CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF LISIAK v. POLAND

(Application no. 37443/97)

JUDGMENT

STRASBOURG

5 November 2002

FINAL

05/02/2003

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 Lisiak 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,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 8 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 37443/97) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Maciej Lisiak ("the applicant"), on 24 February 1997.

2. The applicant was represented by Mr S. Sikora, a lawyer practising in Bielsko-Biała. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant alleged that his right to have a hearing within a "reasonable time" had not been respected. He alleged a breach of Article 6 § 1 of the Convention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. It was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of 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.

6. By a decision of 23 October 2001 the Court declared the application admissible.

7. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

8. 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.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1968 and lives in Bielsko-Biała.

A. Facts before 1 May 1993

10. On 10 August 1991 the applicant was arrested by the police on suspicion of having committed homicide. On 12 August 1991 the Bielsko-Biała District Prosecutor (*Prokurator Rejonowy*) charged the applicant with homicide and uttering threats, and detained him on remand.

11. On 30 April 1992 the Bielsko-Biała Regional Prosecutor lodged a bill of indictment with the Bielsko-Biała Regional Court (*Sąd Rejonowy*). The applicant was indicted on the charges of homicide and uttering threats.

12. The trial began on 16 June 1992.

13. On 14 October 1992 Court quashed the order for the applicant's detention and released him. The Regional Prosecutor appealed.

The Katowice Court of Appeal dismissed the appeal on 4 November 1992. It held that a "reasonable suspicion" that the applicant had committed the offences with which he had been charged was no longer justified because S.U., the witness who had incriminated him in the investigation, had fundamentally changed his original testimony.

14. Between 16 June 1992 and 1 May 1993 the trial court held fourteen hearings. It heard evidence from twenty lay witnesses and one expert witness.

B. Facts after 1 May 1993

15. Between 4 May 1993 and 25 May 1994 the Bielsko-Biała Regional Court held ten hearings and heard evidence from forty-one witnesses and two experts. It needed to rehear evidence from some witnesses several times.

16. On 25 May 1994 the court acquitted the applicant on all charges. On 12 October 1994 the Bielsko-Biała Regional Prosecutor appealed against the acquittal.

17. The appeal was heard before the Katowice Court of Appeal on 9 March 1995. The court quashed the contested judgment and remitted the case to the Bielsko-Biała Regional Prosecutor, holding that a further investigation should be carried out. In particular, the Court of Appeal ordered the prosecutor to reconstruct the scene of the crime and to obtain evidence from experts in psychology. It considered that in order to assess the credibility of evidence given by S.U., the main prosecution witness, it was necessary to diagnose his personality and establish his perception skills.

18. On 12 May 1995 the Bielsko-Biała Regional Prosecutor asked the Institute of Forensic Experts (*Instytut Ekspertyz Sądowych*) in Cracow to prepare a comprehensive report on S.U.'s psychological profile. Furthermore, since in the course of the original investigation the prosecution had already obtained two, albeit inconsistent, reports from psychologists, the prosecutor also adduced copies of those reports and asked experts from the Institute to resolve contradictions.

19. The experts set the dates of the examination for 19 December 1995 and for 12 February 1996 respectively. However, S.U. did not keep his appointment for the examination on either of these dates. Eventually, he appeared before the experts on 9 May 1996 and was examined by them on that day. Their report was ready on 6 September 1996.

20. On 30 December 1996 the Bielsko-Biała Regional Prosecutor lodged a new bill of indictment with the Bielsko-Biała Regional Court. The applicant was again indicted on the charges of homicide and uttering threats.

21. On 27 March 1997 the trial court remitted the case to the Bielsko-Biała Regional Prosecutor, holding that the prosecution had not complied with the orders given by the Katowice Court of Appeal on 9 March 1995. They had not, among other things, reconstructed the scene of the crime.

22. On 30 April 1997 the Bielsko-Biała Regional Prosecutor indicted the applicant on the same charges for the third time.

23. The retrial started on 4 September 1997. The subsequent hearings were held on 4 November 1997, 6 January and 8 April 1998. On 12 February 1998 the court cancelled a hearing because the applicant was ill.

