



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

THIRD SECTION

**CASE OF PANEK v. POLAND**

*(Application no. 38663/97)*

JUDGMENT

STRASBOURG

8 January 2004

**FINAL**

*08/04/2004*

*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 Panek v. Poland,**

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

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr P. KÜRIS,

Mr R. TÜRMEŃ,

Mr J. HEDIGAN,

Mrs H.S. GREVE,

Mr L. GARLICKI, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 4 December 2003,

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

**PROCEDURE**

1. The case originated in an application (no. 38663/97) 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 Janusz Panek (“the applicant”), on 20 March 1997.

2. 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 a “hearing within a reasonable time” had not been respected.

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. The application was allocated to the Third 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.

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

7. By a decision of 5 September 2002 the Court declared the application admissible.

## THE FACTS

8. The applicant was born in 1965 and lives in Koszwały, Poland.

### A. Facts prior to 1 May 1993

9. On 6 February 1992 the applicant was arrested on suspicion of murder, grievous bodily harm, and insulting and assaulting policemen.

10. On 8 February 1992 the Gdańsk District Prosecutor (*Prokurator Rejonowy*) brought criminal charges against him.

11. On 6 July 1992 prosecution authorities lodged with the Gdańsk Regional Court (*Sąd Wojewódzki*) a bill of indictment against him.

12. From 29 January 1993 to 30 April 1993 no hearing was held.

### B. Facts after 30 April 1993

13. A hearing listed for 18 June 1993 was adjourned until 21 September 1993. A further hearing, listed for 21 September 1993, was adjourned because the judge rapporteur was ill. The next hearing, scheduled for 12 October 1993, was cancelled because the judge rapporteur was hospitalised.

14. On 10 January 1994 the case was assigned to another panel of judges as the presiding judge rapporteur resigned from his function.

15. On 15 March 1994 the hearing was re-opened.

16. The subsequent hearings were held on 22 March, 18 May, 12 July and 26 September 1994 and on 10 January 1995.

17. On 13 January 1995 the Gdańsk Regional Court pronounced its judgment. It convicted the applicant as indicted, except for the count of murder, of which he was acquitted. The court sentenced him to five years' imprisonment. On 3 July 1995 the prosecutor lodged an appeal against that judgment, contesting its part relating to the acquittal.

18. On 12 October 1995 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) quashed the contested part of the first-instance court's judgment and remitted the case for re-examination.

19. The court held hearings on 13 March and 15 May 1996. A hearing scheduled for 8 July 1996 was adjourned until 14 October 1996. A further hearing, listed for 14 October 1996, was cancelled because the judge rapporteur was ill. The subsequent hearing was held on 6 November 1996.

20. On 13 December 1996 the Gdańsk Regional Court convicted the applicant of murder with an oblique intent (*w zamiarze ewentualnym*) and sentenced him to nine years' imprisonment. The applicant lodged an appeal against that judgment.

21. On 18 June 1997 the Gdańsk Court of Appeal modified the judgment in that it convicted the applicant of grievous bodily harm with deadly effect and sentenced him to seven years' imprisonment.

22. In the letter of 1 July 1997 the applicant's legal aid lawyer informed him that he refused to lodge a cassation appeal against that judgment, arguing that there was no indication of any breach of substantive or procedural law. He explained that lodging that appeal would only delay the proceedings concerning a cumulative penalty (*kara łączna*) and, afterwards, proceedings concerning the applicant's conditional release.

23. On 13 July 1998 the Gdańsk Regional Court delivered a judgment in which it sentenced the applicant to ten years' imprisonment as the cumulative penalty for the convictions included in the judgments of 13 January 1995, 13 December 1996 and 27 May 1992 (delivered in the course of other criminal proceedings).

## THE LAW

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

24. The applicant complained that the length of the proceedings in his case exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention which, in its relevant part, reads:

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

25. The Government contested this view.

#### A. Period to be taken into consideration

26. The Court notes that the period to be taken into consideration began not on 6 February 1992 when the applicant was arrested, but on 1 May 1993, when the recognition of Poland of the right of individual petition took effect. The proceedings ended on 13 July 1998.

It follows that the proceedings lasted six years and five months out of which five years, two months, and thirteen days are taken into consideration by the Court.

27. In assessing the reasonableness of time in question the Court will have regard to the state of the case on 1 May 1993.

## **B. Reasonableness of the length of the proceedings**

### *1. The submissions before the Court*

28. The Government submitted that the case was particularly complex. They referred, in particular, to the fact that the domestic court obtained numerous expert opinions and heard in total seventeen witnesses.

29. The Government acknowledged that the applicant did not contribute to the length of the proceedings.

30. As regards the conduct of the domestic authorities, the Government submitted that they acted diligently and cannot be held responsible for several delays which occurred in the course of the proceedings. The Government argued that a delay of in total eleven months, for which the trial court cannot bear responsibility, was caused by illness of two subsequent judge rapporteurs and a difficulty to hear an expert witness.

31. The applicant stated that he was unable to comment on the Government's submissions because they were written in English. He submitted that he did not understand this language and could not afford the costs of translation.

### *2. The Court's assessment*

32. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

33. The Court considers that the case involved a certain degree of complexity. However, the overall length of the proceedings cannot be explained by their complexity.

34. As regards the conduct of the applicant, the Court observes that the Government acknowledged that he did not contribute to the length of the proceedings (see paragraph 30 above). It sees no reason to hold otherwise.

35. Leaving aside the question whether the respondent State can be held responsible for every delay in the proceedings, it is to be noted that, as admitted by the Government (see paragraph 30 above), there were delays in the proceedings. Having regard to the circumstances of the case as a whole, the Court considers that the delays in the proceedings were incompatible with the diligence required under Article 6 § 1.

36. Consequently, the Court considers that a period of over six years and five months out of which five years, two months and thirteen days are taken into consideration by the Court, exceeds a reasonable time.

Accordingly, there has been a violation of Article 6 § 1.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 299,100 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

39. The Government submitted that the applicant's claim was excessive.

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

41. On the other hand, the Court is of the view that the applicant suffered damage of a non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, it awards the applicant EUR 2,500 in respect of non-pecuniary damage.

### B. Default interest

42. 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. *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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be payable, to be converted into Polish zlotys at the rate applicable at the settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Georg RESS  
President