



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

FOURTH SECTION

CASE OF CIECHOŃSKA v. POLAND

(Application no. 19776/04)

JUDGMENT

STRASBOURG

14 June 2011

FINAL

14/09/2011

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

In the case of Ciechońska v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 19776/04) 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 Teresa Ciechońska (“the applicant”), on 5 May 2004.

2. The applicant, who had been granted legal aid, was represented by Ms M. Antoszevska, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Woławsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the State failed in its positive obligation to protect her husband’s life and to carry out an effective and thorough investigation into his death.

4. On 12 June 2006 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1943 and lives in Warsaw.

6. On 10 July 1999 the applicant’s husband died after being hit by a tree in a health resort at Kudowa Zdrój, where he had been staying in a

sanatorium. The tree toppled over and fell on the applicant while he was walking on the pavement. Three other people were injured in the accident.

7. The police arrived at the scene, examined the tree and took some black-and-white photographs. The police report stated that the tree was partly rotten and the roots had torn. The police heard an eye witness and a post mortem examination of the applicant's husband was conducted. The Kłodzko District Prosecutor (*Prokurator Rejonowy*) opened an investigation into the incident.

8. On 15 July 1999 the Kłodzko District Prosecutor (*Prokurator Rejonowy*) discontinued the investigation into the applicant's husband's death, finding that it had been an unfortunate accident and that no offence had been committed. He established that the tree had fallen in strong winds. The cause of death was a fractured skull. The prosecutor also established that the Kudowa Municipal Office (*Urząd Miasta*) was responsible for the condition of trees in the city, and heard evidence from Ms A.P., the Inspector for Environmental Protection (*inspektor do spraw ochrony środowiska*), who testified that she had carried out a visual inspection of the tree in April and June 1999, together with a Mr Z.K. who worked for a company specialising in the protection and care of trees and shrubs. She said that the tree had looked healthy and there had been no indication that its removal was required. The prosecutor considered that that assessment was consistent with the examination of the tree after the accident as there were no visible signs that it had been unhealthy or rotten.

9. The applicant appealed against that decision.

10. On 7 September 1999 she obtained an opinion from the Institute of Meteorology and Water Management (*IMGW*) on weather conditions in Kudowa on 10 July 1999. According to the opinion, the wind had been weak or moderate that day and there had been no violent atmospheric conditions.

11. On 9 December 1999 the Kłodzko District Court (*Sąd Rejonowy*) allowed the applicant's appeal and returned the case to the prosecutor to continue the investigation. It considered that the prosecuting authorities had failed to establish what had caused the tree to fall or to examine whether the visual inspection allegedly carried out by A.P. prior to the accident could be considered appropriate. It also pointed to the discrepancy between the police report, which had stated that the tree was partly rotten, and the prosecutor's finding that it was healthy. The court instructed the prosecutor to question the police officers who had attended the scene and the persons who had been injured in the accident.

12. On 31 March 2000 the Kłodzko District Prosecutor discontinued the investigation finding that no offence had been committed. From his questioning of the police officers, he established that the tree had looked healthy but that after the accident it had become apparent that it had been partly rotten and had a weak root system. The prosecutor also considered

that although the Institute for Meteorology had not recorded any violent wind there could have been local gusts. He concluded that the fall of the tree and the death of the applicant's husband had not been caused by any negligence on the part of those responsible for maintaining the trees.

13. On 17 April 2000 the applicant appealed against that decision.

14. On 29 May 2000 the Świdnica Regional Prosecutor allowed the appeal and remitted the case to the District Prosecutor. The appellate prosecutor stressed the need to order expert opinions to establish the condition of the tree.

15. On 3 June 2000 an expert, E.M., submitted to the District Prosecutor his opinion on the condition of the fallen sycamore tree (*klon jawor*). On the basis of the testimonies of the police officers the expert established that the fallen tree was rotten inside and had been totally deprived of its roots. The photographs taken after the accident also showed that the tree's root system had already been badly damaged beforehand. On the picture the trunk could be seen to have been completely deprived of its roots, which would not have been the case if the only thing which had caused it to fall had been strong winds. Nevertheless, the expert concluded that it was possible that such damage to the tree had not been visible from the outside, and that persons responsible for tree maintenance could not normally conduct a comprehensive examination of the roots.

16. On 9 June 2000 the Kłodzko District Prosecutor discontinued the proceedings, mainly on the basis of the expert opinion.

