CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF RYBCZYŃSCY v. POLAND

(Application no. 3501/02)

JUDGMENT

STRASBOURG

3 October 2006

FINAL

03/01/2007

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 Rybczyńscy 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 Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 12 September 2006,

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

PROCEDURE

1. The case originated in an application on 9 January 2002 (no. 3501/02) 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 Ms D. Rybczyńska and Mr T. Rybczyński.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, the Plenipotentiary of the Minister of Foreign Affairs for cases and procedures before the European Court of Human Rights.

3. On 6 October 2005 the Court decided to communicate the application. 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 applicants, Ms D. Rybczyński and Mr T. Rybczyński, brother and sister, are Polish nationals, who were born in 1969 and 1971 respectively and live in Przemyśl. They are represented before the Court by Mr J. Rybczyński, the applicants' father.

5. On 27 April 1993 the applicants filed a civil action for damages with the Przemyśl Regional Court and at the same time requested an exemption from court fees. The proceedings concerned the devastation caused to the applicants' flat by tenants.

6. On 18 May 1993 the court granted the applicants partial exemption from the fees. The applicants appealed and challenged the impartiality of all the judges of the court, since its President was a brother of the husband of one of the defendants. On 24 September 1993 the Rzeszów Court of Appeal exempted the applicants from the payment of court fees and subsequently two judges were excluded from the examination of their case.

7. On 15 November 1993 a hearing was held, but it was adjourned until 26 November 1993 upon the defendants' request.

8. On 26 November 1993 the defendants replied to the claim. They stated that they had lived in the applicants' flat from 1945 to 1992 as Bug River claimants. They denied having devastated the flat and pointed out that the applicants had sued all of the other tenants. At the same time they requested the court to summon 5 witnesses. The hearing held on 26 November 1993 was adjourned upon the defendants' representative's motion.

9. Between 13 December 1993 and 14 February 1994 four hearings were held, during which the court heard 9 witnesses.

10. On 16 March 1994 the applicants extended their claim and demanded compensation for lost profits as a result of the devastation of their flat.

11. Between 23 March 1994 and 5 September 1994 three further hearings were held, during which, *inter alia,* the applicants requested the court to appoint an expert to assess the damage.

12. On 11 October 1994 the expert appointed by the Przemyśl Regional Court sent the case file back and stated that she was not able to prepare the opinion due to the applicants' representative's obstructive conduct. The case file was sent to another expert, who on 9 November 1994 returned it informing the court about his close personal relations with the husband of one of the defendants and with the applicants' representative. On 30 November 1994 the court sent the case file to another expert and on 26 May 1995 the requested opinion was submitted. The applicants challenged it.

13. At a hearing on 19 July 1995 the court ordered a supplementary opinion and adjourned the hearing upon the defendants' attorney's request.

14. On 6 November 1995 the expert supplemented his previous opinion.

15. On 29 December 1995 a hearing was held at which the court heard the expert and, upon the defendants' request, ordered another supplementary expert opinion and adjourned the hearing.

16. On 26 February 1996 the expert informed the court about his serious illness and asked to be relieved of the obligation to prepare the opinion. Consequently, on 21 March 1996 the case file was sent to another expert who was given a time-limit of 3 months to prepare the opinion. However, on 1 April 1996 he returned the case file informing the court about his close personal relations with the husband of one of the defendants and with the applicants' representative. In consequence, on 25 April 1996 the case file

was sent to another expert, who was ordered to prepare the opinion within 3 months. However, on 29 May 1996 he returned the case file pointing out that he did not have sufficient qualifications to prepare it. On 17 July 1996 the court sent the case file to another expert, who was given 3 months to prepare an opinion. It was submitted to the Przemyśl Regional Court on 31 October 1996.

17. On 26 November 1996 the applicants and the defendants lodged objections against the expert opinion.

18. Between 9 December 1996 and 17 December 1997 four hearings were held, during which the expert submitted his supplementary opinion, the applicants challenged it and both parties were heard by the court.

19. On 29 December 1997 the Przemyśl Regional Court gave a judgment, partly dismissing the applicants' action. Both parties appealed.

20. By a judgment of 29 October 1998 the Rzeszów Court of Appeal partly allowed the applicants' and dismissed the defendants' appeal. The applicant lodged a cassation appeal.

