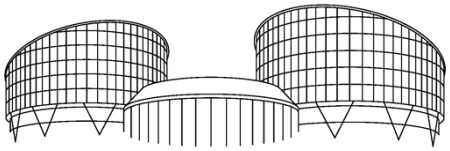

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF WCISŁO AND CABAJ v. POLAND

(Applications nos. 49725/11 and 79950/13)

JUDGMENT

STRASBOURG

8 November 2018

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 Wcisło and Cabaj v. Poland,

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

Linos-Alexandre Sicilianos, *President,*
Ksenija Turković,
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 2 and 16 October 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 49725/11 and 79950/13) 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 three Polish nationals, Mr Krzysztof Wcisło ("the first applicant") (no. 49725/11) and Ms Elżbieta and Mr Jerzy Cabaj ("the second applicant" and "the third applicant") (no. 79950/13). The applications were lodged on 27 July 2011 and 8 December 2013 respectively.

2. The first applicant was represented by Mr G. Koziarski, a lawyer practising in Wejherowo. The second and third applicants were represented by Ms J. Metelska, a lawyer practising in Warsaw.

The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

3. The applicants alleged a violation of Article 6 § 1 of the Convention on account of the unreasonable length of the administrative proceedings in their cases and a violation of Article 13 of the Convention on account of lack of effective domestic remedies for the excessive length of the administrative proceedings. They also invoked Article 1 of Protocol No. 1 to the Convention.

4. On 8 January 2018 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The case of Mr Wcisło (application no. 49725/11)

5. The applicant was born in 1963 and lives in Świątniki Górne.

1. Background to the case

6. The applicant owns the majority of shares in an apartment building situated in Cracow. The owners of the adjacent building extended their building upwards by raising the roof and adding another floor. The new roof was supported on a wall belonging to the applicant's building.

2. Administrative proceedings concerning illicit extension of the adjacent building

7. On 1 June 2000 the applicant asked the Cracow District Inspector of Construction Supervision (*Powiatowy Inspektor Nadzoru Budowlanego* – "the District Inspector") to institute proceedings concerning the illicit extension (*samowola budowlana*) of the building adjacent to his property.

8. On 20 July 2000 the District Inspector instituted proceedings against the applicant's neighbours (the owners of the adjacent building).

9. On 24 April 2001 the District Inspector discontinued the proceedings because meanwhile, two flats in the adjacent building had been sold and the co-owners had changed. On the same date he instituted a new set of proceedings, indicating also the new co-owners as parties to the proceedings.

10. On 20 May 2002 the District Inspector issued a decision. Relying on an expert opinion, he ordered the co-owners of the flats situated on the additional floor to undertake certain building work so that the extension would comply with the relevant regulations.

11. On 5 June 2002 the applicant appealed to the Małopolski Regional Inspector of Construction Supervision (*Małopolski Wojewódzki Inspektor Nadzoru Budowlanego* – "the Regional Inspector").

12. On 24 October 2002 the Regional Inspector annulled the decision of 20 May 2002 and remitted the case, noting that there was no information in the file as to whether the experts on whose expertise the District Inspector had relied had the required licence.

13. On 11 April 2003 the District Inspector again ordered the co-owners of the adjacent property to undertake certain building work in order for the extension to comply with the relevant building permit.

14. On 27 April 2003 the applicant appealed again.

15. On 18 June 2003 the Regional Inspector annulled the decision of 11 April 2003 on the grounds that the first-instance authority had wrongly indicated the persons obliged to undertake the building work. The case was remitted to the first-instance authority again.

16. In a decision of 18 November 2003 the District Inspector for the third time ordered the relevant co-owners to undertake certain precisely indicated building work in order for the extension to comply with the building permit.

17. On 1 December 2003 the applicant appealed against that decision.

18. On 10 February 2004 the Regional Inspector annulled the decision of 18 November 2003 on the grounds that the District Inspector had again wrongly indicated the co-owners of the adjacent building. The case was remitted to the first-instance authority yet again.

19. On 14 March 2005 the District Inspector stayed the proceedings until the delivery of a decision by the Mayor of Cracow concerning a certain procedural issue. The Mayor gave a decision on 25 July 2005.

20. On 21 February 2006 the District Inspector, in a fourth decision on the merits, ordered the co-owners to suspend all building work and provide a technical opinion.

21. On 12 September 2006 the Regional Inspector dismissed an appeal lodged by the co-owners of the adjacent building.

22. On 8 November 2006 and 25 January 2007 the District Inspector ordered the co-owners to suspend all building work.

23. On 23 March 2007 the District Inspector ordered the co-owners to submit a corrected technical plan for the extension.

24. The decisions of 25 January and 23 March 2007 were annulled by the Regional Inspector on 3 and 4 November 2008 respectively on procedural grounds and the case was remitted to the first-instance authority.

25. On 30 July 2009 building experts from the District Inspector's office inspected the site.

26. On 8 December 2011 the District Inspector yet again ordered the parties to provide a number of technical documents and a corrected building plan.

27. On 27 December 2011 two of the applicant's neighbours appealed.

28. On 26 October 2015 the Regional Inspector annulled the decision of 8 December 2011 and issued a decision on the merits, in particular, ordering the parties to submit a new building plan.

29. On 27 November 2015 one of the applicant's neighbours appealed.

30. On 10 May 2016 the Regional Administrative Court in Cracow (*Wojewódzki Sąd Administracyjny*) rendered its judgment on the matter, suspending enforcement of the decision of 26 October 2015.

31. The proceedings are still pending.

3. Length-of-proceedings complaints

32. On 27 May 2003 the applicant complained to the Regional Inspector of delays in the proceedings.

33. On 3 September 2003 the applicant complained to the Regional Inspector of the District Inspector's failure to comply with the time-limits provided for by Article 35 of the Code of Administrative Procedure ("the CAP") (see paragraph 89 below).

34. On 12 November 2003 the Regional Inspector found, under Article 37 of the CAP, that the applicant's complaint was well-founded and ordered the District Inspector to deliver a decision on the merits before 12 December 2003.

35. On 12 January 2006 the applicant again complained to the Regional Inspector of the District Inspector's inactivity.

36. On 16 March 2006 the Regional Inspector decided, pursuant to Article 37 of the CAP, that the applicant's complaint was not justified. The Regional Inspector noted that although the applicant's complaint appeared to have been justified on the date on which it had been lodged, it had become groundless after the decision of 21 February 2006 had been given.

37. Subsequently, on 31 July 2006 the applicant lodged a complaint under the Administrative Courts Act of 30 August 2002 (*Prawo o postępowaniu przed sądami administracyjnymi*) ("the 2002 Act") (see paragraphs 96-98 below) with the Cracow Regional Administrative Court about the inactivity of the District Inspector.

38. On 16 February 2007 the Cracow Regional Administrative Court gave judgment confirming that there had been a delay in the proceedings before the District Inspector. It ordered the District Inspector to deliver a decision on the merits within two months of the date of the judgment. The court noted that the proceedings before the District Inspector had begun in 2000 and had yet not ended. During that time the District Inspector had delivered three decisions on the merits; however, they had all been annulled by a higher authority and the case had been remitted. The court noted that since the last remittal (10 February 2004) the District Inspector had stayed the proceedings until the delivery of a decision by the Mayor of Cracow (14 March 2005 to 25 July 2005) and ordered the suspension of building works (on 21 February and 8 November 2006, and 25 January 2007). However, apart from establishing the names of the parties and obtaining an expert report, the District Inspector had not undertaken any other actions.