17. The applicant appealed.

18. On 3 July 2000 the Świdnica Regional Prosecutor allowed the appeal and remitted the case to the District Prosecutor. The appellate prosecutor emphasised that given the gravity of the accident, in which a person had died, all the circumstances had to be comprehensively clarified.

19. On 16 August 2000 the District Prosecutor ordered another expert opinion to determine the exact location of the tree and the owner of the property.

20. On 22 September 2000 the Kłodzko District Prosecutor again decided to discontinue the investigation into the applicant's husband's death, finding that it had been an accident for which nobody could be held responsible.

21. The applicant appealed and on 4 December 2000 the Świdnica Regional Prosecutor remitted the case to the District Prosecutor and ordered him to continue the investigation. On 15 December 2000 the case was transferred to another prosecutor and the prosecutor who had been dealing with the case up to that point was reprimanded for not following the instructions of the appellate authorities and for delaying the proceedings.

22. On 22 January 2001 the Kłodzko District Prosecutor ordered a further expert opinion.

23. On 19 March 2001 the expert inspected the scene of the accident and on 24 March 2001 submitted his opinion to the prosecutor.

24. On 18 May 2001 the prosecutor closed the investigation into the death of the applicant's husband and on 25 May 2001 lodged a bill of indictment against Ms A.P., the Inspector for Environmental Protection, with the Kłodzko District Court, on charges of having failed to carry out her duty to prevent the sycamore tree from falling, and thereby causing the death of the applicant's husband and injuries to three other persons.

25. On 31 May 2002 the applicant lodged a civil claim with the trial court for compensation in the amount of PLN 400,000 under Article 62 of the Code of Criminal Procedure. She also requested the court to begin the trial and hold a hearing. The applicant indicated her wish to act as an auxiliary prosecutor (*oskarżyciel posiłkowy*).

26. On 13 November 2002 the trial court held the first hearing. However, the court failed to examine the admissibility of the applicant's civil claim.

27. On 2 December 2002 the applicant applied for legal aid as she could not afford to pay for a lawyer of her choice, was in poor health and – given the substantial distance of 550 kilometres between her home in Warsaw and the place of trial – it would be difficult for her to commute to hearings. It is not clear whether her application was ever examined.

28. Subsequently, until 28 May 2003 the court held hearings at regular intervals, heard evidence from witnesses and ordered an expert opinion. All hearings scheduled thereafter were cancelled owing to the illness of either the accused or the judge rapporteur.

29. At the next hearing, held on 7 October 2004, the composition of the court changed, so the trial had to start from the beginning. Subsequently witnesses were heard and on 4 January 2005 the trial court ordered an expert opinion. The expert failed to submit his opinion within the time-limit and on 27 June 2005 the trial court fined him. The expert finally submitted the opinion on 20 August 2005.

30. On 15 February 2006 the applicant, who had standing in the proceedings as an auxiliary prosecutor, lodged a complaint with the Świdnica Regional Court (*Sąd Okręgowy*) under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act").

31. On 31 March 2006 the Świdnica Regional Court allowed her complaint, found that there had been a breach of her right to a trial within a reasonable time and awarded her PLN 3,000 in compensation. It found that there had been several lengthy periods during which the trial court had been totally inactive, for example, no action had been taken for twelve months after the bill of indictment was lodged with the trial court.

32. On 4 April 2006 the trial court held a hearing.

33. On 26 April 2006 it gave a judgment in which it acquitted Ms A.P. after finding that no offence had been committed. It found that she had conducted a proper inspection of the tree prior to the accident and had established that it was healthy. The experts had concluded that the tree looked healthy from the outside and that there had been no signs that the roots were badly damaged. The court considered that the event of 10 July 1999 was an unfortunate accident which had no direct link with the actions of the accused.

34. On 9 August 2006 the applicant appealed against the judgment. She submitted that Ms A.P. did not possess the relevant expertise and had been negligent in the manner in which she had inspected the trees or marked them out for removal. In particular, there was no evidence that the inspections had been carried out on the dates given by the accused. Moreover, the tree had been growing on an escarpment and the roots had apparently been removed during the installation of a gas pipeline directly underneath it. The applicant contended that these elements had not been examined by the trial court.

35. On 3 November 2006 the Świdnica Regional Court allowed the appeal and remitted the case. It pointed to several inconsistencies in the district court's findings as to the relevant facts. In particular, it was not clear to what extent the tree had been leaning or whether the angle had been calculated with reference to the slope or the pavement.

