, in any event, the domestic court's finding that the length of the proceeding in the applicant's case did not exceed a reasonable time resulted from the examination of only one stage of the proceedings which could not have afforded appropriate protection to the applicant.

### 3. Conclusion

37. Consequently, the Court finds that the application cannot be declared inadmissible for non-exhaustion of domestic remedies. It further notes that the application 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 it admissible.

## B. Merits

38. 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 and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

39. With regard to the present case the Court notes that the first set of proceedings lasted, within the Court's jurisdiction *ratione temporis*, five years while the second set of proceedings has been pending since 1991. The proceedings, in particular the second set, were therefore inordinately lengthy and only exceptional circumstances could justify their overall length.

40. 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).

41. 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 the length of both sets of civil proceedings was excessive and failed to meet the "reasonable time" requirement.

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

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 1,000 euros (EUR) in respect of pecuniary damage and EUR 75,000 in respect of non-pecuniary damage.

44. The Government contested these claims and found them exorbitant.

45. 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, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award him [EUR 6,000] under that head.

### B. Costs and expenses

46. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the domestic courts and the Court.

47. The Government did not express an opinion on the matter.

48. 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 considers it reasonable to award the applicant, who was not represented by a lawyer, the sum of [EUR 500] under this head.

### C. Default interest

49. 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 remainder of the application 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 in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, 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 amounts 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 11 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President