CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

HAŁKA AND OTHERS v. POLAND

(Application no. 71891/01)

JUDGMENT

STRASBOURG

2 July 2002

FINAL

02/10/2002

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 Hałka And Others v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mr J. MAKARCZYK,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 June 2002,

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

PROCEDURE

1. The case originated in an application (no. 71891/01) 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 four Polish nationals, Stefania Hałka ("the first applicant") and her three daughters Małgorzata Rudecka ("the second applicant"), Anna Rusak ("the third applicant"), Wiesława Hałka-Bogdańska ("the fourth applicant") ("the applicants"), on 15 March 2000.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs. The applicants were, exceptionally, granted leave to be represented by the fourth applicant (Rule 36 § 4 of the Rules of Court). The latter was also granted leave to use the Polish language in the proceedings before the Court (Rule 34 § 3 of the Rules of Court).

3. The applicants alleged, in particular, that their right to a "hearing within a reasonable time" had not been respected.

4. The application was allocated to the Fourth Section of the Court. Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. On 23 October 2001 the Fourth Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility. It also gave priority to the application, pursuant to Rule 41 of the Rules of Court.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first and the second applicant were born in 1927 and 1950 respectively. The third and the fourth applicant were born in 1954. The first applicant lives in Józefów and her three daughters in Warsaw, Poland.

7. From 1939 to 1944, Jan Hałka, the first applicant's husband, was a member of the Polish resistance troops of the underground Home Army (*Armia Krajowa*). In 1944 he was arrested by the NKVD and the Polish political police and imprisoned in a labour camp in Siberia. He was kept in Borowice (former USSR) from November 1944 to February 1946. He died on 17 November 1986.

8. On 8 December 1994 the applicants filed an application with the Warsaw Regional Court for compensation under section 8 § 2(a) of the Law of 23 February 1991 on annulment of convictions whereby persons were persecuted for their activities aimed at achieving independence for Poland *(Ustawa o uznaniu za nieważne orzeczeń wydanych wobec osób represjonowanych za działalność na rzecz niepodległego buty Państwa Polskiego)* ("the 1991 Act").

9. In 1996 the first applicant personally went to the court and asked a judge to fix a date for a hearing as soon as possible. She submitted that she was an elderly person and that the court should therefore give priority to her case.

10. In 1998 she again went in person to the Warsaw Regional Court and asked the judge to set a date for a hearing as soon as possible.

11. On 11 May 2000 she sent a letter to the court, asking for a hearing date to be set and for information on the proceedings. She maintained that her previous applications for the proceedings to be accelerated had been to no avail and that the period of total inactivity on the part of that court had exceeded five years.

12. On 1 October 2000 she complained to the Minister of Justice about the lack of progress in the proceedings.

13. On 4 December 2000 the Warsaw Regional Court held a hearing in the applicants' case. On the same date the court gave judgment and awarded the first applicant and her three daughters compensation in the amount of 8,075 Polish zlotys (PLN) each. Since no party appealed within the statutory time-limit of seven days, the first-instance decision became final on 12 December 2000.

14. On 19 March 2002 the Warsaw Regional Court informed the first and the third applicant that they could collect the sums awarded from the Financial Department of the Warsaw Regional Court on 25 March 2002. They did so. It appears from the material produced by the applicants that the

second and the fourth applicant have not yet received their share of the compensation awarded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The Law of 23 February 1991 on annulment of convictions whereby persons were persecuted for their activities aimed at achieving independence for Poland sets out rules concerning the conditions under which certain politically-motivated convictions rendered between 1 January 1944 and 31 December 1956 can be declared null and void, and provides for the State's civil liability for such convictions.

According to section 8 § 1 of the Law, a victim of repression is entitled to compensation from the State Treasury for his or her wrongful conviction. This provision states:

> "A person whose conviction has been declared null and void shall be entitled to compensation from the State Treasury for pecuniary and non-pecuniary damage which he has suffered as a consequence of his conviction. Where the person concerned has since died, this entitlement shall be vested in his spouse, children and parents."

On 21 May 1993 the Law was amended to the effect that its provisions became applicable to persons who had been persecuted or convicted for political reasons by the Stalinist Soviet authorities. At the material time, the relevant part of Section 8 § 2(a) provided, in so far as relevant:

> "Entitlement to compensation referred in paragraph 1 shall also be conferred on persons ... who have been persecuted by Soviet judicial, prosecuting or extra-judicial authorities; acting by virtue of an agreement concluded on 26 July 1944 between the Polish Committee of National Liberation (*"PKWN" Polski Komitet Wyzwolenia Narodowego*) and the government of the USSR; in relation to activities undertaken by them with the aim of achieving independence for Poland, or if the persecution in question happened on the ground that they had undertaken such activity. Applications for compensation for pecuniary or non-pecuniary damage should be lodged with the Warsaw Regional Court ...."

