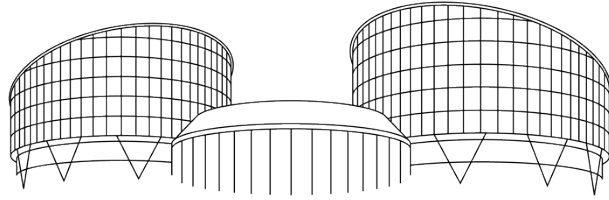

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MAGOCH v. POLAND

(Application no. 29539/07)

JUDGMENT

STRASBOURG

2 February 2010

FINAL

02/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Magoch v. Poland,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
Ján Šikuta,
Mihai Poalelungi,
Nebojša Vučinić, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 12 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 29539/07) 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, Ms Grażyna Magoch ("the applicant"), on 4 June 2007.

2. The applicant was represented by Mr S. Skupień, a lawyer practising in Łódź. The Polish Government ("the Government") were represented by their Agent, Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. On 11 May 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Łódź.

A. Main proceedings

5. On 27 July 1995 the applicant instituted civil proceedings for payment against the Łódź Municipality.

6. On 8 April 1998 the Łódź Regional Court (*Sąd Wojewódzki*) gave judgment. The court partly allowed the applicant's claim. The defendant appealed.

7. On 28 September 1998 the Łódź Court of Appeal (*Sąd Apelacyjny*) quashed the impugned judgment and remitted the case.

8. On 11 August 2005 the Łódź Regional Court (*Sąd Okręgowy*) dismissed the applicant's claim against the Łódź Municipality. The applicant appealed.

9. On 22 March 2006 the Łódź Court of Appeal dismissed her appeal. The applicant lodged a cassation appeal against the appellate court's judgment.

10. On 12 January 2007 the Supreme Court (*Sąd Najwyższy*) refused to entertain her cassation appeal.

B. Proceedings under the 2004 Act

11. On an unspecified date the applicant lodged with the Łódź Court of Appeal a complaint under section 5 of 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").

12. On 16 September 2005 the Łódź Court of Appeal acknowledged the excessive length of the proceedings before the Łódź Regional Court finding that there had been several periods of unjustified inactivity for which the Łódź Regional Court had been responsible. It referred to the periods between 29 January and 16 April 2004, 24 June and 27 October 2004, 12 January and 18 May 2005 and qualified them as unjustified delays. The court did not examine, however, the period prior to the entry into force of the 2004 Act.

13. The court awarded the applicant 1,000 Polish zlotys (PLN) (approx. 285 euros (EUR)) in just satisfaction.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

15. On 16 October 2009 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 18,000 (the equivalent of approx. EUR 4,400). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

16. The applicant did not agree with the Government's proposal and requested the Court to continue the examination of the case. She maintained that the amount offered was too low.

17. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances 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 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 and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar,* cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

18. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length of proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded where it has found a breach of the reasonable-time requirement (*see Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-...,; *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

19. On the facts and for the reasons set out above, in particular the amount of compensation proposed, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

20. This being so, the Court rejects the Government's request to strike the application out of its list of cases 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 ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

21. 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..."

22. The Government refrained from submitting any observations on the admissibility and merits of the complaint.

23. The period to be taken into consideration began on 27 July 1995 and ended on 12 January 2007. It thus lasted 11 years and 6 months for three levels of jurisdiction.

A. Admissibility

24. 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

25. 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).

26. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above). Furthermore, the Court considers that, by not taking into account the overall period of the proceedings, the Łódź Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

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

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed PLN 200,000 (approximately 48,780 euros (EUR)) in respect of pecuniary and non-pecuniary damage.

30. The Government submitted that there was no causal link between the pecuniary damage alleged and the violation found. Moreover, they contested the applicant's claim for non-pecuniary damage as exorbitant.

31. 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 and having regard to the amount already awarded to the applicant under the 2004 Act (see paragraph 13 above), it awards the applicant EUR 6,300 (approximately PLN 25,800) in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant also claimed PLN 600 (equivalent to approximately EUR 160 on the date of the invoice) for the costs and expenses incurred before the Court.

33. The Government did not contest this claim.

34. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was represented by a lawyer, the sum of EUR 160 under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government's request to strike the application out of its list of cases;

2. *Declares* 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 6,300 (six thousand three hundred euros) in respect of non-pecuniary damage and EUR 160 (one hundred and sixty euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President