EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
HUTTEN-CZAPSKA v. POLAND

The European Court of Human Rights has today notified in writing its Grand Chamber (friendly settlement) judgment[1] in the pilot case ***Hutten-Czapska v. Poland*** (application no. 35014/97), which concerned Article 41 (just satisfaction) of the European Convention on Human Rights.

The Court has unanimously decided to **strike out** the case in the light of a friendly settlement which promises both to resolve fundamental problems with Polish housing legislation – affecting some 100,000 property owners – and to provide redress for the applicant. (The judgment is available in English and French.)

In its principal judgment in the case (19 June 2006), the Grand Chamber held that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention concerning the fact that the applicant could not use her property or charge adequate rent for its lease. The Grand Chamber found that the violation was part of a systemic problem, the malfunctioning of Polish housing legislation. It called on Poland to find a remedy at national level which would allow homeowners to make a profit from their property while also ensuring the availability of accommodation for the less well-off. The Court further awarded the applicant 30,000 euros (EUR) for non-pecuniary damage and EUR 22,500 for costs and expenses, finding that the question of an award for pecuniary damage was not ready for decision.

1. The Friendly Settlement

Under the terms of the friendly settlement the Polish Government is to pay the applicant 240,000 Polish zlotys (PLN) for pecuniary damage and a further PLN 22,500 for costs and expenses.

The Government also indicated various general measures taken or to be taken to resolve the underlying housing problem:

- A scheme providing State financial assistance for investment in social housing and social and protected accommodation;

- An amendment (the December 2006 amendment) enabling landlords to increase rent to cover the costs of property maintenance, to obtain a return on capital investment and to receive a "decent profit";

- A mechanism to monitor rent levels to ensure the transparency of rent increases;

- A Bill designed to partially refund loans taken out by homeowners for the renovation and/or thermo-modernisation of tenement buildings;

- Promotion of investment in housing in private and State-owned tenement buildings and social and protected accommodation; and,

- Further efforts to ensure landlords receive market-related rent.

The Polish Government also recognised their obligation to provide redress to other people in a similar situation to that of the applicant, considering that the above-mentioned Bill would provide an appropriate remedy.

2. Principal facts

Ms Hutten-Czapska, who is a French national of Polish origin, was born in 1931. She lived for a long time in Andrésy, France. At present, she lives in Poznań, Poland. She owns a house and a plot of land in Gdynia, Poland.

She is one of around 100,000 landlords in Poland affected by a restrictive system of rent control (from which some 600,000 to 900,000 tenants benefit), which originated in laws adopted under the former communist regime. The system imposed a number of restrictions on landlords' rights, in particular, setting a ceiling on rent levels which was so low that landlords could not even recoup their maintenance costs, let alone make a profit.

In 1994 a rent control scheme was applied to private property in Poland, under which landlords were both obliged to carry out costly maintenance work and prevented from charging rents which covered those costs. According to one calculation, rents covered only about 60% of the maintenance costs. Severe restrictions on the termination of leases were also in place.

The 1994 Act was replaced by a new act in 2001, designed to improve the situation, which maintained all restrictions on the termination of leases and obligations in respect of maintenance of property and also introduced a new procedure for controlling rent increases.

The Polish Constitutional Court found that the rent-control scheme under both the 1994 Act and the 2001 Act was unconstitutional and that it had placed a

disproportionate and excessive burden on landlords. The provisions in question were repealed.

From 10 October 2000 until 31 December 2004 the applicant was able to increase the rent she charged by about 10% to PLN 5.15 a square metre (approximately EUR 1.27).

On 1 January 2005, new provisions entered into force, which were later repealed as unconstitutional.

The applicant's property has now been vacated.

On 17 May 2006 the Constitutional Court declared unconstitutional a number of provisions of the 2001 Act. To implement that judgment, Parliament enacted amending legislation of 15 December 2006, which introduced, among other things, new provisions on rent increases.