24. On 9 June 1998 the trial was adjourned since a new judge rapporteur had in the meantime been appointed and needed to study the case-file.

25. The trial was to be resumed on 26 March 1999 but it was again postponed. The applicant was absent at that hearing. He was also absent at the hearing listed for 7 May 1999. The applicant's lawyer informed the court that he had left for Greece in search of odd jobs and that he would be absent for some four months. In fact, the applicant returned after three weeks.

Also, at that time, the court found that the witness S.U. had left his place of residence without indicating his new address and that his whereabouts were unknown. In the circumstances, the court stayed the proceedings.

26. On 7 November 2000, at the applicant's request, the proceedings were resumed. In 2001 the Regional Court held three hearings. They took place on 20 April, 15 June and 31 October respectively.

27. Further hearings were scheduled for 4 January, 6 February, 6 March, 9 April and 14 May 2002. The court heard evidence from twenty witnesses.

At the hearing held on 9 April 2002 the court, at the Regional Prosecutor's request, ordered that evidence from a DNA identification test of several hairs found on the victim be obtained to determine whether they belonged to the applicant. However, on 13 May 2002, experts from the Forensic Laboratory of the Silesian Regional Police Headquarters informed the court that it was not possible for them to make any DNA identification of the specimens as they had to be analysed through a chondrosome test, which only the Cracow Institute of Forensic Experts or the Bydgoszcz Forensic Institute could carry out. On 20 May 2002 the court asked the Cracow Institute to make the relevant test and adjourned the trial *sine die*.

In the meantime, the Regional Court had tried to establish the whereabouts of S.U., who was a homeless person. It appears that those efforts have so far been unsuccessful.

The proceedings are pending.

THE LAW

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

28. The applicant complained that his right to a "hearing within a reasonable time" had not been respected. He alleged a breach of Article 6 § 1 of the Convention, which in its relevant part provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. The parties' arguments

1. The applicant

29. The applicant maintained that his trial, which had so far lasted more than eleven years, was excessively lengthy. There had, he asserted, been no explanation for the authorities' continuous failure to determine the charges against him within a "reasonable time".

In particular, the applicant stressed that his case was not as complicated as it could *prima facie* appear. It was true that the prosecution had called numerous witnesses but only one of them, S.U. had been at the scene of the incident and could give a firsthand, although fragmentary, account of what had happened. The fact that S.U. had so many times changed his testimony that it was no longer believable and that the trial court had had to establish the facts of the case on the basis of inferences could not justify the delay in the proceedings. Indeed, the evaluation of conflicting evidence could not be considered an extraordinarily complicated task for the court but a normal exercise of its general power to accept or to reject evidence before it.

30. Moreover, the applicant went on to argue, the authorities had not made any significant efforts to accelerate the process of obtaining evidence. The proceedings had been adjourned frequently and there had been several too lengthy intervals between the hearings.

In the applicant's submission, the authorities had failed to act with due diligence in the conduct of the trial. Nor had they given much consideration to what was at stake for him in the proceedings. The principal charge against him was homicide, a charge that involved not only the risk of a particularly heavy penalty but also the inevitable stigma of murderer in the eyes of the others. He had been 23 years old when the proceedings had started and since then, for the subsequent eleven years, he had lived in constant anguish because his whole life had been marred by awaiting – so far in vain – the end of his trial.

31. The applicant further maintained that, except for his three duly justified absences from hearings, he had on no further occasion failed to appear before the court or had otherwise caused a postponement of the proceedings. Accordingly, his conduct could not delay significantly the determination of the charges against him.

In view of the foregoing, the applicant asked the Court to find that the authorities had not respected his right to have his case heard within a "reasonable time", as required under Article 6 § 1 of the Convention.

2. *The Government*

32. The Government, for their part, considered that in the applicant's case there had been no breach of the "reasonable time" requirement laid down in Article 6 § 1.

33. To begin with, the Government maintained that the case concerned very serious charges and that it was of an exceptional complexity.