39. On 28 July 2008 the applicant again complained to the Regional Inspector of delays in the proceedings. The complaint was transferred to the Chief Inspector of Construction Supervision (*Główny Urząd Nadzoru Budowlanego* – "the Chief Inspector").

40. On 11 September 2008 the Chief Inspector informed the applicant that his complaint was well-founded and that there had indeed been a delay in the proceedings. The Chief Inspector noted that the Regional Inspector

had received the complete case file on 30 November 2007 and therefore the case had not been handled within the time-limits provided for by Article 35 of the CAP.

41. On 19 September 2008 the Chief Inspector found that the applicant's complaint about the failure to comply with the time-limits specified in Article 35 of the CAP should have been lodged with the Regional Inspector.

42. On 1 March 2011, pursuant to Article 37 § 1 of the CAP, the District Inspector set a new time-limit for dealing with the case (1 May 2011).

43. On 29 March 2011, in response to the applicant's complaint of 28 July 2008, the Regional Inspector refused to set a new time-limit for the District Inspector, as the time-limit had already been extended in the meantime.

44. On 20 April 2012 the Regional Inspector set another new time-limit for dealing with the case (31 July 2012).

45. On 9 June 2015 the Regional Inspector set yet another new time-limit for dealing with the case (31 August 2015).

B. The case of Ms and Mr Cabaj (application no. 79950/13)

46. The applicants were born in 1954 and 1957 respectively and live in Garwolin.

1. Background to the case

47. In 1996 the applicants asked the local authority for a decision on the division of their land. On 10 June 1996 the Garwolin District Office (*Urząd Rejonowy*) decided to approve the division of two larger plots of land. Four plots were designated for the construction of roads. Under the relevant provisions in force at the material time, those plots were expropriated *ex lege* on the date on which the decision on division became final. Compensation was to be determined in separate proceedings.

2. Proceedings seeking to have the decision declared null and void

48. On 7 May 2001 the Garwolin City Office (*Urząd Miasta*) applied to the Mazowiecki Governor seeking to have the decision of 10 June 1996 declared null and void.

49. On 18 July 2001 the Mazowiecki Governor (*Wojewoda Mazowiecki*) rejected the application. Following a number of appeals, that decision was finally upheld by the Warsaw Regional Administrative Court on 2 March 2005.

3. Proceedings for compensation

50. Between 1996 and 1999 the applicants lodged several applications with the Garwolin City Office, seeking compensation for the expropriated

plots of land. However, they maintained that the amounts offered by the municipality did not reflect the market value of the land.

51. On 23 February 2001 the applicants asked the Mayor of Garwolin District (*Starosta Powiatu Garwolińskiego* – "the Mayor") to determine the compensation to be paid for the expropriated plots.

52. On 24 April 2001 the Mayor issued a decision determining the amount of compensation at 103,106.29 Polish zlotys (PLN) (approximately 25,776 euros (EUR)).

53. On 7 May 2001 the Garwolin City Office appealed against that decision.

54. On 4 June 2001 the Mazowiecki Governor stayed the proceedings until completion of the annulment proceedings (see paragraphs 48 and 49 above).

55. On 23 July 2005 the applicants asked the Garwolin City Office when they would receive compensation. In reply they were informed that the decision of 24 April 2001 determining the amount of compensation was not final.

56. At the request of the applicants, on 3 October 2005 the Mazowiecki Governor ordered the resumption of the proceedings. The Garwolin City Office appealed to the Minister of Transport and Construction (*Minister Transportu i Budownictwa*). The decision to resume the proceedings was upheld on 17 February 2006 by the Minister and on 25 October 2006 by the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

57. On 25 April 2007 the Mazowiecki Governor annulled the Mayor's decision of 24 April 2001 and remitted the case, holding that the compensation had not been correctly calculated.

58. On 11 February 2008 the Mayor gave a new decision, determining the amount of compensation to be paid to the applicants at PLN 220,000 (approximately EUR 55,000).

59. The applicants appealed, submitting that that amount did not reflect the market value of the expropriated property.

60. On 28 July 2008 the Mazowiecki Governor annulled the Mayor's decision on procedural grounds and remitted the case. The Governor noted that the Mayor had failed to summon to the administrative hearing the real-estate appraiser who had prepared the valuation report.

61. On 28 January 2009 the Warsaw Regional Administrative Court dismissed a further appeal lodged by the applicants.

62. On 12 November 2009 the Mayor stayed the proceedings regarding compensation until the Polish Federation of Real Estate Appraisers had examined whether the valuation reports submitted in the case had been prepared in accordance with the relevant regulations.

63. The proceedings were resumed on 27 May 2010.

64. On 6 December 2010 the Mayor again gave a decision determining the amount of compensation to be paid to the applicants at PLN 329,957

(approximately EUR 82,480). The Mayor relied on a valuation report of 9 August 2010.

65. The Garwolin City Office appealed against that decision. It was subsequently upheld by the Mazowiecki Governor on 28 January 2011.

66. On a further appeal, on 13 October 2011 the Warsaw Regional Administrative Court gave a judgment setting aside both decisions (of 6 December 2010 and 28 January 2011), The court held that the valuation report of 9 August 2010 on which the authorities had based their decisions had not been prepared in accordance with the relevant legal provisions.

67. The applicants lodged a cassation appeal.

68. On 14 June 2013 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) upheld the Warsaw Regional Administrative Court's judgment. It further noted that in any event, following recent changes in the relevant legislation, any new valuation reports would have to be prepared in accordance with the new regulations.

69. The case file was returned to the Mazowiecki Governor on 22 August 2013. It was subsequently transferred to the Mayor on 26 August 2013.

70. On 25 June 2014 the Mayor gave yet another decision determining the amount of compensation to be paid to the applicants at PLN 280,000 (approximately EUR 70,000). The Mayor relied on a new valuation report of 4 February 2014.

71. The Garwolin City Office appealed.

72. On 27 November 2014 the Mazowiecki Governor upheld the Mayor's decision.

73. On 12 December 2014 the Garwolin City Office appealed.

74. On 8 July 2015 the Warsaw Regional Administrative Court set aside both decisions (of 25 June and 27 November 2014). The court held that the valuation report of 4 February 2014 on which the authorities had based their decisions had not been prepared in accordance with the legal regulations in force.

75. On 12 October 2015 the applicants lodged another cassation appeal.

76. On 5 April 2017 the Supreme Administrative Court quashed the judgment of 8 July 2015 and remitted the case to the Warsaw Regional Administrative Court. The court noted that contrary to the clear indications given in its previous judgment of 14 June 2013, the Regional Administrative Court had examined the validity of the valuation report of 2014 in the light of the old domestic provisions.

77. On 17 October 2017 the Warsaw Regional Administrative Court gave judgment and dismissed the Garwolin City Office's appeal against the decision of 27 November 2014.

78. The Garwolin City Office lodged a cassation appeal on 22 November 2017.

79. The proceedings are pending before the Supreme Administrative Court.

4. Length-of-proceedings complaints

80. The applicants made use of various remedies seeking to accelerate the administrative proceedings.

81. On 21 January 2006, in reply to a request submitted by the applicants, the Minister of Transport and Construction set a new time-limit for dealing with the case (as provided for by Article 36 § 1 of the CAP).