21. On 10 July 2001 the Supreme Court refused to entertain the cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. State's liability for a tort committed by its official

1. Provisions applicable before 1 September 2004

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, reads 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. Article 418 of the Civil Code, as applicable until 18 December 2001, provided for the following exception in cases where damage resulted from the issue of a decision or order:

> "1. If, in consequence of the issue 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 issue of the decision or order and if that breach is the subject of a prosecution under the criminal law or of 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 superior of that person.
>
> 2. The absence of the establishment of guilt by way of a criminal conviction or in 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 the [statutory] exception to prosecution or disciplinary actions."

2. Provisions applicable as from 1 September 2004

24. 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 417^1 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.

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 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."

25. However, under the transitional provisions of Article 5 of the 2004 Amendment, Article 417 as applicable before 1 September 2004 shall apply to all events and legal situations that subsisted before that date.

B. Constitutional Court's judgment of 4 December 2001

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

On the same day the Constitutional 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 action of a State official carried out in the course of performing his 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 with the personal culpability of the State official concerned, established in criminal or disciplinary proceedings.

27. 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 an action of a public authority consisting in the issue of unlawful decisions or orders will flow from the general principles of the State liability laid down in Article 417 of the Civil Code. This, however, does not rule out the application in the present legal system of other, not necessarily only those listed in the Civil Code, principles of the State liability laid down in specific statutes."

C. The Law of 17 June 2004

28. 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 Article 2 read in conjunction with Article 5(1) of the 2004 Act.

Article 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)."

Article 5 provides, in so far as relevant:

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

29. Article 16 refers to proceedings that have been terminated and that do not fall under the transitional provision of Article 18 in the following terms:

> "A party which has not lodged a complaint about the unreasonable length of the proceedings under Article 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."

30. 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 3 years following the date on which the claimant learned of the damage and the persons liable

for it. However, the claim shall in any case lapse 10 years following the date on which the event causing the damage had occurred."

31. Article 18 of the 2004 Act lays down the following transitional rules in relation to the 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 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant complained about the unfairness of the proceedings and alleged that the length of the proceedings had been incompatible with the "reasonable time" requirement. He invoked Article 6 § 1 of the Convention, which reads as follows:

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

33. The Court observes that the proceedings started on 27 April 1993, when the applicants lodged their claim with the Przemyśl Regional Court, and were terminated by the Supreme Court's judgment of 10 July 2001. They therefore lasted over 8 years and 2 months for three levels of jurisdiction.

34. The Court observes that the period to be taken into consideration began on 30 April 1993, when the recognition by Poland of the right of individual petition took effect and that it includes practically the whole period of the proceedings, which were initiated on 27 April 1993.

A. Admissibility

1. Complaint under Article 6 § 1 of the Convention about the unfairness of the proceedings

35. The applicants complained, invoking Article 6 § 1 of the Convention, that the Przemyśl Regional Court did not consider evidence fundamental to their case, did not accept evidence and witnesses who testified in their favour and erroneously failed to include transportation costs and VAT in the amount of compensation. Finally, they alleged that the judges of the Regional Court lacked impartiality.

36. The Court reiterates that according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and insofar as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999- I).

37. Noting that the present complaint concerns the domestic court's evaluation of facts and evidence, the Court finds that its examination of the applicants' submissions does not disclose any appearance of a violation of the Convention. There are no elements which would indicate that the national courts went beyond their proper discretion in their assessment of facts or that they reached conclusions which could be considered arbitrary.

38. Insofar as the applicants complained about the impartiality of the judges, the Court notes that the Rzeszów Court of Appeal examined the issue at the applicants' request and as a result two judges were excluded from trying their case. In these circumstances, the Court finds that this part of the application discloses no appearance of a violation of the applicants' rights under Article 6 of the Convention.

39. Accordingly, the complaint about the unfairness of the proceedings is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be declared inadmissible in accordance with Article 35 § 4.

2. Complaint under Article 6 § 1 of the Convention about the unreasonable length of the proceedings

40. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004 when the 2004 Act came into force, the applicant had a possibility of lodging with the Polish civil courts a claim for compensation for damage suffered due to the excessive length of proceedings under Article 417 of the Civil Code read together with Article 16 of the 2004 Act. 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.