In that context, they stressed that the trial court had had to resolve a number of difficult questions relating to the assessment of evidence because the charges against the applicant had been based on circumstantial evidence and S.U., the only eye-witness, had given incoherent and discrepant testimony. Given these factors and the fact that important issues were at stake for the applicant in the proceedings, the court had to act with particular diligence so as to assess all the relevant material in conformity with the principle of *in dubio pro reo*.

34. Furthermore, the Government added, the magnitude of evidence, including expert evidence, obtained during the proceedings showed how difficult were tasks with which the authorities had been charged. According to the Government, the Regional Court had so far heard evidence from seventy lay witnesses. It had needed to rehear some witnesses several times as most of them, as well as the applicant and the victim himself, had been intoxicated on the material day. Also, with the passage of time, the process of obtaining evidence had become more and more cumbersome. In particular, owing to the length of time that had elapsed since the events, it had become more difficult for the court to establish the relevant facts on the basis of evidence from witnesses. The Regional Court had also encountered a number of difficulties in ensuring the appearance of certain witnesses.

35. The Government next asserted that the length of the proceedings had partly been attributable to the applicant's conduct. They considered that his absence from hearings had caused a delay of some three months. First, on 12 February 1998, the hearing had been cancelled because he had been ill. Secondly, the trial had been postponed since he had not appeared at the hearings set for 26 March and 7 May 1999.

36. On the other hand, the Government admitted that the conduct of the authorities had also caused the prolongation of the trial. There had, for instance, been several adjournments caused by the absence or illness of the judges or the fact that the new judge rapporteur had been appointed. Overall, the Government estimated that the authorities had been responsible for a delay of about ten months.

37. Yet, in the Government's view, that interval did not in itself amount to a breach of the reasonable time requirement because the authorities had not on the whole failed to act with due diligence. The case had so far been heard by the courts at three instances and had twice been remitted to the prosecution authorities for a further investigation. The Regional Court had had recourse to all available means in order to ensure witnesses' presence before it. For instance, it had on a number of occasions fined witnesses who had not appeared at hearings or ordered that the police bring some of them to the court.

38. In sum, the Government concluded that even though the total duration of the proceedings might at first sight appear to have been excessive, taking everything into consideration the applicant's right to a hearing within a "reasonable time" had been respected.

B. The Court's assessment

1. Period to be taken into consideration

39. The Court notes that the proceedings began on 10 August 1991, when the applicant was charged with homicide and uttering threats and that, as it emerges from the material in its possession, they are still pending before the Bielsko-Biała Regional Court (see paragraphs 10 and 27 above). The total length of the applicant's trial at the date of the adoption of this judgment accordingly amounts to 11 years, 1 month and 28 days.

However, as Poland's declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention took effect on 1 May 1993, the period before that date lies outside the Court's jurisdiction *ratione temporis*. Consequently, the Court can only consider the period of 9 years and 5 months and 7 days which have elapsed since 1 May 1993, although it will have regard to the stage reached in the proceedings on that date (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, ECHR-XII, §123).

2. Reasonableness of the length of the period in issue

40. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see the *Kudła v. Poland* cited above, § 124).

41. In the present case the Government heavily relied on the complexity of the case, maintaining that it was even exceptionally complicated. In the applicant's submission, the case could seem difficult only on first appearance. He also stressed that the fact that the court had to deal with conflicting evidence could not in itself make the whole process inordinately complex (see paragraphs 33-34 above).

42. The Court observes that the volume of evidence obtained by the authorities was indeed considerable. That included several expert reports, the reconstruction of the scene of the crime and, given the number of witnesses involved in the proceedings, very abundant testimonial evidence (see paragraphs 14-15 and 17-18 above).

The Court therefore accepts that the applicant's case was certainly of more than average complexity. That, however, cannot justify the total, significant length of the trial. Nor can the fact that the court needed to establish the facts of the case on the basis of circumstantial evidence be seen as a factor absolving it from its principal obligation to determine the charges against the applicant within a "reasonable time".

43. It is true that the Regional Court swiftly proceeded with the original trial, which began on 16 June 1992 and ended on 25 May 1994. During that time it held twenty-four hearings and heard abundant evidence. As regards the appellate proceedings, the Court notes that it took the Court of Appeal mere five months to hear the prosecutor's appeal (see paragraphs 12 and 14-17 above).

