CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

## FOURTH SECTION

## DECISION

Application no. 12958/02
by Ryszard NOWAK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 2 October 2007 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 regard to the above application lodged on 7 November 2001,

Having regard to the unsuccessful friendly settlement negotiations,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the Government's request to strike the case out of its list of cases and the text of a unilateral declaration made with a view to resolving the issues raised by the application,

Having regard to the applicant's comments on the Government's proposal for a unilateral declaration,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Ryszard Nowak, is a Polish national who was born in 1946 and lives in Łódź. The Polish Government ("the Government") were

represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

The facts of the case, as submitted by the parties, may be summarised as follows.

In September 1993 the applicant's company entered into a contract with the Łódź branch of the "Polish Post" for refurbishment of one of the latter's agencies. Subsequently, the remuneration for the contract became the subject of a dispute between the parties.

On an unspecified date in 1994 the applicant sued the "Polish Post" before the Łódź Regional Court for an unpaid remuneration. On 15 December 1994 the Regional Court gave judgment in default, allowing the applicant's claim in full. The defendant filed its objection to the judgment in default.

On 15 May 1998 the Łódź Regional Court quashed the judgment in default. It allowed the applicant's claim for the most part. The defendant appealed against that judgment.

On 10 February 1999 the Łódź Court of Appeal amended the Regional Court's judgment by reducing the amount awarded to the applicant.

On 13 April 1999 the applicant lodged a cassation appeal against the Court of Appeal's judgment.

On 20 August 2001 the Supreme Court, sitting *in camera*, refused to entertain the applicant's cassation appeal. It relied on the provisions of the Code of Civil Procedure (CCP), as amended in May 2000, allowing it to refuse to examine manifestly ill-founded appeals or appeals in cases where no serious legal issue arose, even if such appeals had been filed before 1 July 2000, the date on which the relevant amendments entered into force.

On 30 June 2003 the applicant made an application to the Supreme Court for the reopening of the proceedings, relying on the Constitutional Court's judgment of 9 June 2003 (case no. SK 12/03) which had held that the relevant amendments to the CCP had been in breach of Article 2 of the Constitution (rule of law principle). On 10 October 2003 the Supreme Court rejected his application.

On 8 April 2004 the applicant made another application to the Supreme Court for the reopening of the proceedings. He relied on the Constitutional Court's judgment of 2 March 2004 (case no. SK 53/03) in which that court had reviewed and found to be constitutional the grounds for the reopening of proceedings provided for in the CCP following a judgment of the Constitutional Court. On 29 June 2004 the Supreme Court rejected the applicant's application for the reopening of the proceedings.

# COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention about the Supreme Court's refusal to examine his cassation appeal on the merits. He submitted that the amendments to the Code of Civil Procedure providing for a possibility to leave the cassation appeal without examination had entered into force after his cassation appeal had been lodged.

2. The applicant also complained under Article 6 § 1 of the Convention about the unreasonable length of the proceedings.

# THE LAW

## *A. Access to a court*

The applicant complained under Article 6 § 1 of the Convention that the Supreme Court had refused to entertain his cassation appeal on the basis of procedural provisions which had entered into force after he had lodged his appeal.

However, the Court recalls that it has already examined similar complaints and rejected them as being manifestly ill-founded (see, *Zmaliński v. Poland* (dec.), no. 52039/99, 16 October 2001 and, more recently, *Międzyzakładowa Spółdzielnia Mieszkaniowa Warszawscy Budowlani v. Poland* (dec.), no. 13990/04, 26 October 2004). It sees no reason to reach a different conclusion in the present case. It follows that the complaint under Article 6 § 1 as regards the right of access to a court is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## *B. Length of proceedings*

On 28 June 2007 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by this part of the application. It further requested the Court to strike out the relevant part of the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "... the Government hereby wish to express – by way of the unilateral declaration – its acknowledgment of the unreasonable duration of the domestic proceedings in which the applicant was involved.
>
> In these circumstances of the case, and having regard to the particular facts of the case, the Government declare that they offer to pay to the applicant the amount of PLN 10,000 which they consider to be reasonable in the light of the Court's case-law. The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be

applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

The Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

..."

The applicant requested the Court to reject the Government's initiative on the basis that the unilateral declaration was insufficient in terms of the level of compensation proposed, which he found inadequate having regard to the damage sustained as a result of the excessive length of the proceedings. Furthermore, he submitted that the delays in the proceedings before the Supreme Court had resulted in the refusal to examine his cassation appeal on the merits. Consequently, the applicant requested the Court to continue the examination of his case and deliver a judgment.

The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. It recalls that, according to Article 38 § 2 of the Convention, friendly-settlement negotiations are confidential and that Rule 62 § 2 of the Rules of Court further stipulates that no written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in contentious proceedings. However, the declaration was made by the Government on 19 June 2007 and was subsequently amended outside the framework of the friendly-settlement negotiations.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

Article 37 § 1 *in fine* includes the proviso that:

"However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court also recalls that under certain circumstances, it may strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar*

*v. Turkey* (preliminary objection) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *Meriakri v. Moldova* (striking out), no. 53487/99, §§ 29-32, 1 March 2005; *Swedish Transport Workers Union v. Sweden* (striking out), no. 53507/99, §§ 24-27, 18 July 2006 and *Van Houten v. the Netherlands* (striking out), no. 25149/03, §§ 34-37, ECHR 2005-IX).

Turning to the instant case, the Court notes that it has specified in a number of cases the nature and extent of the obligations which arise for the respondent State under Article 6 § 1 of the Convention as regards the guarantees of the right to a trial within a reasonable time (see, among many others, *Podbielski v. Poland*, judgment of 30 October 1998, RJD 1998-VIII; *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Kubiszyn v. Poland*, no. 37437/97, 30 January 2003 and *Barszcz v. Poland*, no. 71152/01, 30 May 2006). Where the Court has found a breach of this Article it has awarded just satisfaction, the amount of which depended on the particular features of the case.

Having regard to the nature of the admissions contained in the Government's unilateral declaration, as well as the amount of compensation proposed (which can be considered reasonable in comparison with the Court's awards in similar cases), the Court considers that it is no longer justified to continue the examination of the complaint under Article 6 § 1 concerning the unreasonable length of the proceedings pursuant to Article 37 § 1 (c) (see, for the relevant principles, *Tahsin Acar* cited above and also *Haran v. Turkey* (striking out), no. 25754/94, 26 March 2002).

In the light of all the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

### *C. Article 29 § 3 of the Convention*

Having regard to the above conclusions, Article 29 § 3 of the Convention should no longer apply to the case.

For these reasons, the Court unanimously

*Declares* the complaint under Article 6 § 1 of the Convention as regards the right of access to a court inadmissible;

*Takes note* of the terms of the respondent Government's declaration in respect of the complaint under Article 6 § 1 concerning the length of the proceedings and of the modalities for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention.

T.L. EARLY
Registrar

Nicolas BRATZA
President