36. The trial court held hearings on 11 April, 9 May and 7 September 2007.

37. On 7 September 2007 the Kłodzko District Court gave a judgment in which it acquitted Ms A.P. It established that she had not been under an obligation to inspect the trees or to prevent them from falling because that was not part of her duties.

38. The applicant and the prosecutor lodged appeals against the judgment.

39. On 11 December 2007 the Świdnica Regional Court quashed the judgment and remitted the case. It found that the trial court had failed to analyse the legal regulations in force at the material time. It pointed out that issues concerning trees in public places were the responsibility of the municipal authorities and that they could be held criminally liable for failure to carry out their duties properly. Thus, the Mayor of Kudowa Zdrój was obliged by law to order the removal of trees that were unsafe. Moreover, it appeared from the documents in the file that a gas pipeline had been laid under the tree, making it necessary to remove some of the roots, and that that issue had not been clarified. Lastly, the court noted that the trial court had failed to deal with the complaint, raised by the applicant in her appeal, that her claim for compensation had never been examined.

40. On an unspecified date in 2007 the applicant received from the office of the Mayor of Kudowa Zdrój a reply to her letter requesting

compensation for her husband's death. The Mayor refused to acknowledge the liability of the municipality and stated that the criminal court had not held the municipality responsible for her husband's death. The applicant was further informed that if she lodged a civil claim for compensation it would most probably be stayed until the termination of the criminal proceedings.

41. The trial court held hearings on 5 May, 16 June, 23 July and 1 October 2008.

42. On 6 April 2009 it gave a judgment in which it again acquitted Ms A.P. The court established that the root system of the tree in question had been seriously damaged. However the disease had not been visible on the external parts of the tree – in particular on its crown. Thus persons checking the state of the tree could not have established that the tree had become a danger to the public and ordered its removal. Furthermore, the court established that there had been no grounds to believe that since the tree had grown on a slope it had been necessary to take any preventive measures by, for example, installing special supports.

The court considered that there had been many shortcomings in the preparatory proceedings. Consequently, many issues relating to the exact location of the tree, its condition, and whether it had been leaning, had not been elucidated. For example, it was not possible to establish if the roots of the fallen tree could have been damaged during the installation of the gas pipeline because it had not been clear where exactly the tree had been growing. Moreover, the tree, or its part, had not been secured for further examination but had been destroyed immediately after the accident. The photographic evidence was of poor quality, black-and-white, and blurred so the reason for the fall of the tree, and where it actually grew, could not be unambiguously clarified. According to the court, the expert opinions prepared on the basis of such poor evidentiary material could not make it possible to conclude that there had been grounds for removal of the tree or use of supports.

As regards the liability of Ms A.P. the court agreed with the previous findings and concluded that the accused had not been obliged to carry out controls of trees and to order their removal. Although her duties included “issuing of decisions to remove shrubs and trees”, such decisions had in fact been given by the Mayor and she had only been preparing files for his examination. The court acknowledged that Ms A.P. admitted to having carried out some controls of the trees together with a specialist. However, it considered that she had been doing so either directly in accordance with instructions of the Mayor or following complaints made by the public.

The court considered that the absence of clear regulations regarding who was responsible for the care of green areas and for carrying out checks of trees amounted to clear organisational negligence on the part of the municipality, for which the accused should not be held liable.

Finally, the court found that the applicant's request for compensation had been pointless in the light of the acquittal of Ms A.P. because the obligation to compensate damage could arise only in the event of a conviction.

43. The applicant and the prosecutor each lodged appeals against the judgment.

44. On 16 July 2009 the Świdnica Regional Court upheld the judgment. It agreed with the first-instance court in that, according to her contract of employment, the accused had not been required to undertake any actions aimed at protecting trees from falling. According to the law, the legal responsibility for care of the greenery lay with the municipality which should have secured the means and organised a system to fulfil its obligations. A failure of the municipality to take necessary measures to eliminate a danger to the public could result in criminal liability. The court however underlined that it had not been proved that the carrying out of these duties had been vested in the accused. Thus, she could not be held criminally liable for having failed to do so.

The court also established that taking into account the state of the trees discovered during an inspection on 19 March 2001, and the lengthy process of development of pathologies in trees, the Kudowa Zdrój Municipality had not been correctly carrying out the above-mentioned duty of care in respect of its green areas. Nevertheless, the responsibility for that failure could not be attributed to the accused.