In the circumstances, the Court finds that at the initial phase of the proceedings the authorities acted with the diligence required under Article 6 § 1.

44. The same does not, however, hold true in regard to the further procedure.

In this connection, the Court notes that after the applicant's acquittal was quashed on appeal and his case remitted to the Regional Prosecutor on 9 March 1995, the new and the third – as the second was likewise remitted – indictment was ready as late as 27 March 1997. In consequence, the retrial began only on 4 September 1997, that is to say after a lapse of some two and a half years (see paragraphs 17-23 above).

45. Even considering that the authorities cannot be held fully responsible for the delay in the preparation of the expert report as it was partly caused by the conduct of S.U., the Court does not find a convincing explanation as to why the carrying out of the Court of Appeal's orders, drawing up the indictment and, subsequently, setting a date for the retrial should have taken such a considerable time. In that context, the Court would also point out that while it is for the national courts to assess the weight of evidence against an accused, and to decide whether he should be convicted or acquitted, in discharging their fact-finding functions those courts must, paying due regard the principle of the presumption of innocence, ensure that the process of gathering evidence against him does not last for an unreasonably long time.

46. It has further to be noted that later, from 9 June 1998, when the new judge rapporteur was appointed, to 20 April 2001, when the trial restarted after its resumption, no hearing on the merits was held (see paragraphs 24-26 above).

Admittedly, that interval was – at least in some part – due to S.U.'s failure to appear before the court and the fact that the authorities could not detect his whereabouts. Also, the applicant himself was absent at the hearings scheduled for 26 March and 7 May 1999 (see paragraph 25 above).

However, that lack of progress in the trial resulted in a delay of about two years and ten months. The Court does not find a sufficient justification for that delay, especially having regard to the importance of what – in terms of both criminal liability and psychological strain involved – was, and still is, at stake for the applicant in the proceedings (see paragraphs 30 and 33 *in fine* above).

47. Finally, the Court observes that on 20 May 2002 the Regional Court asked experts to carry out a DNA identification test and that since then the trial has been adjourned with no further hearing date being assigned (see paragraph 27 above). In the circumstances, it does not appear that the process of obtaining evidence in the applicant's case will be terminated in a short time.

3. Conclusion

48. Accordingly, the Court cannot regard the period of time that elapsed in the instant case as reasonable.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed a total sum of 400,000 Polish zlotys for both pecuniary and non-pecuniary damage caused by the protracted length of the criminal proceedings against him.

He maintained that on account of the inordinate length of his trial he had lost any prospects of finding a job because, given the nature of the charges against him and media attention given to his trial, nobody wanted to employ him.

As to the psychological harm he had suffered, the applicant first stressed that, owing to the fact that he had been labelled as a murderer, he had lost his family since his wife together with his child had left him. He further submitted that for many years his life had been severed into two pieces, the first in which he tried to live a normal life and the second in which he defended himself against the unjustified charges and tried to clear his name. As a result, he lived in infamy and constant anguish.

51. The Government considered that the amount claimed was inordinately excessive. They asked the Court to rule that the finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on

the basis of its case-law in similar cases and national economic circumstances.

52. The Court's conclusion, on the material before it, is that the applicant has failed to demonstrate that the alleged pecuniary damage was indeed caused by the excessive length of the criminal proceedings against him. Consequently, there is no justification for making any award to him under that head.

53. However, the Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the undue prolongation of his trial – which is not sufficiently compensated by the finding of violation of Article 6 § 1 of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 under this head.

B. Costs and expenses

54. The applicant did not submit any claim for costs and expenses involved in the proceedings before the Court.

C. Default interest

55. The Court considers it appropriate that the rate of the default interest to be paid on outstanding amounts expressed in Euro should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/97, § 124, to be published in ECHR 2002-...)

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds*
   (a) that the respondent State is to pay the applicant, 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, plus any tax that may be chargeable on that amount;
   (b) that simple interest at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable

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

Done in English, and notified in writing on 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President