16. Later, on 3 February 1995, the 1991 Act was again amended, this time to the effect that all regional courts could deal with applications lodged by such persons. The second amendment took effect on 1 April 1995.

Lastly, the 1991 Act was amended on 16 July 1998. The third amendment took effect on 14 August 1998.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicants complained that the length of the proceedings was incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. That Article, in its relevant part, 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..."

A. Applicability of Article 6 § 1

18. The applicability of Article 6 to the relevant proceedings has not been contested before the Court. The Court sees no reason to hold otherwise. The proceedings in question concerned a dispute over the applicants' right to compensation for their late husband's and father's unjustified detention, which is a "civil right" within the meaning of Article 6 § 1 of the Convention (see, *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 57, unreported).

B. Period to be taken into consideration

19. The parties agreed that the period to be taken into consideration began on 8 December 1994 when the applicants lodged their claim with the Warsaw Regional Court. The Court notes that the proceedings on the merits ended on 4 December 2000, when the Warsaw Regional Court gave judgment. However, the applicants' claim was – although not in its entirety – only satisfied on 25 March 2002, when the first and the third applicant received their shares of the compensation awarded (see paragraphs 13-14 above).

20. The Court reiterates that, for the purposes of Article 6 § 1 of the Convention, the termination of the proceedings on the merits of the claim does not always constitute the end of a "determination of a civil right" within the meaning of that provision. What is decisive is the point at which the right asserted by a claimant actually becomes "effective", that is to say, when his or her judicially-determined claim is finally satisfied (see, among other examples, *Dewicka v. Poland*, no. 38670/97, 4 April 2000, § 42).

21. Since the claim of the first and the third applicant was satisfied on 25 March 2002, the period to be examined under Article 6 § 1 amounts to 7 years, 3 months and 17 days. As regards the second and the fourth applicant, it appears from the material in the Court's possession that they have not yet received the compensation from the State and that the

"determination of [their] civil claim" is still not completed. It thus follows that, in respect of these two applicants, the relevant period currently exceeds 7 years and 3 months.

C. Admissibility

22. The Court finds that the application 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. The application must therefore be declared admissible.

D. Merits

1. The applicants' submissions

23. The applicants submitted that their case had not been complex. The trial court did not need to obtain fresh evidence. Moreover, in order to give the final ruling, it held only one hearing.

24. They further maintained that the excessive length of the proceedings had put a severe strain on them, in particular in view of the first applicant's great age.

Referring to what was at stake for them in the proceedings, they stressed that, on account of the political situation in Poland, they were for a long time unable to vindicate their claim. Furthermore, the nature of their claim and the result of the proceedings had been of crucial importance to all of them because they had also been seeking redress for the tarnished honour and reputation of their family. In their view, the nature of the claim had required the domestic courts to display "special diligence" in handling the case.

The applicants also added that, despite the fact that they had been awarded the compensation on 4 December 2000, they did not receive it until 25 March 2002. Moreover, on that date it was only paid to two applicants (see paragraph 14 above).

25. Lastly, the applicants stressed that the authorities should have foreseen that the courts would have to deal with many similar applications lodged by victims of repression. In their opinion, the fact that the Warsaw Regional Court had been inundated with thousands of compensation cases was the direct result of the legislative mistake made by the authorities. Moreover, the remedial measures taken by the authorities had come too late and had not resulted in an increase in the court's efficiency. The authorities had accordingly been fully responsible for the slow conduct of the proceedings in their case.

2. The Government's submissions.

26. The Government accepted that the case had not been particularly complex.

27. They also acknowledged that the applicants had not contributed to the length of the proceedings.

28. On the other hand, the Government argued that the applicants' claim had already been satisfied by the domestic courts because the Warsaw Regional Court had awarded each of them compensation in the amount of 8,075 Polish zlotys.

As to the conduct of the relevant authorities, the Government considered that, unlike in cases concerning employment, pensions and invalidity pensions, the court had not been required to handle the applicants' case with "special diligence".