45. The Regional Court's judgment was final and binding (*prawomocny*). However, the parties could lodge a cassation appeal with the Supreme Court. On 15 October 2009 the Świdnica Regional Court dismissed the applicant's request for legal aid for the purposes of lodging a cassation appeal. The applicant submits that a lawyer of her choice refused to lodge a cassation appeal on her behalf because it had no prospects of success.

II. RELEVANT DOMESTIC LAW

46. Article 62 of the Code of Criminal Procedure provides as follows:

"The victim may, until the start of the judicial examination at the main trial, lodge a civil claim against the accused in order to determine, within the framework of the criminal proceedings, his pecuniary property claims directly resulting from the offence."

47. Article 63 of the Code allows a deceased victim's next-of-kin to institute a civil action under Article 62.

Article 65 reads as follows:

"1. Before commencing its examination, the court shall reject a civil claim if:

1) it is inadmissible by reason of some special provision;

- 2) it has no direct connection with the charges included in the indictment;
- 3) it has been filed by an unauthorised person;
- 4) it is the object of other proceedings or a valid and final decision; or
- 5) a public, local-government social institution or a person who is not an accused in the criminal proceedings needs to be joined as a defendant.

2. If the civil claim is in proper form, and the circumstances set forth in § 1 do not apply, the court shall issue a decision regarding the admissibility of the civil claim.

3. The court shall not hear the civil claim, even if previously declared admissible, if after it has commenced its judicial examination, any of the circumstances listed in § 1, comes to light.

4. No interlocutory appeal shall lie against the refusal of the court to declare a civil claim admissible, or the fact that it has not been heard pursuant to § 3.”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

48. The applicant complained that Article 2 of the Convention had been breached in that the State had failed in its positive obligation to protect the applicant’s husband’s life and failed to carry out an effective investigation into the circumstances of his death. Article 2 of the Convention reads as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

49. The Government contested that argument.

A. Admissibility

50. The Government submitted that the applicant had not exhausted the remedies available under Polish law in that she had lodged the application with the Court without waiting for the outcome of the criminal proceedings concerning her husband's death, and thus the application was premature. They failed to submit further comments on the issue after the domestic proceedings in the applicant's case had ended.

51. The applicant submitted that she had used all existing remedies in order to obtain the prosecution and punishment of those responsible for her husband's death. It was only because of her determination that the prosecutor had finally indicted the civil servant responsible for the maintenance of municipal trees and shrubs. She had also attempted to bring a civil action for compensation, but it had never been examined. Moreover, she had lodged a complaint about the unreasonable length of the criminal proceedings – but it had not led to the acceleration of the proceedings. In sum, the authorities had been trying to conceal the truth and had failed to conduct a thorough and effective investigation into her husband's death. Thus, the existing remedies had proved to be ineffective.

52. The Court notes that the applicant has been actively involved in the criminal proceedings brought against Ms A.P., employed by the Kudowa Zdrój Municipal office as the Inspector for Environmental Protection. Those proceedings finally ended on 16 July 2009 with the acquittal of the accused. The Government's objection that the Article 2 complaint was premature should therefore be dismissed.

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

B. Merits

1. The submissions made to the Court

(a) The applicant

54. The applicant submitted that the State had failed in its positive obligation to take appropriate action to protect life against a real and imminent threat of which the authorities had been or should have been aware. The tragic death of her husband had occurred because of the municipality's failure to secure the proper maintenance of its trees. The municipality was required to secure the funding and resources necessary to treat or remove unhealthy trees, as well as implement appropriate measures to protect people's lives and health in that respect. The applicant argued that her husband's death was not an unpredictable accident, caused for example

by a very strong wind, but a result of negligence for which the municipal authorities should be held liable. The tree in question had no roots as they had either decayed or been removed during the laying of a gas pipeline. The municipality had authorised the construction of the pipeline. Accordingly it had known, or should have known, where it ran and that the investment had involved the removal of the roots of trees where they interfered with the pipeline. In any event, the authorities had failed in their obligation to properly inspect the condition of the trees and remove those presenting a threat to people's lives or health.