82. Subsequently, on 29 June and 24 August 2010, 16 September and 28 November 2013 the Mayor informed the applicants that a decision could not be given within the statutory time-limit. On each occasion the Mayor fixed a new time-limit for dealing with the case.

83. On 6 December 2013 the applicants lodged a complaint with the Mazowiecki Governor's office under Article 37 § 1 of the CAP, complaining of an excessive delay in conducting the proceedings.

84. On 29 January 2014 the Governor's office, having examined only the period after 26 August 2013 (the date when the case file had been transferred to the Mayor), held that the applicants' complaint was not justified, as there had been no excessive delays in the proceedings before the Mayor after that date. The applicants did not appeal against that decision to the Warsaw Regional Court.

85. On 24 February 2014 the Mayor set another new time-limit for dealing with the case (31 March 2014).

86. On 30 December 2016 the applicants lodged a complaint with the Supreme Administrative Court under section 3(6) of the Law of 17 June 2004 on the right to have a case examined in judicial proceedings without undue delay ("the 2004 Act") (see paragraphs 107-109 below). They sought a finding that the length of the proceedings had been excessive and an award of PLN 2,000 to each of them by way of compensation. The applicants maintained that in the thirteen months since their cassation appeal had been lodged with the Supreme Administrative Court, that court had not undertaken any action in their case.

87. On 19 January 2017 the Supreme Administrative Court dismissed the applicants' complaint. The court assessed only the last stage of the proceedings, that is the period before the case had reached the Supreme Administrative Court. It found that the applicants' cassation appeal had been registered on 24 November 2015. Subsequently, it had been examined in accordance with the date of registration and was waiting for a hearing date to be scheduled. Since the applicants had not asked for a speedy examination, the waiting time before a hearing date was scheduled could not be considered as an unjustified delay on the part of the court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Administrative Procedure

88. Article 35 of the Code of Administrative Procedure of 14 June 1960 ("the CAP") lays down time-limits ranging from one month to two months for dealing with a case pending before an administrative authority. If those time-limits have not been complied with, the authority must, under Article 36, inform the parties of that fact, explain the reasons for the delay and fix a new time-limit.

89. Article 37 § 1 provides that if the case has not been handled within the time-limits referred to in Articles 35 and 36, a party to administrative proceedings can lodge an appeal with the higher authority, alleging inactivity. In cases where the allegations of inactivity are well-founded, the higher authority fixes a new term for handling the case and orders an inquiry in order to determine the reasons for the inactivity and to identify the persons responsible for the delay. If need be, the authority may order that measures be applied to prevent such delays in the future.

1. Amendments of 2011

90. In 2011 the CAP was amended on three occasions. The amendments entered into force on 11 April, 17 May and 12 July 2011.

91. In particular, the amended Article 37 § 1 provides that a party to administrative proceedings may lodge a complaint not only about an authority's failure to handle the case within the time-limits referred to in Articles 35 and 36 (as then provided for), but also about excessive delay in conducting the proceedings (*przewlekłe prowadzenie postępowania*). Pursuant to Article 37 § 2, when examining the complaint, the higher authority also decides whether the inactivity or excessive delay was in flagrant breach of the law (*rażące naruszenie prawa*).

2. Amendments of 2017

92. The CAP was amended again on 7 April 2017. The amendments entered into force on 1 June 2017 and concern only proceedings instituted after that date. Several new procedures aiming at simplifying and accelerating proceedings were introduced, in particular a "silent procedure" (*milczące załatwienie sprawy*) and a simplified procedure (Article 35 § 3 (a) and Articles 163b-163g).

93. In addition, the CAP was amended to include legal definitions of inactivity (*bezczynność*) and excessive length (*przewlekłość*). Those definitions read as follows:

Article 37 § 1 (1) (inactivity)

"The case has not been dealt with within the time-limits provided for by Article 35 [of the CAP] and other special provisions nor within the time-limit indicated under Article 36 § 1."

Article 37 § 1 (2) (excessive length)

"The proceedings take longer than necessary in order to resolve the case."

94. A complaint about an authority's failure to comply with the time-limits provided for in Article 37 was called a "request for acceleration" (*ponaglenie*). Pursuant to the amended provisions, a higher authority is now obliged to examine a party's request for acceleration within seven days.

B. Procedure before the administrative courts

1. The 1995 Act

95. The Supreme Administrative Court Act of 11 May 1995 ("the 1995 Act") entered into force on 1 October 1995. Section 17 of the Act provided that a party to administrative proceedings could, at any time, lodge a complaint with the Supreme Administrative Court about inactivity on the part of an authority obliged to issue an administrative decision.

2. The 2002 Act

96. The 1995 Act was repealed and replaced by the Administrative Courts Act of 30 August 2002 (*Prawo o postępowaniu przed sądami administracyjnymi*) ("the 2002 Act"), which entered into force on 1 January 2004. Section 3(2)(8) of the 2002 Act contains provisions analogous to section 17 of the 1995 Act. A party to administrative proceedings can lodge a complaint with an administrative court alleging inactivity on the part of an authority responsible for issuing an administrative decision.

97. Section 149 in its original wording provided:

"If the court finds a complaint alleging inactivity on the part of an authority well-founded in cases described in sections 3(2)(1) to (14), it shall order the authority concerned to issue a decision within a prescribed time-limit, or to perform a specific act, or to confirm or recognise a right or obligation provided for by law."

98. Section 154 in its original wording, in so far as relevant, provided:

"1. In the event of an authority's failure to implement a judgment allowing a complaint about inactivity ... a party to the proceedings, after submitting a written

request to the authority concerned, may lodge a complaint in that respect, asking for a fine to be imposed on that authority.

2. In situations described in subsection (1) above, a court may decide about the existence or non-existence of a right or obligation, if it is possible in view of the type of matter concerned and its factual and legal circumstances.

..."

(a) Amendments of 2011

99. In 2011 the 2002 Act was amended on several occasions. The most relevant amendments entered into force on 11 April, 17 May and 12 July 2011.

100. In particular, section 3(2)(8) was amended to include a similar provision to that added to the CAP (see paragraph 91 above), providing that a party to administrative proceedings may also complain of excessive delay in conducting the proceedings (*przewlekłe prowadzenie postępowania*).

101. Moreover, under the amended section 149 of the 2002 Act, if the Administrative Court considers a complaint to be well-founded, it must also determine whether the inactivity or excessive delay was in flagrant breach of the law. A new subsection 149(2) was introduced, providing that if a court allowed a complaint alleging inactivity, it could also, either of its own motion or at a party's request, impose on the responsible authority a fine of up to ten times the average monthly public-sector salary.

(b) Amendments of 2015

102. The 2002 Act was amended again on 9 April 2015 (the amendments entered into force on 15 August 2015). The changes were aimed mainly at simplifying proceedings before the administrative courts. In particular, if an administrative court considers a complaint about inactivity or excessive delay well-founded, in addition to ordering an administrative authority to act in a certain manner, it can also issue a decision on the substance of the case (section 149(1)(b)).

103. Most importantly, by the amendment of 2015 the administrative courts were granted the competence to award compensation directly to a party to proceedings that had suffered as a result of inactivity or excessive delay on the part of administrative authorities. Consequently, the administrative court may now not only fine the administrative authority on account of its inactivity, but may also order it to pay compensation directly to an applicant in an amount of up to five times the average monthly public-sector salary (section 149(2)).

