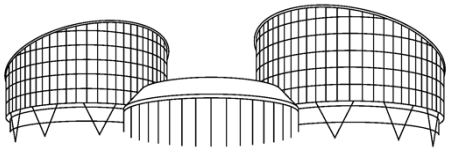

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF GOŁAWSKI AND PISAREK v. POLAND

(Application no. 32327/10)

JUDGMENT

STRASBOURG

27 May 2014

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Goławski and Pisarek v. Poland,

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

George Nicolaou, *President,*
Ledi Bianku,
Nona Tsotsoria, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 6 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 32327/10) 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 two Polish nationals, Mr Paweł Goławski and Mr Zbigniew Pisarek ("the applicants"), on 24 May 2010.

2. The Polish Government ("the Government") were represented by their Agents, Mr J. Wołąsiewicz, succeeded by Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. On 18 June 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1961 and 1956 respectively and live in Warsaw.

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

A. Civil proceedings for protection against copyright infringement (case no. I C 993/97, I ACa 737/07 and I C 244/08)

6. On 2 June 1997 the applicants, business partners, lodged before the Łódź Regional Court a civil action against a third party for protection against copyright infringement (*o ochronę praw autorskich*). They also applied that their claims would be secured from the respondent's property. On 15 September 2000 the motion to secure the claims was dismissed.

7. The first hearing was held on 24 February 1998. The subsequent hearings were held on the following dates: 10 September 1999, 1 September 2000, 14 September 2001, 14 November 2003, 6 January 2004, 24 February 2004, 5 October 2004, 3 March 2006, 24 March 2006 and 10 November 2006. On 23 February 2007 the applicants increased the value of their claims (*rozszerzenie powództwa*). A subsequent hearing was held on 22 May 2007.

8. On 30 May 2007 the Łódź Regional Court awarded the applicants 1,000 Polish Zlotys (PLN), ordered the respondent to publish a certain statement in a daily newspaper and dismissed the remaining claims. Both parties appealed.

9. On 13 December 2007 the Łódź Court of Appeal quashed and remitted the first-instance judgment in part and dismissed a remainder.

10. On re-examination of the case the first hearing before the Łódź Regional Court was held on 29 October 2008. The applicants' council requested then to allow evidence from an expert opinion. By the decision of 13 January 2009 the Łódź Regional Court granted the request.

11. On 20 October 2009 the applicants filed a request for their claims to be secured. By the decision of 18 November 2009 the Łódź Regional Court dismissed their motion. The applicants' interlocutory appeal was dismissed on 15 January 2010 by the Łódź Court of Appeal.

12. The Łódź Regional Court held its further hearings on 20 January, 21 April and 30 July 2010. Subsequently four more hearings were held on unspecified dates.

13. On 12 December 2011 the applicants filed another motion to secure their claims from the respondent's real property or his other property rights. On 7 February 2012 the Łódź Regional Court dismissed the motion.

14. On 11 March 2013 the Łódź Regional Court found in part for the applicants and dismissed the remainder.

15. The proceedings appear to be pending before the second-instance court.

B. The applicants' first complaint under the 2004 Act (case nos. I As 10/04 and I As 11/04)

16. On 1 October 2004 each of the applicants lodged their complaint with the Łódź Court of Appeal 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").

17. On 24 November 2004 the Łódź Court of Appeal acknowledged that the examination of the applicants' motion to secure claims had been lengthy (period from 2 June 1997 to 15 September 2000). The domestic court held,

however, that the Law of 2004 could not apply retroactively. The remaining part of the complaint was found to be unjustified.

C. The applicants' second complaint under the 2004 Act (case no. I As 9/09)

18. On 11 August 2009 the applicants lodged with the Łódź Court of Appeal another complaint under section 5 of the 2004 Act.

19. On 24 September 2009 the Łódź Court of Appeal acknowledged that between 1997 and 2005 the proceedings were not conducted in a timely manner. The Court of Appeal further held that since 2006 the proceedings had been conducted timely, although, taking under consideration the overall length of the proceedings, the domestic court should have asked an expert to speed up his work on a rapport.

20. The Łódź Court of Appeal awarded each of the applicants PLN 3,000 (approx. 700 euros (EUR)).

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. 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 cases of *Charzyński v. Poland* (dec.), no. 15212/03, §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005-VIII and the judgments in the cases of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V and *Wawrzynowicz v. Poland*, no. 73192/01, §§ 23-28, 17 July 2007.

THE LAW

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

22. On 14 December 2012 the Government submitted a unilateral declaration requesting the Court to strike out the application.

23. The applicants did not agree with the Government's proposal and requested the Court to continue the examination of the case.

24. Having studied the terms of the Government's unilateral declaration, the Court considers, in the particular circumstances of the case, that it does not 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 *Magoch v. Poland*, no. 29539/07,

§ 19, 2 February 2010; and *Dochnal v. Poland*, no. 31622/07, § 69, 18 September 2012).

25. 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

26. The applicants 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..."

27. The Government confined themselves to the statements set out in their unilateral declaration.

28. The period to be taken into consideration began on 2 June 1997 and has not yet ended. It has thus lasted 16 years and 9 months for two levels of jurisdiction.

A. Admissibility

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

B. Merits

30. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

31. 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).

32. 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

33. 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

34. The applicants claimed PLN 34,240,478.08 (approx. 8,108,145 EUR) in respect of pecuniary damage and PLN 1,000,000 (approx. 236,800 EUR) in respect of non-pecuniary damage.

35. The Government contested these claims.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

37. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis it awards each of the applicants 6,300 EUR under that head, taking under consideration the amounts awarded to each of the applicants by the domestic court in result of their complaints under the 2004 Act.

B. Costs and expenses

38. The applicants also claimed PLN 279,132.79 (approx. 66,100 EUR) for the costs and expenses incurred before the domestic courts.

39. The Government contested these claims.

40. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for reimbursement of costs and expenses in the domestic proceedings.

C. Default interest

41. 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. *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 each of the applicants, within three months, EUR 6,300 (six thousand three hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	George Nicolaou President