55. Secondly, the applicant complained of the unreasonable length and the ineffectiveness of the domestic authorities' investigations into the tragic death of her husband. She submitted that for over ten years she had endured extreme stress and hardship as a result of the investigation and the trial. The prolonged stress had caused her serious health problems as she had almost totally lost her hearing. She alleged that the authorities had not been diligent. They had failed to examine the evidence, most of which had been adduced at her request, proving for instance that the tree that had killed her husband did not have any roots. Moreover, the tree had been removed and destroyed immediately after the accident, so preventing any expert evidence from being taken. The applicant also complained that the civil claim she had made before the start of the criminal trial had never been examined and that she was prevented from obtaining compensation because of the limitation period.

(b) The Government

56. The Government maintained that the State cannot be held responsible for the death of the applicant's husband. They submitted that Article 2 of the Convention was not applicable to the present case as his death had been a tragic accident. Moreover, at the time of making their submissions the issues surrounding the incident were still in dispute before the domestic courts. The Government maintained that the criminal court alone could be considered competent to establish the facts and to assess the alleged responsibility of the Inspector for Environmental Protection for the applicant's husband's death.

57. The Government refrained from commenting on whether the investigation into the death of the applicant's husband and the judicial phase of the proceedings had been conducted thoroughly and effectively, as required by Article 2 of the Convention.

58. Moreover, regard being had to the fact that the applicant's civil action lodged in the course of the criminal proceedings had not been examined by the courts until 2009, the Government did not take a position on whether this matter raised an issue under the Convention.

2. *The Court's assessment*

(a) **General principles**

59. Article 2 ranks as one of the most fundamental provisions in the Convention. It enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings require that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, § 109, ECHR 2002-IV).

60. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III; *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

61. Such positive obligation has been found to arise in a range of different contexts examined so far by the Court. Thus, for example, and as regards policing, the Court has noted that the authorities are under a duty to protect the life of an individual where it is known, or ought to have been known to them in view of the circumstances, that he or she was at real and immediate risk from the criminal acts of a third party (see *Osman*, cited above, § 115).

62. The State's positive obligation under Article 2 has also been found to be engaged in the health care sector, be it public or private, as regards the acts or omissions of health professionals (see *Dodov v. Bulgaria*, no. 59548/00, §§ 70, 79-83 and 87, ECHR 2008-...; *Byrzykowski v. Poland*, no. 11562/05, §§ 104 and 106, 27 June 2006; and *Vo v. France* [GC], no. 53924/00, §§ 89-90, ECHR 2004-VIII, with further references), as well as in respect of the management of dangerous activities (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII) and ensuring safety on board a ship (see *Leray and Others v. France* (dec.), no. 44617/98, 16 January 2008) or on building sites (see *Pereira Henriques and Others v. Luxembourg* (dec.), no. 60255/00, 26 August 2003). In certain circumstances positive obligations may attach to a State to protect individuals from risk to their lives resulting from their own action or behaviour (see *Bone v. France* (dec.), no. 69869/01, 1 March 2005, with further references). In addition, the extent of the State's positive obligation under Article 2 has been addressed by the Court in the context of road safety (see, for example, *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007). The State's duty to safeguard the right to life was also considered to extend to the provision of emergency services where it has

been brought to the notice of the authorities that the life or health of an individual is at risk on account of injuries sustained as a result of an accident (see *Furdik v. Slovakia* (dec.), no 42994/05, 2 December 2008).

63. The above list of sectors is not exhaustive. Indeed, in its *Oneryildiz v. Turkey* judgment cited above (§ 71) the Grand Chamber observed that the Article 2 positive obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake.

64. However, the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and operational choices which must be made in terms of priorities and resources (see, amongst other authorities, *Keenan v. the United Kingdom*, no. 27229/95, § 90, ECHR 2001-III, and *A. and Others v. Turkey*, no. 30015/96, §§ 44-45, 27 July 2004).

65. The Court recalls in this connection that the choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means (see, among other cases, *Fadeyeva v. Russia*, no. 55723/00, § 96, ECHR 2005-IV).

66. The State's positive obligation also requires an effective independent judicial system to be set up so as to secure legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Dodov*, cited above, § 83, and *Byrzykowski*, cited above, §§ 104-118). This obligation does not necessarily require the provision of a criminal-law remedy in every case. Where negligence has been shown, for example, the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts. However, Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice (see *Calvelli and Ciglio*, cited above, § 53).