On 11 September 2006 the Constitutional Court declared unconstitutional further provisions of the 2001 Act which limited municipalities' civil liability for failure to provide social accommodation to a tenant in respect of whom a landlord obtained an enforceable eviction order.

Laws on State funding for social accommodation and on the system for monitoring rent levels were introduced on 8 December 2006 and 24 August 2007.

On 29 February 2008 the Government submitted a Bill on Supporting Thermo-Modernisation and Renovations to Parliament.

3. Complaints

The applicant complained that she could not use her property or charge adequate rent for its lease, relying on Article 1 of Protocol No. 1 (protection of property).

4. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 December 1994 and declared admissible on 16 September 2003.

A Chamber hearing on the merits took place on 27 January 2004 and, on 22 February 2005, the Chamber held that there had been a violation of Article 1 of Protocol No. 1 and considered that the violation originated in a systemic problem linked to the malfunctioning of Polish legislation.

On 19 May 2005 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 6 July 2005 the panel of the Grand Chamber accepted that request.

The Court's principal Grand Chamber judgment in the case was delivered on 19 June 2006.

Today's judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (French), ***Judge***,
Luzius **Wildhaber** (Swiss),
Christos **Rozakis** (Greek),
Boštjan M. **Zupančič** (Slovenian),
Giovanni **Bonello** (Maltese),
Peer **Lorenzen** (Danish),
Kristaq **Traja** (Albanian)
Snejana **Botoucharova** (Bulgarian),
Mindia **Ugrekhelidze** (Georgian),
Vladimiro **Zagrebelsky** (Italian),
Khanlar **Hajiyev** (Azerbaijani),
Renate **Jaeger** (German),
Egbert **Myjer** (Dutch),
Sverre Erik **Jebens** (Norwegian),
David Thór **Björgvinsson** (Icelandic),
Ineta **Ziemele** (Latvian), ***judges***,
Anna **Wyrozumska** (Polish), **ad hoc *judge***,

and also Michael **O'Boyle**, ***Deputy Registrar***.

5. Summary of the judgment

The Court noted that it could strike an application out of its list only if satisfied that the solution arrived at between the parties was based on "respect for human rights as defined in the Convention and the Protocols thereto". The Court reiterated that the applicant's case had been examined under the pilot-judgment procedure, which meant that it also had to examine the case in terms of general measures that needed to be taken in the interest of other potentially affected property owners.

It accepted that the friendly settlement reached between the parties addressed the general as well as the individual aspects of the finding of a violation of Article 1 of Protocol No. 1 made in the principal judgment. For example, the enactment of the December 2006 Amendment, the submission of the Government's Bill to Parliament, and the Government's commitment to continue the improvement of the housing situation and to secure to landlords a "decent profit" from rent, were clearly aimed at removing the

restrictive aspects of the 2001 Act. The Government had also recognised their obligation to provide redress to others in the same situation as the applicant.

In respect of the Bill, the Court observed that the relevant legislative process was under way and that the special scheme offering compensatory refunds to those affected by the rent-control legislation would be proposed later by the Government.

In general, the Government had demonstrated an active commitment to take measures aimed at resolving the systemic problem identified in the principal judgment.

As to the reparation afforded to the individual applicant, the Court noted that the applicant was to be paid an amount covering pecuniary damage and outstanding costs and expenses, her remaining Article 41 claims having been addressed in the Court's principal judgment.

Finding that the settlement was based on respect for human rights as defined in the Convention or its Protocols, the Court decided that the case should be struck out of the list.

Judge Zagrebelski joined by Judge Jaeger expressed a separate opinion, and Judge Ziemele expressed a concurring opinion. The texts are annexed to the judgment.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int/).

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__The European Court of Human Rights__ was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

[1] Grand Chamber judgments are final (Article 44 of the Convention).

[2] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

[3] This summary by the Registry does not bind the Court.