



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

FOURTH SECTION

**CASE OF WAWRZYNOWICZ v. POLAND**

*(Application no. 73192/01)*

JUDGMENT

STRASBOURG

17 July 2007

**FINAL**

*17/10/2007*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Wawrzynowicz v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 26 June 2007,

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

## PROCEDURE

1. The case originated in an application (no. 73192/01) 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 a Polish national, Mrs M. Wawrzynowicz (“the applicant”) on 25 February 2001.

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

3. On 8 December 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. The applicant and the Government each filed observations on the merits and on the claims for just satisfaction under Article 41 of the Convention.

5. The Government submitted a unilateral declaration and invited the Court to strike out the application, in accordance with Article 37 of the Convention.

## THE FACTS

### A. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1940 and lives in Poznań.

7. On 12 March 1993 she lodged an application with the Poznań District Court. She sought interest on the sum of money awarded to her by the court on 30 September 1991. The proceedings were related to other proceedings concerning the division of the matrimonial property of the applicant and her former husband, in particular their apartment. Apparently the apartment had been vested to the applicant's former husband by a judgment of 1992. Other sets of proceedings concerned their mutual liabilities in this regard.

8. Hearings were held on 25 May 1993 and 31 August 1993. Subsequently, the applicant extended her claim.

9. On 5 October 1993 the court decided to transfer the case-file to the Regional Court. On 15 January 1994 the Poznań Regional Court transferred the case-file back to the Poznań District Court.

10. On 9 May 1994 the applicant requested the court to adjourn the hearing scheduled for 10 May 1994.

11. On 29 July 1994 and 21 November 1994 the applicant's lawyer submitted pleadings setting out details of the claim.

12. Subsequent hearings were held on 27 September 1994, 24 January 1995, 27 March 1995, 24 April 1995, 17 May 1995 and 19 June 1995.

13. On 26 June 1995 the Poznań District Court delivered a judgment. It allowed the applicant's claim in part. On 2 September 1995 the applicant appealed.

14. On 1 December 1995 the Poznań Regional Court quashed the judgment and remitted the case.

15. A hearing of 10 April 1996 was adjourned to 18 October 1996. A hearing of 18 October 1996 was cancelled because a judge sitting in the case was ill. Subsequent hearings were held on 20 December 1996 and 11 March 1997. It appears that the files of cases related to the present proceedings, requested by the parties on 11 March 1997, had not been submitted to the court. They were eventually submitted on 13 May 1997 and 6 March 1998.

16. Subsequent hearings were held on 29 May 1998, 8 November 1999, 10 January 2000, 10 February 2000 (adjourned), 31 August 2000 and 12 October 2000.

17. On 7 December 2000 the Poznań District court delivered a judgment. It allowed the applicant's claim in part. On 10 April 2001 the applicant appealed.

18. On 7 September 2001 the Poznań Regional Court dismissed the appeal. The judgment was final.

19. On 9 March 2005 the applicant lodged a complaint with the Poznań Court of Appeal about the excessive length of two sets of proceedings, including the one complained of in the present case (further referred to as "the first set of proceedings"). She invoked section 18 of the 2004 Act (see domestic law part below) and requested the court to find that the length of

the proceedings, which had lasted eight and four years respectively, had been unreasonable. She further submitted that she had lodged a complaint about the length of the proceedings with the European Court of Human Rights.

20. On 21 April 2005 the Court of Appeal rejected the complaint without examining its merits. The court found (referring to the second set of proceedings) that the complaint had not been lodged while the impugned proceedings were still pending. The court further noted that the [second set of] proceedings had terminated in 2000, which was before the applicant had lodged an application with the European Court of Human Rights. Therefore, the applicant had not complied with the provisions of sections 5 or 18 of the 2004 Act and her complaint had to be rejected. The court did not refer to the first set of proceedings mentioned in the applicant's complaint.

21. Apparently, following the communication of the application, the Government drew the Court of Appeal's attention to the fact that the applicant's complaint concerning the length of the first set of proceedings had not been examined. On 31 March 2006 the president of the court informed the Government that the court would deal with this part of the complaint.