67. For the Court, and having regard to its case-law, the State's duty to safeguard the right to life must also be considered to involve the taking of reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see paragraph 66 above). The events related to the applicant's husband's death therefore fall within the scope of Article 2 of the Convention.

(b) Application of the general principles in the present case

68. In the present case the applicant's husband died in 1999 after he had been hit by a tree that had fallen on a pavement. Following his death an investigation was opened and the prosecutor, after having on four occasions discontinued the investigation, on 25 May 2001 indicted a municipal official for having failed to identify the tree which caused the tragic accident as being dangerous. It took another eight years for the courts to examine the case; on 16 July 2009 the Świdnica Regional Court finally acquitted the official.

69. Having regard to the approach adopted in previous cases involving non-intentional infringements of the right to life, the Court reiterates that the aforementioned positive obligations require States to adopt in this context regulations for the protection of people's safety in public spaces, and to ensure the effective functioning of that regulatory framework (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I, and *Furdik*, cited above).

70. The Court firstly notes that there existed legal regulations regarding care and maintenance of greenery in towns, including trees growing on municipal land. The responsibility of the municipality for the maintenance of trees was confirmed by the domestic courts which finally, in 2009, established that the Kudowa Zdrój Municipality had not been carrying out its duty to care for its green areas correctly, although legally obliged to do so (see paragraphs 42 and 44 above). However, it was more difficult for the courts to establish the issue of the individual responsibility of the Inspector for Environmental Protection as the scope of her duties with regard to the inspection of trees and their treatment appeared to be opaque and open to ambiguity.

The Court is not required, however, to arrive at general conclusions about the relevant regulatory regime *in abstracto*. It must examine whether the legal system as a whole dealt adequately with the case at hand (see *Dodov v. Bulgaria*, cited above, §§ 83 and 86).

71. Secondly, the Court reiterates that an issue of State responsibility under Article 2 of the Convention may arise in the event of the inability of the domestic legal system to secure accountability for any negligent acts endangering or resulting in the loss of human life (see *Furdik*, cited above).

In such a case the Court must examine whether the available legal remedies, taken together, as provided in law and applied in practice, could be said to have amounted to legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim.

72. Following the death of the applicant's husband on 10 July 1999, the prosecutor opened an investigation and five days later discontinued it. The applicant submitted that the discontinuation had been premature and that the prosecutor had failed to prepare an expert opinion. These doubts were

confirmed by the District Court which, on 9 December 1999, remitted the investigation to the prosecutor and ordered him to supplement the case (see paragraph 11 above). Subsequently, on three occasions the regional prosecutor remitted the case to the district prosecutor for re-examination. The appellate prosecutor observed that all the circumstances of the accident had not been clarified and that no expert opinion had been prepared. On the last occasion, he reprimanded the district prosecutor for not following the instructions of the appellate authorities and for delaying the proceedings (see paragraphs 14, 18 and 21 above).

73. Finally, after the case was transferred to another district prosecutor, on 25 May 2001 a bill of indictment was lodged with the Kłodzko District Court against the Inspector for Environmental Protection.

However, the trial court remained totally inactive for the next eighteen months as the first hearing was held only on 13 November 2002. Moreover, between 23 May 2003 and 7 October 2004 no hearings were held. On the latter date the composition of the court changed and the trial had to start anew. An expert opinion ordered on 4 January 2005 was not submitted to the court until 20 August 2005. All these delays, particularly the delay at the beginning of the trial, were confirmed by the Regional Court which, on 31 March 2006, allowed the applicant's complaint under the 2004 Act.

Most recently, on 11 December 2007, after the second quashing of the trial court's judgment acquitting the accused, the case was for the third time remitted to the Kłodzko District Court. The trial court delivered a judgment, which was upheld on appeal, on 6 April 2009.

74. The Court observes that the investigation into the death of the applicant's husband was discontinued on four occasions and that, each time, the decision to discontinue the investigation was quashed by the appellate authorities.

The same pattern of repeated deficient decisions which had to be later quashed because of a failure to elucidate important factual or legal circumstances repeated itself in the judicial stage of the proceedings. The Regional Court twice remitted the case to the District Court and quashed the decisions to acquit Ms A.P. (see paragraphs 35 and 39 above). The Regional Court pointed to inconsistencies and deficiencies in the trial court's findings, as well as the failure to analyse the legal regulations governing liability with regard to the maintenance of trees on municipal land.

