CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF NOWAK AND ZAJĄCZKOWSKI v. POLAND

(Application no. 12174/02)

JUDGMENT

STRASBOURG

22 August 2006

FINAL

12/02/2007

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 and Zajączkowski v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 11 July 2006,

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

PROCEDURE

1. The case originated in an application (no. 12174/02) 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 two Polish nationals, Mr Daniel Nowak and Mr Bogusław Zajączkowski ("the applicants"), on 28 August 2001.

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

3. On 26 August 2005 the President of the Fourth Section decided to communicate the application. 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1927 and 1938 respectively and live in Wrocław, Poland.

1. The facts prior to 1 May 1993

5. On 22 June 1992 the applicants sued the "Wrocławskie Przedsiębiorstwo Robót Inżynieryjnych Budownictwa Przemysłowego nr 2" ("the defendant company") before the Wrocław Regional Court, seeking

remuneration for the defendant company's use of an industrial invention of which they were the authors.

6. The Regional Court held 3 hearings on the following dates: 21 December 1992; 1 February and 2 April 1993.

2. The facts after 1 May 1993

7. The Wrocław Regional Court held 11 hearings on the following dates: 3 November and 22 December 1993; 29 January 1994; 20 February, 27 July and 23 November 1995; 30 January, 27 February, 10 July and 11 September 1997, and 21 December 1998.

8. In the course of the proceedings the Regional Court obtained five expert reports. It appears that two other experts (K.N. and R.B.) returned the case file after 5 months without having prepared a report as ordered by the court.

9. The applicant repeatedly complained to the President of the Regional Court and the Wrocław Court of Appeal about delays in the proceedings. On 6 February 1998 the President of the Regional Court and on 27 October 1998 the President of the Court of Appeal acknowledged that there had been delays.

10. On 30 June 1998 the applicants and the defendant company concluded an out-of-court settlement in respect of a minor part of the applicants' claims.

11. On 21 December 1998 the Regional Court gave judgment. It dismissed the applicants' claims and discontinued the proceedings in respect of the claims which had been the subject of the settlement. The applicants appealed against that judgment.

12. On 9 April 1999 the Wrocław Court of Appeal held a hearing. On the same day it quashed the judgment of the Regional Court and remitted the case.

13. The Regional Court held 6 hearings on the following dates: 22 September, 13 October and 9 November 1999; 7 and 22 April and 1 December 2000. It obtained 3 additional expert reports.

14. On 15 December 2000 the Regional Court gave judgment. It allowed the applicants' claims in part. The defendant company appealed against that judgment. However, on 25 June 2001 it withdrew its appeal. Consequently, on 27 June 2001 the Wrocław Court of Appeal discontinued the appeal proceedings.

15. On 12 July 2001 the Wrocław Court of Appeal issued an enforcement order in favour of the applicants in respect of the judgment of the Regional Court of 15 December 2000.

16. On 22 November 2001 the defendant was declared insolvent.

3. Proceedings for compensation for damage suffered due to the excessive length of proceedings

17. On 10 November 2004 the applicants sued the State Treasury before the Wrocław Regional Court, seeking compensation for the excessive length of the proceedings referred to above.

18. On 10 February 2005 the first applicant (Mr Daniel Nowak) withdrew his claim. Consequently, on 28 February 2005 the Regional Court discontinued the proceedings in respect of the first applicant.

19. On 29 September 2005 the Regional Court gave judgment and dismissed the second applicant's claim. It found that he had failed to establish the State Treasury's liability for damage caused by the excessive length of the proceedings. The second applicant (Mr Bogusław Zajączkowski) appealed. The appeal proceedings are pending.

II. RELEVANT DOMESTIC LAW

20. The legal provisions applicable at the material time as well as matters of practice are set out in paragraphs 26-35 of the judgment delivered by the Court on 30 May 2006 in the case of *Barszcz v. Poland*, no. 71152/01.

THE LAW

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

21. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down 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..."

22. The Government contested that argument.

23. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time. The period in question ended on 27 June 2001. It thus lasted 8 years and nearly 2 months for two levels of jurisdiction.

A. Admissibility

24. The Government submitted that the first applicant had not exhausted remedies available under Polish law as he had withdrawn his claim for compensation for the excessive length of proceedings. In respect of the second applicant, the Government invited the Court to adjourn the examination of his application until the proceedings brought by the second applicant for compensation for the excessive length of proceedings had terminated. They argued that the second applicant had not yet exhausted all available domestic remedies.

25. The Government maintained that from 17 September 2004 when 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") had come into force, the applicant had a possibility of lodging with the Polish civil courts under Article 417 of the Civil Code read together with Article 16 of the 2004 Act a claim for compensation for damage suffered due to the excessive length of proceedings. They argued that the three-year prescription period for the purposes of a compensation claim in tort based on the excessive length of proceedings could run from a date later than the date on which a final decision in these proceedings had been given. The Government further submitted that such a possibility had existed in Polish law before the entry into force of the 2004 Act ever since the judgment of the Constitutional Court of 4 December 2001, which entered into force on 18 December 2001.

26. The applicants contested the Government's arguments.

27. The Court observes that the proceedings at issue ended at the latest on 12 July 2001, which is more than three years before the relevant provisions of the 2004 Act read together with the Civil Code became effective. It follows that the limitation period for the State's liability for tort set out in Article 442 of the Code Civil had expired before 17 September 2004. The Court recalls that in those circumstances a civil action for compensation provided for by Article 417 of the Civil Code read together with Article 16 of the 2004 Act could not be regarded as an effective remedy (see, *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005-...; *Barszcz v. Poland,* no. 71152/01, §§ 41-45, 30 May 2006).

28. The Court notes that the arguments raised by the Government are the same as those already examined by the Court in previous cases against Poland (see *Małasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003; *Ratajczyk v. Poland,* cited above and *Barszcz v. Poland,* cited above) and the Government have not submitted any new arguments which would lead the Court to depart from its previous findings.

29. In view of the foregoing, the Court considers that the first applicant's withdrawal of his claim for compensation for damage suffered due to the

excessive length of proceedings cannot be held against him. In respect of the second applicant, the Court finds that the application cannot be declared inadmissible on the grounds of non-exhaustion since the second applicant is pursuing a claim, which under the Court's case-law, cannot be regarded as an effective remedy. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

30. The Court notes that the application 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. It must therefore be declared admissible.

B. Merits

31. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

32. 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).

33. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicants claimed PLN 100,000 in respect of non-pecuniary damage.

36. The Government contested the claim.

37. The Court considers that the applicants must have suffered some non-pecuniary damage. Ruling on an equitable basis, it awards each of the applicants EUR 3,000 under that head.

B. Costs and expenses

38. The applicants did not seek to be reimbursed for any costs and expenses in connection with the proceedings before the Court.

C. Default interest

39. 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 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 each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President