22. On 31 May 2006 the Poznan Court of Appeal rejected the applicant's complaint concerning the first set of proceedings. The court considered that the applicant had failed to indicate circumstances that would justify her request, as required by section 6 of the 2004 Act. The court found that the mere fact, relied on by the applicant, that the proceedings had lasted over eight years, could not suffice to find that the proceedings had lasted longer than was necessary. Therefore, according to section 9 of the Act, the complaint had to be rejected without requiring the plaintiff to complete it.

## B. RELEVANT DOMESTIC LAW AND PRACTICE

23. On 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act") entered into force. A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length under section 2 read in conjunction with section 5(1) of the 2004 Act.<sup>1</sup>

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<sup>1</sup> For a detailed presentation of the relevant domestic law concerning the available remedies against excessive length of proceedings, see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005; *Barszcz v. Poland*, no. 71152/01, 30 May 2006, §§ 26-35.

24. Section 12 provides for measures that may be applied by the court dealing with the complaint. The relevant part provides:

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

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

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

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

25. Section 6 § 2 provides that a complaint must include:

1) a request to find that there was an unreasonable delay in the impugned proceedings;

2) circumstances that would justify the request.

26. According to section 9 of the Act, when a complaint does not meet the requirements of section 6 of the Act, it must be rejected without prior summons to the plaintiff to complete the shortcomings in the complaint.

27. Under section 18 of the Act, within six months after the entry into force of the Act, that is, from 17 September 2004, anyone who had lodged an application with the European Court of Human Rights complaining of a violation of the 'reasonable-time' requirement contained in Article 6 § 1 of the Convention was entitled to lodge a length of proceedings complaint provided for by the Act, if the application to the Court had been lodged when the proceedings were still pending and if it had not yet been declared admissible by the European Court.

28. Under Article 130 of the Code of Civil Procedure if a statement of case or a pleading fails to comply with formal requirements, the party shall be summoned to complete or remedy the formal shortcomings within a one-week time-limit.

## THE LAW

### I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

29. On 13 April 2007 the Government submitted a unilateral declaration similar to that in the case *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under

Article 6 § 1 of the Convention as a result of the unreasonable length of the proceedings in which the applicant had been involved. In respect of non-pecuniary damage, the Government proposed to award the applicant PLN 10,000 (the equivalent of EUR 2,600). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

30. The applicant did not agree with the Government's proposal. She considered that the amount proposed did not constitute sufficient just satisfaction for the damage she had sustained and requested the Court to continue the examination of the application.

31. The Court observes, as it has previously stated in *Tahsin Acar* (cited above, §§ 74-77), that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings and, on the other, unilateral declarations – such as the present declarations – made by a respondent Government in public and adversarial proceedings before the Court. In accordance with Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, the Court will proceed on the basis of the Government's unilateral declarations and the parties' observations submitted outside the framework of friendly-settlement negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement.

32. The Court considers that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

33. Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue. It may also be material whether the facts are in dispute between the parties, and, if so, to what extent, and what *prima facie* evidentiary value is to be attributed to the parties' submissions on the facts. In that connection it will be of significance whether the Court itself has already taken evidence in the case for the purposes of establishing disputed facts.

Other relevant factors may include the question of whether in their unilateral declaration the respondent Government have made any

admission(s) in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant (see *Melnic*, cited above, § 23).

34. To establish whether the amount of the intended redress should be regarded as appropriate for the purpose of striking out the application, the Court shall take into consideration the possibility of removing or reducing the effects of an alleged violation and the respondent Government's readiness to do so.

35. The foregoing list is not intended to be exhaustive. Depending on the particular circumstances of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 (c) of the Convention.

36. 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 Articles 6 and 13 of the Convention as regards the guarantees of the right to a trial within a reasonable time (see, among many others, *Kusmierrek v. Poland*, no. 10675/02, judgment of 21 September 2004; *Zynger v. Poland*, no. 66096/01, judgment of 13 July 2004) and the requirement of an effective remedy capable of providing appropriate redress for the damage resulting from the breach of this right (see *Kudla v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Krasuski v. Poland*, no. 61444/00, ECHR 2005-... (extracts); *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-...; *Majewski v. Poland*, no. 52690/99, 11 October 2005; *Cocchiarella v. Italy* [GC], no. 64886/01, ECHR 2006-...). Where the Court has found a breach of these Articles it has awarded just satisfaction, the amount of which depended on the particular features of the case.

37. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declarations made by the Government, the Court notes in the first place that the applicant's admissible complaint concerned mainly the excessive length of the civil proceedings. The Court further observes that the proceedings were terminated on 7 September 2001 and the relevant Polish remedies against excessive length of proceedings introduced in 2004 proved either not applicable or not effective in the circumstances of the present case (see the admissibility part below). Consequently, no other remedy for the alleged violation is possible at this stage.

38. Further, the Court notes that although the Government acknowledged in their unilateral declarations that the domestic proceedings had been unreasonably lengthy, they did not, however, offer her an adequate redress. The Court considers that the sum proposed in the declaration in respect of non-pecuniary damage suffered by the applicant as a result of the alleged violation of the Convention does not bear a reasonable relationship with the amounts awarded by the Court in similar cases for non-pecuniary damage.



39. It is to be noted that the amount proposed by the Government in their unilateral declaration is the maximum amount of just satisfaction that can be awarded under section 12 of the 2004 Act. The Court reiterates that when it considered the 2004 Act an effective remedy in length cases it was prepared to accept the statutory ceiling of PLN 10,000 only when it remained open to the applicant to lodge a civil claim and thus seek full compensation (see *Charzyński*, cited above, § 38). However, as noted above, that remedy was not available to the applicant in the instant case.

40. It cannot be excluded that where an applicant has been speedily awarded compensation of PLN 10,000 by a domestic court under the 2004 Act, and has been promptly paid, the Court might consider the amount to be compatible with its own awards in such cases, bearing in mind the principles which it has developed in this connection for determining victim status and for assessing its own award in cases where it has found a breach of the reasonable-time requirement (see *Cocchiarella*, cited above, §§ 85-107; *Scordino v. Italy* [GC], no. 36813/97, §§ 193-215, 29 March 2006; *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004). However, these considerations cannot be applied to a unilateral declaration which addresses a situation where the remedy failed or was not available to an applicant who had to introduce proceedings under the Convention in order to obtain redress.

41. On the facts and for the reasons set out above, the Court finds that the Government failed to submit a statement offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

42. This being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

43. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

44. The proceedings began on 12 March 1993 and ended on 7 September 2001. The period to be taken into consideration began only on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. However, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at the time.

45. The proceedings have thus lasted 8 years, 6 months and 9 days for two levels of jurisdiction, the case having been remitted on one occasion to the first-instance court.

#### **A. Admissibility**

46. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that from 17 September 2004 when the 2004 Act had come into force, the applicant had the possibility of lodging with the Polish civil courts a claim for compensation for damage caused by the excessive length of proceedings under Article 417 of the Civil Code, read together with section 16 of the 2004 Act. They noted that the three-year limitation period for the purposes of a compensation claim in tort based on the excessive length of proceedings could run from a date later than the date on which a final decision in such proceedings had been given.

47. The Government further argued that such a possibility had existed in Polish law even before the entry into force of the 2004 Act, namely since the judgment of the Constitutional Court of 4 December 2001.

48. The Court observes that in the present case the proceedings at issue terminated on 7 September 2001, which is more than three years before the relevant provisions of the 2004 Act read together with the Civil Code became effective. Consequently, the limitation period for the State's liability in tort set out in Article 442 of the Code Civil had expired before 17 September 2004.

49. The Court notes that the arguments raised by the Government are the same as those already examined and rejected by the Court in previous cases against Poland (see *Małasiewicz v. Poland*, no. 22072/02, §§ 32-34, 14 October 2003; *Ratajczyk v. Poland* (dec.), 11215/02, 31 May 2005; and *Barszcz v. Poland*, no. 71152/01, 30 May 2006) and the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

50. The Government also submitted that the applicant had not exhausted the remedies provided for in section 18 of the 2004 Act, since the examination of her complaint about the length of the impugned proceedings had been resumed and was pending at the time the Government's observation were submitted to the Court.

51. The Court observes that the applicant's complaint with regard to the proceedings in question was rejected on formal grounds on 31 May 2006 (see paragraphs 19-22 above), having been examined over a year after the complaint had been lodged with the competent court, and only as a consequence of the communication of the application to the Government. In the first decision following the applicant's complaint the domestic court made no reference to the impugned proceedings.