The Court finds 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 decisions within one set of proceedings disclosed in the applicant's case a serious deficiency in the operation of the judicial system (see *Byrzykowski*, cited above, § 111).

75. Furthermore, there were many shortcomings, particularly at the early stage of the proceedings, which negatively affected any prospect of establishing the facts of the case and the responsibility of the accused. In

particular, it appears that the remainder of the tree was immediately removed and destroyed, photographic evidence taken was of poor quality and other issues, for instance, the exact location of the gas pipe and its impact on the health of the tree, had never been elucidated (see paragraph 42 above).

76. Regard being had to the overall length of the period which has elapsed since the death of the applicant's husband on 10 July 1999 and the termination of the proceedings ten years later, to the serious deficiencies in the operation of the judicial system and other shortcomings discerned above, the Court is of the view that it cannot be said that the procedures applied in order to elucidate the applicant's allegations of negligence on the part of the municipal official resulted in an effective investigation into the cause of death in the present case.

77. Finally, the Court reiterates that the State's positive obligation to set up an effective judicial system may be satisfied if the legal system affords victims a remedy in the civil courts enabling liability to be established and any appropriate civil redress, such as damages, to be obtained. In the present case the Court notes that although the applicant requested to join the criminal proceedings as a civil party on 31 May 2002, the domestic court failed to give any decision in this regard either allowing or rejecting this claim (see paragraphs 25, 26 and 39 above). The Government acknowledged that the civil claim had not been examined by the trial court but failed to explain why. In the end, the applicant's civil claim was dismissed on 6 April 2009 by the Kłodzko District Court which found it manifestly ill-founded in the light of the municipal official's acquittal.

The Court reiterates that the obligations of the State under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice within a time-span such that the courts can complete their examination of the merits of each individual case (see *Calvelli and Ciglio* [GC], cited above, §§ 51-53, and *Vo v. France* [GC], no. 53924/00, §§ 89-90, ECHR 2004-VIII).

78. In the light of the above, the Court considers that in the particular circumstances of the case neither the criminal proceedings nor the possibility to bring a civil action enabled the applicant to effectively establish any liability for the death of her husband and to obtain appropriate civil redress. The legal system as a whole, faced with an arguable case of a negligent act causing death, failed to provide an adequate and timely response consonant with Poland's obligations under Article 2 of the Convention.

79. Accordingly, the Court concludes that there has been a violation of Article 2 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

80. The applicant complained of a violation of Articles 6 § 1 and 13 of the Convention in that her civil claim had never been examined.

81. The Government decided not to comment on these complaints.

82. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

83. The Court observes that this complaint has the same factual background as the issues examined under Article 2 of the Convention. Moreover, in finding a violation of the latter provision the Court also had regard to the domestic court's failure to examine the applicant's civil claim brought in 2002 (see paragraphs 77 and 78 above). In the light of that finding the Court considers that it is not necessary to examine the facts of the case separately under Articles 6 § 1 and 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 400,000 Polish zlotys (PLN, approximately 100,000 euros (EUR) at the time the claim was submitted) in respect of non-pecuniary damage.

86. The Government considered the claim excessive.

87. The Court awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

88. The applicant also claimed PLN 22,000 (approximately EUR 5,500) for the costs and expenses incurred before the domestic courts and the Court. The claim comprised PLN 12,000 (approximately EUR 3,000) in legal costs for her representation before the Court, which included 60 hours' work at an hourly rate of PLN 200, and PLN 10,000 (approximately EUR 2,500) for costs incurred before the domestic authorities since 1999, in particular, trips between the applicant's home in Warsaw and the trial court,

as well as legal fees and postal expenses, the latter having been incurred in both the domestic and the Strasbourg proceedings.

89. The Government submitted that only those costs actually and necessarily incurred should be reimbursed.

90. 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, the Court notes that the claims submitted by the applicant were not excessive as she had obviously sustained costs in connection with the 10-year-long domestic proceedings as well as before the Court in Strasbourg. As regards the latter, the Court considers that the claim submitted by her lawyer was sufficiently substantiated. Regard being had to the information in its possession and the above criteria, the Court allows the applicant's claim in full, less EUR 850 already received by the applicant by way of legal aid from the Council of Europe. It thus awards her the sum of EUR 4,650 covering costs under all heads.

C. Default interest

91. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention;
3. *Holds* that there is no need to examine the complaints under Articles 6 § 1 and 13 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, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,650 (four thousand six hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President