104. A similar mechanism is provided for if an administrative authority fails to implement a court judgment allowing a complaint alleging inactivity or excessive delay (section 154(2) and (7) of the 2002 Act). In such circumstances, the party concerned may apply to an administrative court asking it to impose a fine on the relevant administrative authority. If the

court allows the complaint, it may award compensation directly to the party concerned in an amount of up to five times the average monthly public-sector salary. In addition, the party may claim damages under the relevant provisions of the Civil Code.

3. The Supreme Administrative Court's relevant case-law

105. The Supreme Administrative Court has on several occasions delivered rulings concerning the interpretation of the 2002 Act and, in particular, on the issue of the fragmentation of proceedings that were the subject of a complaint concerning their length. For instance, in its judgment of 27 October 2016 (I OSK 1781/16) the Supreme Administrative Court held that while the adopted legislative model of a "length" complaint under the 2002 Act led to fragmentation of the assessment of the length of the proceedings, such complaints should be examined bearing in mind the particular circumstances of each case, in particular if the case has already been examined by the same authority.

A similar view – that the assessment of the length of the proceedings could include their earlier stages before the same authority – was expressed in a number of subsequent judgments of the Supreme Administrative Court, for instance in the judgments of 15 February 2018 (II OSK 920/17) and 5 April 2018 (II GSK 621/18).

C. Civil Code

106. Articles 417 et seq. of the Civil Code (*Kodeks cywilny*) provide for the State's liability in tort. Article 417^1 § 3 of the Civil Code entered into force on 1 September 2004. It provides for a possibility of lodging a compensation claim for damage resulting from the unreasonable length of administrative proceedings, after it has been formally determined in the relevant proceedings that there was an unlawful failure to issue an administrative decision within the relevant time-limits.

D. The 2004 Act

107. The relevant domestic law and practice concerning remedies for excessively lengthy criminal and civil judicial proceedings, in particular the applicable provisions of the Law of 17 June 2004 on the right to have a case examined in judicial proceedings without undue delay (*ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki* – "the 2004 Act"), are presented in the Court's judgment in the case of *Rutkowski and Others v. Poland* (nos. 72287/10, 13927/11 and 46187/11, §§ 75-92, 7 July 2015) and in the decision

in *Załuska, Rogalska and Others v. Poland* ((dec.), nos. 53491/10 and 72286/10, §§ 19-22, 20 June 2017).

108. Under section 3 of the 2004 Act, in judicial administrative proceedings a complaint may be lodged by a party (*skarżący*) or a participant acting as a party (*uczestnik postępowania na prawach strony*).

109. Under section 4(3) of the 2004 Act, a complaint concerning the excessive length of proceedings before a regional administrative court or the Supreme Administrative Court will be examined by the Supreme Administrative Court.

E. Statistical and other information on the practice of administrative courts

110. The Government have produced statistical information on the number of complaints on inactivity or excessive length of administrative proceedings lodged with the administrative courts and the amounts awarded in just satisfaction from 2011 to 2017.

111. With regard exclusively to complaints about inactivity and excessive length of proceedings, the statistics are as follows. In 2011 and 2012, respectively 3,831 and 4,154 complaints were lodged with the regional administrative courts. Between 2013 and 2017 on average, more than 6,000 complaints per year were lodged with the regional administrative courts (2013 – 6,262; 2014 – 6,769; 2015 – 6,517; 2016 – 6,597; 2017 - 6,305).

112. As regards applications under section 149(2) of the 2002 Act (imposition of a fine and compensation awarded to a party to proceedings), the Government submitted the following statistics.

113. In 2011 and 2012 the regional administrative courts imposed fines on the administrative authorities in nine and fifty cases respectively.

114. In 2013, 512 complaints were lodged with the regional administrative courts; in 135 cases the courts imposed fines on the administrative authorities.

115. In 2014, a total of 746 applications were lodged with the regional administrative courts and in 238 cases the courts imposed fines on the administrative authorities. The fines ranged between PLN 100 and PLN 5,000.

116. In 2015 a total of 1,437 applications were lodged with the regional administrative courts. In 225 cases the courts imposed a fine on the administrative authority at the request of a party and in 73 cases they did so of their own motion. The fines ranged between PLN 200 and PLN 5,000. In addition, the courts awarded the parties compensation totalling PLN 26,572.

117. In 2016 a total of 1,372 applications were lodged with the regional administrative courts. In 296 cases the courts imposed a fine on the administrative authority at the request of a party and in 86 cases did so of

their own motion. The fines ranged between PLN 250 and PLN 15,000. The compensation awarded to the parties totalled PLN 216,629.

118. In 2017 a total of 1,308 applications were lodged with the regional administrative courts. In 213 cases the courts imposed a fine on the administrative authority at the request of a party and in 46 cases did so of their own motion. The fines ranged between PLN 200 and PLN 5,000. The compensation awarded to the parties totalled PLN 216,250.

III. COMMITTEE OF MINISTERS' DOCUMENTS CONCERNING THE LENGTH OF ADMINISTRATIVE PROCEEDINGS IN POLAND

119. On 8 December 2016 the Committee of Ministers, at its 1273rd meeting of the Ministers' Deputies, decided to close the execution of eighty judgments against Poland relating to the excessive length of proceedings before administrative courts and bodies, and adopted a final resolution (CM/ResDH(2016)359) ("the 2016 CM Resolution").

The 2016 CM resolution reads, in so far as relevant, as follows:

> "Having regard to the final judgment transmitted by the Court to the Committee in these cases and to the violations established due to excessive length of administrative proceedings;
>
> Recalling the respondent State's obligation, under Article 46, paragraph 1, of the Convention, to abide by all final judgments in cases to which it has been a party and that this obligation entails, over and above the payment of any sums awarded by the Court, the adoption by the authorities of the respondent State, where required:
>
> of individual measures to put an end to violations established and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
>
> of general measures preventing similar violations;
>
> Having examined the information provided by the government (see document DH-DD(2016)1160);
>
> Having noted that just satisfaction awarded by the Court has been paid by the government of the respondent State and that domestic proceedings in these cases are now terminated;
>
> Having noted the general measures adopted by the Polish authorities, which demonstrate their commitment to continue the efforts to solve the problem of the excessive length of administrative proceedings;
>
> Noting with satisfaction that the amendments to the Law on proceedings before administrative courts which entered into force in August 2015 have allowed for termination of the practice of remittals of cases after annulment of administrative decisions, a reason for numerous delays in the proceedings;
>
> Noting that outstanding issues concerning the length of administrative proceedings and the functioning of the remedies remain under supervision in the framework of the *Beller* group of cases;

DECLARES that it has exercised its functions under Article 46, paragraph 2, of the Convention in the cases enlisted below and

DECIDES to close the examination thereof."

THE LAW

I. JOINDER OF THE APPLICATIONS

120. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides that the present applications should be joined.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

121. The Government raised an objection, arguing that the applicants had failed to exhaust available domestic remedies. In particular, they pointed out that after 28 July 2008 Mr Wcisło had not made use of any remedies provided for by the CAP and the 2002 Act. As regards Ms and Mr Cabaj, they had not lodged an appeal against the Mazowiecki Governor's decision of 29 January 2014 and had not made use of the remedies introduced following the amendments to the CAP and the 2002 Act.