52. It is to be noted that the applicant did not complaint about effectiveness of the Polish length of proceedings remedy. It must be determined, however, whether the applicant's failure to fulfil the formal requirements leads to a finding that her application is inadmissible for failure to exhaust domestic remedies.

53. In this connection the Court emphasises that the application of the exhaustion of domestic remedies rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. This means, in particular, that the Court must take realistic account, not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him to exhaust domestic remedies (see *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 69, and *Yaşa v. Turkey* judgment of 2 September 1998, *Reports* 1998-VI, § 77).

54. With regard to the domestic court's finding that the applicant "had failed to indicate circumstances that would justify her request", the Court notes that it is not called upon to interpret this procedural rule and its application in the present case. Nevertheless, it has already found that declaring a complaint inadmissible on the grounds that an applicant "had not specified the circumstances in which his/her complaint had been based" is too formalistic an approach, which may prevent an applicant's claims from being examined on the merits. Such a limitation of one's right to a court has been found to be disproportionate to the aim of ensuring legal certainty and the proper administration of justice (see, *mutatis mutandis*, *Liakopoulou v. Greece*, no. 20627/04, §§ 23-24, 24 May 2006).

55. The Court considers that when the relevant law provides individuals with a possibility of lodging a complaint without being represented by a lawyer, domestic court should advise applicants on how to remedy the formal deficiencies of their complaints (see *Wende and Kukowka v. Poland*, no. 56026/00, § 54, 10 May 2007).

In the present case the applicant had not been requested to provide the required justification and therefore she had not been given a chance to remedy the formal deficiencies of her complaint. Furthermore, the Court notes that the applicant could not have lodged a fresh, corrected complaint, since the decision of the domestic court was delivered one year and two months after the expiry of the time-limit provided for in section 18 of the 2004 Act.

56. Therefore, applying the above criteria, and having regard to the vague and ill-defined nature of the requirement (see *Wende and Kukowka*, cited above; c.f. *Šidlová v. Slovakia*, no. 50224/99, § 53, 26 September 2006), the Court is satisfied that the applicant did everything that could reasonably be expected of her to exhaust domestic remedies.

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

58. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

59. The Government submitted that the case had involved complex legal and factual issues. They also submitted that it had required the examination of case-files concerning other sets of proceedings.

60. The Government were of the opinion that the interests of the applicant had been of a purely pecuniary nature.

61. They observed that, as regards the conduct of the authorities, the court had conducted comprehensive evidence proceedings. Twenty-one hearings had been held, the parties had been heard on several occasions and the case files of other proceedings had been analysed.

62. The Government maintained that the applicant had contributed to the length of the proceedings as she had amended her claim on several occasions and had not complied with the prescribed time-limits.

63. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Kusmierek v. Poland*, no. 10675/02, judgment of 21 September 2004, § 62; and *Zynger v. Poland*, no. 66096/01, judgment of 13 July 2004, § 45).

64. The Court notes that the proceedings were not very complex.

65. The Court further observes that the transfer of the case-file to the Regional Court and back to the District Court unnecessarily contributed to the length of the proceedings (see paragraph 9 above). Several hearings were adjourned. Moreover, case-files of related proceedings were submitted to the court with a significant delay (they had been requested on 11 March 1997 and submitted on 13 May 1997 and 6 March 1998).

66. The Court takes note of the fact that the applicant amended her claim on several occasions; however, she did not contribute to the length of the proceedings in a significant way.

67. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender* and other cases cited above).

68. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. In respect of non-pecuniary damage the applicants claimed PLN 10,000<sup>1</sup> as well as an award of a social flat or, alternatively, higher financial compensation.

72. The Government contested any claims exceeding PLN 10,000.

73. The Court considers that the applicant must have sustained some non-pecuniary damage, having regard to the excessive length of the proceedings. Ruling on an equitable basis, it awards her EUR 4,200 in respect of non-pecuniary damage.

#### B. Costs and expenses

74. The applicant did not make a claim for costs and expenses.

#### C. Default interest

75. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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<sup>1</sup> Approx. EUR 2,563

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the remainder of the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,200 (four thousand two hundred euros) in respect of non-pecuniary damage to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Nicolas BRATZA  
President