41. The applicant contested the Government's arguments.

42. 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 *Malasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003; *Ratajczyk v. Poland*; (dec.), 11215/02, 31 May 2005; *Barszcz v. Poland,* no. 71152/01, 30 May 2006) and the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

43. The Government further argued that the possibility of lodging a claim for compensation for damage suffered due to the excessive length of proceedings under Article 417 of the Civil Code had existed in Polish law even before the entry into force of the 2004 Act, namely since the judgment of the Constitutional Court of 4 December 2001.

44. The applicants contested the Government's arguments, maintaining that there was no legal basis for lodging a claim for compensation in the circumstances of their case.

45. The Court notes that it has already examined whether after 18 December 2001 and prior to the entry into force of the Law of 17 June 2004 a compensation claim in tort as provided for by Polish civil law was an effective remedy in respect of complaints about the length of proceedings. It held that no evidence of any judicial practice had been provided to show that a claim for compensation based on Article 417 of the Civil Code has ever been successful before the domestic courts (see *Skawińska v. Poland* (dec.), no. 42096/98, 4 March 2003 and *Malasiewicz v. Poland,* no. 22072/02, 14 October 2003). As the Government have failed to submit any new arguments, the Court will abide by its previous findings.

46. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

47. 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. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

48. The applicants complained about the excessive length of the civil proceedings.

49. The Government submitted that the case had been very complex due to the fact that the courts had to establish the extent of the damage to the

applicants' flat and to assess its value. The examination of the case had required the obtaining of expert opinions.

50. The Government further argued that the parties had contributed significantly to the length and the complexity of the proceedings, in particular by challenging the expert opinions, with the result that supplementary opinions had to be ordered. In addition, two hearings had to be adjourned upon their or their representative's motion.

51. As regards the conduct of the public authorities, the Government were of the view that the case did not require special diligence since what was at stake for the applicants was solely of a pecuniary nature.

52. The applicants contested the Government's arguments and submitted that the length of the proceedings was excessive.

2. The Court's assessment

53. 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; *Malinowska v. Poland*, no. 35843/97, 14 December 2000).

54. As to the complexity of the case, the Court notes that the applicants sought compensation for damage caused to their flat. The fact that the court had to obtain expert evidence in order to estimate the amount of damage could not of itself render the case complex.

55. As to the conduct of the parties, the Court notes that the applicants challenged the expert opinions. However, it is well-established in the Court's case-law that the applicant in principle cannot be reproached for having made full use of the procedures available to him under domestic law (see *mutatis mutandis Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, § 82). In the present case the objections against expert opinions were raised by both parties and the domestic court found the objections justified, requesting the experts to supplement their opinions (see paragraphs 12-15 and 17-18 above). Moreover, the Court notes that the case file was sent twice to an expert who had close personal relations with the husband of one of the defendants and the applicant's representative and for that reason he had to disqualify himself. Moreover, it was discovered that another expert who had been commissioned did not have sufficient qualifications to prepare an opinion. Accordingly, the part of the proceedings during which the opinions were ordered and examined lasted from October 1994 to December 1997 (see paragraphs 12 -18 above), thus prolonging the proceedings before the first instance court for 3 years and 2 months. In the opinion of the Court, the first-instance court did not deal with the estimation of the damage to the applicants' house with sufficient rigour.

Quite apart from that, the Government have not provided any sufficient explanation for the length of the proceedings.

56. Having examined all the material submitted to it and 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

57. 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

58. The applicant claimed 250,000 PLN (62,000 EUR) in respect of pecuniary and non-pecuniary damage.

59. The Government contested the claim, arguing that it was exorbitant.

60. 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 applicants 2,400 EUR (two thousand four hundred euros) in respect of non-pecuniary damage to be converted into Polish zlotys at the rate applicable at the date of settlement.

B. Costs and expenses

61. The applicants also claimed PLN 4,711.48 (about EUR 1,190) for the costs and expenses incurred before the domestic courts and PLN 1,436.38 (about EUR 363) for those incurred before the Court.

62. The Government contested the claim.

63. 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 rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 363 for the proceedings before the Court.

C. Default interest

64. 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;

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four hundred euros) in respect of non-pecuniary damage and EUR 363 (three hundred and sixty-three euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement, together with any tax that may be payable;
   (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 3 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President