122. The applicants contested the Government's argument, stating that they had raised the issue of delays in the proceedings on many occasions. They further referred to all their complaints about the length of administrative proceedings.

123. The Court observes that the question whether the requirement that an applicant must exhaust domestic remedies has been satisfied in the instant cases is closely linked to the complaints concerning the existence of an effective remedy within the meaning of Article 13 of the Convention. It therefore considers that this objection, raised by the Government under Article 6 § 1 of the Convention, should be joined to the merits of the complaints under Article 13.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONEVNTION

124. All applicants complained that the domestic remedies in respect of the protracted length of the administrative proceedings had been ineffective in their cases. They invoked Article 13 of the Convention, which 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. Admissibility

125. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

126. All applicants submitted that as shown by the circumstances of their cases, the combination of remedies under the CAP, the 2002 Act and the 2004 Act could not be considered "effective" within the meaning of Article 13 of the Convention. The remedies as applicable at the material time had not been effective since they had not resulted in acceleration of the proceedings and had not enabled them to obtain appropriate compensation.

127. The applicants acknowledged that amendments to the CAP introducing new remedies had been introduced in 2017. However, those amendments were irrelevant for their cases, as they applied to proceedings instituted after 1 June 2017.

128. The first applicant further submitted that he had made use of the remedies provided for by the 2002 Act and lodged a complaint with an administrative court. In reply, the administrative court had ordered the first-instance authority to settle the case within two months. However, despite that ruling, there had been no acceleration of the proceedings.

129. The second and third applicants stressed that they had been informed by the authorities on many occasions that a decision could not be issued within the statutory time-limit and a new time-limit had been set. They pointed to the deficiencies in the functioning of the domestic remedies. In particular, the domestic authorities had been applying the defective practice of "fragmentation of proceedings" when deciding on complaints about the length of proceedings. In the applicants' case, in reply to their complaint of 6 December 2013, the Mazowiecki Governor had examined only the period after 26 August 2013, after the case file had been remitted to the first-instance authority (see paragraph 84 above).

130. Lastly, the second and third applicants submitted that they had made use of various remedies over many years in an attempt to accelerate the proceedings. However, the combination of remedies had not enabled them to prevent the proceedings from becoming excessively lengthy or to obtain appropriate compensation. They also stressed that the very fact of lodging a complaint about the length of the proceedings had contributed significantly to their length, as the case files had been automatically sent to

the authority dealing with the complaint and the proceedings on the merits had been suspended. There had been no appropriate regulations which would have allowed the proceedings on the merits to be continued.

(b) The Government

131. The Government disagreed with the applicants' submissions. They maintained that the aggregate of remedies provided for by the CAP, the 2002 Act and the 2004 Act was adequate and effective within the meaning of Article 13 of the Convention. They referred to the recent amendments to those acts (see paragraphs 92-94 and 102-104 above).

132. With respect to the CAP, the Government referred to the new mechanisms provided for by the amendment of 2017.

133. The Government noted that further amendments had been introduced in order to limit situations where cases were remitted by a second-instance authority for reconsideration. Under those provisions, a party to proceedings could request that the higher authority supplement the evidence or instruct the first-instance authority to do so.

134. They also referred to a new mechanism whereby an appeal could be lodged against a decision remitting a case for re-examination (*sprzeciw od decyzji kasatoryjnej*). Such an appeal would be examined in a simplified administrative procedure. This, in their view, would prevent excessive length of proceedings and limit the practice of repeated remittals.

135. The Government listed other amendments to the CAP aimed at improving and accelerating administrative proceedings. Those included the introduction of an "optional" request for reconsideration of the case relating to decisions given by ministers or self-government boards of appeal; a waiver of the right to appeal; the possibility to notify a decision by means of a so-called "public notification" (*zawiadomienie publiczne*); and the introduction of a "silent procedure" (*milczące załatwienie sprawy*) and "simplified procedure" (*postępowanie uproszczone*). Lastly, it was no longer necessary to request the elimination of a breach before lodging an appeal with an administrative court.

136. With respect to the 2002 Act, the Government pointed out that amendments had been adopted in 2011 and 2015. In particular, they stressed that pursuant to the amendments of 2015, the administrative courts had been granted the competence to award compensation directly to the party to the proceedings on account of inactivity or excessive delay in the administrative proceedings.

137. The Government stated that a party to administrative proceedings had access to numerous effective remedies at national level and that the Court had already found that the combination of those remedies had been effective for the purpose of Article 13 of the Convention. In that connection, they referred to previous cases against Poland (*Futro v. Poland* (dec.), no. 51832/99, 3 June 2003; *Kołodziej v. Poland* (dec), no. 47995/99,

18 October 2005; *Szablińska v. Poland* (dec.), no. 52462/99, 2 February 2006; and *Olędzki v. Poland* (dec.), no. 13715/03, 4 January 2008) in which the Court had found that the applicants had failed to use available domestic remedies against lengthy administrative proceedings.

138. Lastly, the Government stressed that the Committee of Ministers of the Council of Europe, at its 1273rd meeting held on 6-8 December 2016, had closed the execution of judgments delivered against Poland in a group of eighty cases concerning the length of administrative proceedings. In the 2016 CM Resolution, the Committee of Ministers noted that the general measures adopted by the Polish authorities had demonstrated their commitment to continuing efforts to solve the problem of excessively lengthy administrative proceedings (see paragraph 119 above).

139. In conclusion, the Government expressed their intention to continue taking all further necessary actions in order to make administrative proceedings more efficient.

2. The Court's assessment

(a) General principles deriving from the Court's case-law

140. The relevant principles relating to the application of Article 13 of the Convention to complaints about a violation of the right to a hearing within a reasonable time have been set out in a number of judgments (see, among other authorities, *Kudła,* cited above, § 157; *Scordino (no. 1)*, cited above, §§ 182-89; *Sürmeli v. Germany* ([GC], no. 75529/01, §§ 97-101, ECHR 2006-VII, with further references; *Vassilios Athanasiou and Others v. Greece*, no. 50973/08, § 55, 21 December 2010; and *Ümmühan Kaplan v. Turkey*, no. 24240/07, § 72, 20 March 2012. They were recently restated in the pilot judgment *Rutkowski and Others* (cited above, §§ 172-175).

141. The Court reiterates, in particular, that remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they can be used either to expedite the proceedings before the national courts or to provide the party with adequate redress for delays that have already occurred. Where a domestic legal system has made provision for bringing an action against the State, such an action must remain an effective, sufficient and accessible remedy in respect of the excessive length of judicial proceedings. Its sufficiency may be affected by excessive delays and depend on the level of compensation (see *Rutkowski and Others*, cited above, § 173).

(b) Application of the above principles to the present cases

142. The Court finds at the outset that the applicants' complaints are "arguable" for the purposes of Article 13 and that they were entitled to a remedy whereby they could obtain appropriate relief for the Convention

breach before the domestic authority, including compensation for non-pecuniary damage suffered on account of delays that had occurred in their cases (see *Kudła,* cited above, § 157, and *Rutkowski and Others*, cited above, § 176).

143. The Government did not contest the applicants' right to an "effective remedy" and, in consequence, their right to redress for the violation alleged. However, in their view, the aggregate of remedies provided for by the CAP, the 2002 Act and the 2004 Act offered the applicants "appropriate and sufficient redress". In that context, they relied on the Court's previous rulings in Polish cases, holding that a combination of remedies designed to accelerate the administrative proceedings had been regarded as "effective remedies" (see paragraph 137 above).