29. The Government further stressed that since 1991 a total of 15,000 similar applications for rehabilitation or for compensation had been lodged with the Warsaw Regional Court. That had resulted in an excessive workload for that court. However, as all the claimants were elderly persons, the court had decided to give priority to applications submitted by victims of repression who were still alive. The examination of applications filed by heirs of such persons had been postponed to a later date. Moreover, the Government asserted that the authorities had increased the number of judicial and administrative posts in the Warsaw Regional Court in order to clear the backlog of compensation cases.

30. Lastly, the Government underlined that the measures taken by the Polish authorities had resulted in a substantial reduction of the backlog. They cited the relevant statistics, according to which in 1998 there had been 580 applications for compensation filed with the Criminal Division of the Warsaw Regional Court; in 1999 there had been 476; in 2000 there had been 273; and 256 in 2001. They stressed that there had been an increase in applications examined and terminated, that is to say 525 in 1998, 599 in 1999, 638 in 2000 and 912 in 2000.

31. Basing their argument on the Trickovic v. Slovenia judgment (judgment of 12 June 2001, no 39914/98), the Government maintained that a temporary backlog in court business did not entail the liability of the Polish authorities because they had taken the appropriate remedial action with the requisite promptness.

32. In conclusion, the Government invited the Court to find that there had been no violation of Article 6 § 1 of the Convention.

3. The Court's assessment.

33. 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 criteria established by its case-law, particularly the

complexity of the case, the conduct of the applicants and of 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; and *Humen v. Poland* cited above, § 60).

34. The Court notes that the parties agreed that the case was not particularly complex (see paragraphs 23 and 26 above). It does not see any reason to hold otherwise.

35. As regards the conduct of the applicants, the Court observes that the Government acknowledged that the applicants had not in any way contributed to the length of the proceedings (see paragraph 27 above).

36. As to the conduct of the authorities, the Court notes that the applicants' case lay dormant for the very substantial period of six years from 8 December 1994 (when they initiated the proceedings) to 4 December 2000 (when the final ruling was given). Furthermore, the claim was – only in part – satisfied as late as 25 March 2002, that is to say some 16 months after it had become enforceable. It appears also that the claims of the second and the fourth applicants have still not been satisfied (see paragraphs 13-14 above).

37. The Court accepts that, in view of the large number of similar applications lodged under the 1991 Act, the Warsaw Regional Court had to deal with an increased case-load.

However, exceptional situations and particularly important issues were at stake in the relevant proceedings. The applicants' case did not concern an ordinary compensation claim but a claim which could not have been vindicated under the former totalitarian system. Due to the political situation in Poland, the applicants were able to submit an application for compensation as late as fifty years after the relevant events (see paragraph 15 above). Taking into consideration the first applicant's age and the long time she had been waiting for redress, over seven years of litigation must be considered a very considerable period (see, *mutatis mutandis*, *Dewicka v Poland* cited above, § 55).

The Government argued that the authorities had taken prompt remedial action in order to deal with the backlog in the Warsaw Regional Court (see paragraphs 29-30 above).

The Court considers, however, that the measures applied by the authorities to remedy the situation did not result in any significant acceleration of the proceedings in the applicants' case.

The Court therefore finds that, given what was at stake in the proceedings, the remedial action relied on by the Government cannot exonerate the authorities from their responsibility for the total delay in the proceedings (see, *Kurzac v. Poland* no 31382/96, 22 February 2001, §§ 34-35, unreported).

38. Consequently, the Court concludes that an overall period of more than seven years cannot be deemed to satisfy the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

39. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants did not claim any particular sum in respect of pecuniary and non-pecuniary damage. However, they requested the Court to grant them just satisfaction in an amount it considered equitable, given the detriment suffered by them on account of the length of the proceedings in their case. In particular, they stressed that very personal issues had been at stake for them in the litigation and that the excessive duration of the proceedings had seriously affected the first applicant's health.

42. The Government did not address this matter.

43. The Court considers that the applicants have certainly suffered non-pecuniary damage, such as distress and frustration resulting from the protracted length of the proceedings, which cannot sufficiently be compensated by the finding of a violation. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicants a total sum of 10,000 euros ("EUR") under that head.

B. Costs and expenses

44. The applicants did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

45. Having regard to the fact that the Court makes its award in euros, it considers it appropriate to apply a default interest rate of 7.25 %.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that simple interest at an annual rate of 7.25 % shall be payable from the expiry of the above-mentioned three months until settlement;

Done in English, and notified in writing on 2 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President