144. The applicants contested that argument, maintaining that the operation of those remedies had been defective, in particular as regards the possibility of preventing excessively lengthy proceedings and obtaining appropriate compensation. This, in their view, resulted from, among other things, the national authorities' defective practice of limiting the assessment of the length of proceedings to the stage at the current instance, without taking any account of previous delays, and the practice of repeatedly remitting the case to the first-instance authority (see paragraph 129 above).

145. The Court has already examined the effectiveness of the combination of remedies for excessively lengthy administrative proceedings and found them found them effective (see, among other authorities, *Bukowski v. Poland* (dec.), no. 38665/97, 11 June 2002; *Koss v. Poland*, no. 52495/99, §§ 43-49, 28 March 2006; *Turczanik v. Poland*, no. 38064/97, § 54, ECHR 2005-VI; *Leon and Agnieszka Kania v. Poland*, no. 12605/03, §§ 89-90, 21 July 2009 and *Derda v. Poland*, no. 58154/08, § 58, 1 June 2010). Those rulings were based on the circumstances as established at the material time. However, since those rulings were given the practice of the domestic authorities has developed. The instant cases reveal their failure to take account of any previous delays and the practice of frequent remittals to the first-instance authority. In the light of those circumstances, the Court sees good cause for reconsidering its previous position on the effectiveness of a combination of remedies for complaints concerning excessively lengthy administrative proceedings.

(i) As regards the CAP

146. The Court observes that in Poland a party to administrative proceedings may lodge an appeal under Article 37 of the CAP in order to urge the relevant authority to issue a decision within the relevant time-limits (see paragraph 89 above).

147. As shown by the facts of the present cases, the applicants made use of the remedies provided for by the CAP on numerous occasions. Although new time-limits for dealing with the cases were fixed, those complaints did

not result in the acceleration of the applicants' cases, as the competent authorities repeatedly failed to comply with the newly fixed time-limits. Moreover, such non-compliance had no consequences for either the administrative authorities in question or the officials acting on their behalf (see paragraphs 32-35, 39, 40, 42, 44, 45, 81- 83 and 85 above).

148. The Court acknowledges that significant amendments have recently been introduced to the CAP and a number of procedures aimed at simplifying and accelerating the administrative procedure has been introduced (see paragraphs 92-94 above). As pointed out by the Government, these new mechanisms might prevent excessively lengthy administrative proceedings (see paragraphs 133-136 above).

149. The Court welcomes those recent legislative initiatives but nevertheless observes that the new procedures could not remedy the applicants' situation as they apply only to proceedings instituted after 1 June 2017. In any event, the functioning of the new procedures must be assessed in the light of developments in domestic practice.

150. The Court considers that in the circumstances of the applicants' cases, the remedies provided for by the CAP, as applicable at the material time, namely before 1 June 2017, did not represent effective remedies for excessively lengthy administrative proceedings.

(ii) As regards the 2002 Act

151. The Court observes that in cases where an authority fails to comply with the relevant time-limits provided for by the CAP, it is possible under the 2002 Act (previously under the 1995 Act) to lodge a complaint with an administrative court alleging inactivity on the part of that authority or excessive delay in conducting the proceedings (see paragraphs 95-98 above).

152. Currently, if an administrative court considers such complaint well-founded, in addition to imposing on an administrative authority an obligation to act in a certain manner, it can also give a decision on the substance of the case (see paragraph 102 above). Moreover, it may fine the administrative authority for failure to act and for excessive delay, and it may also make such authority liable for the payment of compensation directly to an applicant (see paragraph 103 above). This mechanism is again available if an administrative authority fails to implement a court judgment allowing a complaint about inactivity (see paragraph 104 above).

153. The first applicant had recourse to that remedy. His complaint alleging inactivity resulted in a judgment of the Cracow Regional Administrative Court of 16 February 2007, which confirmed that there had indeed been a delay in the proceedings. Despite that decision, there was no acceleration in the proceedings (see paragraphs 37-39 above). At the same time, the Court notes with satisfaction that the Regional Court did not limit itself to assessing the last stage of the proceedings, but examined their

overall length notwithstanding the fact that there had been several remittals (see paragraph 38 above). It thus correctly applied the relevant standards in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005, and *Rutkowski and Others*, cited above, § 213).

154. The Court further observes that the second and third applicants did not make use of the remedy provided for by the 2002 Act.

155. However, in this regard, the Court observes that the possibility of claiming compensation for excessively lengthy administrative proceedings was only introduced by the amendments of 2015, which entered into force on 15 August 2015.

156. In the case of the first applicant, the complaint under the 2002 Act was made before the adoption of the 2015 amendments. As regards, the second and third applicants, the proceedings in their case have been pending before the administrative courts since December 2014 (see paragraphs 73-79 above). Therefore, the compensatory remedy provided for by the amendments of 2015 was at the relevant time not available to the applicants.

157. The Court notes that, as it appears from the statistical information produced by the Government, since the adoption of the amendments of 2015 the courts have been making awards to parties to administrative proceedings who have complained about their length. However, the Government did not provide any detailed information on the amounts of compensation awarded by the administrative courts, or the number of cases in which such compensation had been granted. They merely indicated the total sums awarded to individuals in a calendar year (see paragraphs 116-118 above). Consequently, it is not possible to establish the average sum of compensation per case, or the minimum and maximum awards. For those reasons, the operation of the compensatory remedy and the practice of the domestic authorities in this respect cannot yet be established.

158. It would thus appear that in the circumstances of the applicants' cases, the remedies provided for by the 2002 Act, as applicable at the material time, namely before 15 August 2015, did not represent an effective remedy for their complaints about the excessive length of the administrative proceedings. However, the Court's position may be subject to review in the future, and the burden of proof as to the effectiveness of the remedy in practice remains on the Polish Government.

(iii) As regards the 2004 Act

159. As regards delays before the administrative courts, the Court notes that a party to judicial administrative proceedings may lodge a complaint with the Supreme Administrative Court under the 2004 Act. Under the relevant provisions, if the court finds a breach of the "reasonable time"

requirement, it may award compensation to the party (see paragraphs 107-109 above).

160. It is true that the first applicant did not make use of that remedy. However, it was not appropriate in the circumstances of his case, which has been pending mainly before the administrative authorities.

161. The second and third applicants' complaint under the 2004 Act was dismissed on 19 January 2017 as lacking substantiation. The Supreme Administrative Court considered that the applicants had failed to ask for a speedy examination of their complaint and noted that all cases were examined in accordance with the date of registration. The Court, however, notes that the Supreme Administrative Court did not examine the overall length of the judicial administrative proceedings but limited its assessment to the current instance and disregarded the period in which the case had been pending before the Regional Court (see paragraph 87 above).

162. The Court reiterates that it perceived the practice of "fragmentation of proceedings" applied by the national courts as incompatible with Article 6 § 1 already at an early stage of the operation of the 2004 Act, and brought the matter to the attention of the Polish State. It was in the *Majewski v. Poland* judgment, delivered on 11 October 2005, that the Court first reminded the Polish authorities that "as it ha[d] already indicated on a great number of occasions, the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case taken as a whole. The Court's approach consist[ed] in examining the overall length of proceedings and in covering all stages of the proceedings" (see *Majewski*, cited above, § 35). In the light of that judgment, it should have been clear for the domestic authorities that a court dealing with a complaint under the 2004 Act must consider the entirety of the proceedings and all their stages (see *Rutkowski and Others,* cited above, § 213).

163. The Court also points out that it has already examined the effectiveness of a complaint under the 2004 Act in the context of civil and criminal proceedings in the pilot judgment in the case of *Rutkowski and Others* (cited above, §§ 161-186) and found a violation of Article 13 on account of the lack of effectiveness of this remedy only in its compensatory aspect (ibid., §§ 179-186). Subsequently, however, in its decision in *Załuska* it noted that a number of issues that had been the root cause of the violation of Article 6 § 1 and Article 13 of the Convention found in the pilot judgment had been addressed by the relevant amendments (see *Załuska*, cited above, § 44). It further concluded that the Polish Government, by the various measures adopted in implementation of the *Rutkowski and Others* judgment and the legislative measures as promised in their declarations, demonstrated an active and reliable commitment to take measures intended to remedy the systemic defects in the Polish legislation and judicial practice identified by the Court in its pilot judgment.

164. In view of the above considerations, the Court finds that, despite the shortcomings in approach of the domestic courts in the instant cases (see paragraph 161 above), the remedy under the 2004 Act, after the measures adopted to implement the *Rutkowski and Others* judgment, by itself, appears to be effective, sufficient and accessible also in respect of excessively lengthy judicial administrative proceedings.

(iv) Conclusion

165. The Court observes that the applicants had at their disposal a number of domestic remedies for the allegedly lengthy administrative proceedings. During respectively sixteen and seventeen years of the proceedings in their cases, they made use of several different remedies at various stages of the proceedings. However, none of those remedies, either individually or in combination, resulted in the acceleration of the proceedings or offered the required redress to the applicants.

166. In the light of all the foregoing considerations, the Court is not satisfied that the aggregate of the aforementioned legal remedies can be considered an effective legal remedy in the circumstances of the present cases.

167. The Court therefore finds that the applicants did not have access to an "effective remedy" in respect of their complaints under Article 6 § 1 of the Convention.

168. Accordingly, the Court dismisses the Government's preliminary objection of non-exhaustion of domestic remedies (see paragraph 121 above) and holds that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention.

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

169. Article 6 § 1 of the Convention, in so far as relevant, 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 ..."

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

170. The general principles relating to the "reasonable time" guarantee of Article 6 § 1 of the Convention were recently restated in the pilot judgment of *Rutkowski and Others* (cited above, §§ 126-128). The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the

complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see ibid., and *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

B. Case of Mr Wcisło

171. The applicant complained under Article 6 § 1 of the Convention that the length of the administrative proceedings in his case had been excessive.

1. Admissibility

172. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Period to be taken into consideration

173. The Court observes that the administrative proceedings in the present case were instituted on 20 July 2000 (see paragraph 8 above). However, the period to be taken into consideration began only on 5 June 2002 when the applicant appealed against the decision of the District Inspector (see paragraph 11 above). It was then that a "dispute" within the meaning of Article 6 § 1 arose (see, for example, *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001; *Mitkova v. the former Yugoslav Republic of Macedonia*, no. 48386/09, § 49, 15 October 2015; and *Christian Baptist Church in Wrocław v. Poland*, no. 32045/10, § 85, 5 April 2018). The proceedings are still pending. They have therefore lasted so far more than sixteen years. During that time the case was examined several times by administrative authorities at two levels and by a regional administrative court.

(b) Reasonableness of the length of that period

(i) The parties

174. The applicant submitted that the proceedings in his case had been excessively lengthy and that there was no justification for their delay.

175. The Government made no comment on the merits of the complaint.

(ii) The Court's assessment

176. The Court accepts that the present case might have presented some difficulties for the domestic administrative authorities, particularly as expert

opinions had to be obtained and also since the parties to the proceedings kept changing.

177. Having regard to the available evidence, the Court finds that the applicant did not contribute to the overall length of the proceedings. On the contrary, he attempted to expedite the proceedings in many ways (see paragraphs 32, 33, 35, 37 and 39 above).

178. As regards the conduct of the relevant authorities, the Court notes that on several occasions the Regional Inspector annulled the decisions of the first-instance authority and remitted the case on procedural grounds (see paragraphs 12, 15, 18 and 24 above). In particular, the Regional Inspector twice remitted the case (18 June 2003 and 10 February 2004) because on both occasions the District Inspector had wrongly indicated the owners obliged to undertake building work (see paragraphs 15 and 18 above). The Court considers in that regard that since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower authorities, the repetition of such orders within one set of proceedings discloses a serious deficiency in the operation of the legal system (see, among many others, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Vlad and Others v. Romania*, nos. 40756/06 and 2 others, § 133, 26 November 2013).

179. Moreover, the Court observes that there were several periods of inactivity in the proceedings. By way of example, it notes that following the remittal of the case on 24 October 2002, it took the District Inspector nearly six months to issue a decision (see paragraph 13 above). Subsequently, there was a period of seven months of inactivity between the Mayor's decision of 25 July 2005 and the decision of the District Inspector of 21 February 2006 (see paragraphs 19 and 20 above). The Court further notes that there were other unexplained periods of inactivity in the subsequent proceedings, such as a period of nearly two and a half years between 30 July 2009, when an inspection of the site was held, and the District Inspector's decision of 8 December 2011 (see paragraphs 25 and 26 above). Lastly, there was a period of nearly four years of inactivity when the case was before the Regional Inspector (from 27 December 2011 until 26 October 2015) (see paragraphs 27 and 28 above).

180. Given that the Government did not provide any reason justifying the overall length of the proceedings, the Court cannot but find that the applicant was deprived of his right to a "hearing within a reasonable time".

181. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

C. Case of Ms and Mr Cabaj

182. The applicants complained under Article 6 § 1 of the Convention that the length of the administrative proceedings in their case had been excessive.

1. Admissibility

183. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Period to be taken into consideration

184. The Court observes that the administrative proceedings in the present case were instituted on 23 February 2001 (see paragraph 51 above). However, the period to be taken into consideration began only on 7 May 2001 when an appeal against the Mayor's decision was lodged (see paragraph 53 above). It was then that a "dispute" within the meaning of Article 6 § 1 arose (see, for example, *Janssen*, cited above, § 40; *Mitkova*, cited above, § 49; and *Christian Baptist Church in Wrocław*, cited above, § 85). The proceedings are still pending. They have therefore lasted so far more than seventeen years. During that time the case was examined several times by administrative authorities at different levels and by two instances of the administrative courts.

(b) Reasonableness of the length of that period

The parties

185. The applicants submitted that the proceedings in their case had been excessively lengthy and that there was no justification for their overall length. The case was not complex and they had not contributed to any delays. The delays in the proceedings had been caused by several periods of inactivity, a lack of diligence on the part of the authorities and the practice of repeatedly referring the case back to the first-instance authority.

186. The Government made no comment on the merits of the complaint.

(c) The Court's assessment

187. The Court accepts the applicants' contention that their case did not involve complex issues of fact and law, even though the value of the expropriated land had to be determined by real-estate appraisers. Although the taking of expert evidence necessarily takes time, this fact in the Court's

view cannot by itself explain the delay of seventeen years in the present case.

188. The Court observes that there is no indication that the applicants contributed in any way to the length of the proceedings. On the contrary, on many occasions they attempted to expedite the proceedings (see paragraphs 80, 83 and 86 above).

189. As regards the conduct of the relevant authorities, the Court notes that following three remittals on procedural grounds, the applicants' case was examined on four occasions by the first-instance authority. It appears that the Mayor repeatedly relied on valuation reports which had not been prepared in accordance with the relevant legal provisions (see paragraphs 66, 70 and 74 above). In that connection, the Court observes that the Supreme Administrative Court expressly noted that the lower instance had not followed its clear indications given in a previous judgment (see paragraph 76 above). It further reiterates that the repetition of orders for re-examination within one set of proceedings discloses a serious deficiency in the operation of the legal system (see, among many others, *Wierciszewska,* cited above, § 46).

190. Furthermore, the Court observes that significant periods of inactivity occurred in the proceedings at issue. For instance, following the remittal of the case on 25 April 2007, it took the Mayor ten months to determine a new amount of compensation (see paragraphs 57 and 58 above). It then took twenty-two months for the Supreme Administrative Court to examine the applicants' first cassation appeal (see paragraphs 67 and 68 above) and eighteen months to examine their second cassation appeal (see paragraphs 75 and 76 above). It would appear that during those periods, the Supreme Administrative Court remained inactive and the case was simply lying dormant waiting for a hearing date to be scheduled (see paragraph 87 above).

191. Given that the Government did not provide any justification for the delay in the examination of the applicants' case, the Court cannot but find that they were deprived of their right to a "hearing within a reasonable time".

192. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings.

V. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

193. All applicants complained that the excessive length of the administrative proceedings in their cases had constituted a breach of their right to property pursuant to Article 1 of Protocol No. 1 to the Convention, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

194. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Case of Mr Wcislo

195. The Court observes that the applicant's complaints have already been examined under Article 6 § 1 (see paragraph 181 above). Consequently, having regard to its finding under that provision, the Court considers that it is not necessary to examine whether there has also been a separate violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, 19 February 1991, § 23, Series A no. 194-C, p. 47, and *Beller v. Poland*, no. 51837/99, § 74, 1 February 2005).

2. Case of Ms and Mr Cabaj

196. The Court considers that the circumstances of this case require it to depart from its practice of not determining a complaint under Article 1 of Protocol No. 1 separately once a violation of Article 6 § 1 has been found (see paragraph 195 above), since in the present case the delay in the payment of compensation to the applicants still persists (see *Czajkowska and Others v. Poland*, no. 16651/05, § 47, 13 July 2010).

197. Most importantly, the Court notes that the domestic authorities unequivocally confirmed that the applicants were entitled to compensation for deprivation of their property (see paragraphs 47-49 above). The substance of the applicants' claim has never been contested and the ongoing dispute concerns only the exact amount of compensation to be paid (see paragraph 51 above).

198. The Court has already found that the administrative proceedings relating to the applicants' claim for compensation had lasted for an unreasonably long time (see paragraph 192 above). In the Court's view, the fact that the applicants have been expropriated and have not yet received the

compensation provided for by domestic law constitutes an excessive burden which has upset the fair balance that has to be struck between the demands of the public interest and the protection of the right to peaceful enjoyment of possessions (see *Kunić v. Croatia*, no. 22344/02, § 67, 11 January 2007, and *Czajkowska and Others,* cited above, § 62, 13 July 2010).

199. There has accordingly been a breach of Article 1 of Protocol No. 1.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

200. 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

1. Case of Mr Wcisło

201. The applicant claimed 23,351.94 euros (EUR) in respect of pecuniary damage, namely for compensation for loss of profit on account of the fact that he had been unable to rent two of his apartments due to a faulty ventilation system caused by improperly carried out work. He also claimed EUR 15,000 in respect of non-pecuniary damage caused by the excessive length of the proceedings in his case.

202. The Government contested those claims. With respect to the pecuniary damage claimed, they pointed out that the domestic proceedings were still pending. In addition, the applicant had failed to submit any relevant documents in support of his claim.

203. 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 considers that the applicant must have suffered non-pecuniary damage on account of the excessive length of the proceedings in his case. It therefore awards him EUR 13,000 in respect of non-pecuniary damage.

2. Case of Ms and Mr Cabaj

204. The applicants claimed 280,000 Polish zlotys (PLN) (approximately EUR 66,000) together with statutory interest in the amount of PLN 71,733.70 (approximately EUR 17,079) in respect of pecuniary damage, namely compensation for the expropriated land in question. They also claimed EUR 15,000 in respect of non-pecuniary damage caused by the excessive length of the proceedings in their case.

205. The Government contested those claims. With respect to the pecuniary damage claimed, they stated that the domestic proceedings were still pending and therefore any claims were premature.

206. In the circumstances of the present case, given the ongoing dispute concerning the value of the expropriated land, the Court considers that the question of compensation for pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court).

207. On the other hand, the Court considers that the applicants must have suffered non-pecuniary damage on account of the excessive length of the proceedings in their case. It therefore awards them EUR 10,400 in respect of non-pecuniary damage.

B. Costs and expenses

208. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

1. Case of Mr Wcisło

209. The applicant claimed EUR 2,000 for the costs and expenses incurred before the Court. In support he submitted itemised particulars of his claim, involving thirty-five hours of legal work (six hours for the preliminary examination; two hours for preparation of an authority form; two hours for consultation with the client; and twenty-five hours' for preparation of observations).

210. The Government contested the claim on the grounds that the applicant had not attached an invoice from his lawyer.

211. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

212. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 for costs and expenses for the proceedings before the Court.

2. Case of Ms and Mr Cabaj

213. The applicants claimed a total of PLN 21,941 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. That sum included PLN 12,423 (approximately EUR 2,958) for legal representation before the Court. They submitted invoices from lawyers as well as an invoice from an expert real-estate appraiser who had prepared an opinion on the amount of statutory interest due on the compensation claim.

214. The Government contested the claim. In particular, they noted that the calculation of the statutory interest had not required the services of an expert.

215. In the present case, regard being had to the documents 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 2,958 for the proceedings before the Court.

C. Default interest

216. The Court considers it appropriate that the default interest rate 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. *Decides* to join the applications;

2. *Joins* to the merits of the complaint under Article 13 of the Convention the Government's non-exhaustion objection in relation to the complaint under Article 6 § 1 of the Convention and rejects it;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1 of the Convention;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

6. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the case of Ms and Mr Cabaj;

7. *Holds* that there is no need to examine the complaint under Article 1 of Protocol No. 1 to the Convention in respect of the case of Mr Wcisło;

8. *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, the following amounts in respect of non-pecuniary damage and costs and expenses, plus any tax that may be chargeable on those amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement:

(i) EUR 13,000 (thirteen thousand euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) for costs and expenses in respect of Mr Wcisło;

(ii) EUR 10,400 (ten thousand four hundred euros) in respect of non-pecuniary damage and EUR 2,958 (two thousand nine hundred and fifty-eight euros) for costs and expenses to Ms and Mr Cabaj;

(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;

9. *Holds* that the question of the application of Article 41 of the Convention in so far as pecuniary damage resulting from the violation found in the present case in respect of the second and third applicants is concerned is not ready for decision, and accordingly:

(a) reserves the said question in that respect;

(b) invites the Government and the aforementioned applicants to submit, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and to notify the Court of any agreement that they may reach;

(c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

10. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 8 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President