



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

FOURTH SECTION

**CASE OF PIEKARA v. POLAND**

*(Application no. 77741/01)*

JUDGMENT

STRASBOURG

15 June 2004

**FINAL**

*15/09/2004*

*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 Piekara v. Poland,**

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

Sir Nicolas BRATZA, *President*,  
Mrs V. STRÁŽNICKÁ,  
Mr J. CASADEVALL,  
Mr R. MARUSTE,  
Mr L. GARLICKI,  
Mrs E. FURA-SANDSTRÖM,  
Ms L. MIJOVIĆ, *judges*,  
Mr M. PELLONPÄÄ,  
Mr S. PAVLOVSCHI,  
Mr J. BORREGO BORREGO, *substitute judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 May 2004,

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

**PROCEDURE**

1. The case originated in an application (no. 77741/01) 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 a Polish national, Mr Roman Piekara ("the applicant"), on 17 October 2000.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki, and subsequently, Mr J. Wołasiewicz of the Ministry of Foreign Affairs.

3. On 5 June 2003 the President of the Fourth Section decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility. The President of the Chamber further gave priority to the application, pursuant to Rule 41 of the Rules of the Court.

**THE FACTS**

4. The applicant was born in 1920 and lives in Łódź, Poland.

5. On an unspecified date in 1992 the applicant asked the Veterans and Persecuted Persons' Office (*Urząd do Spraw Kombatantów i Osób Represjonowanych*) to grant him "veteran status."

6. The President of the Office informed the applicant that his application was not complete and should be submitted first to a local veterans association.

7. On 2 October 1993, after having contacted the Łódź District Veterans Association, the applicant lodged for the second time an application with the Veterans and Persecuted Persons' Office concerning his "veteran status."

8. The Office failed to issue a decision and informed the applicant that he should first lodge an application with the World Veteran Association.

9. On 25 February 1994 the applicant lodged a complaint about the inactivity of the Office with the Supreme Administrative Court. On 24 June 1994 the Supreme Administrative Court allowed his complaint and ordered the Office to give a decision within two months. The court established that the applicant's application of 2 October 1993 had satisfied legal requirements and that the Office should have given a decision on merits instead of asking the applicant to fulfil other conditions.

10. On 8 February and 3 April 1995 the Veterans and Persecuted Persons' Office requested the applicant to submit additional documents concerning his case. The applicant complied with the requests.

11. On 4 July 1995 the President of the Veterans and Persecuted Persons' Office gave a decision in which he refused to grant the applicant "veteran status". The Office found that the applicant had failed to provide evidence of his participation in the Polish Defence War in September 1939.

12. The applicant lodged a complaint against this decision with the Supreme Administrative Court.

13. On 5 March 1996 the Supreme Administrative Court quashed the impugned decision and remitted the case to the first-instance authority. The court found that the Office had not examined the case properly and, in particular, had not heard the applicant despite his several applications and had not heard other soldiers who had allegedly fought with him.

14. Since the Office had failed to give a decision, on 11 July 1996 the applicant complained about this inactivity to the Supreme Administrative Court. At the hearing held on 10 January 1997 the Supreme Administrative Court gave judgment in which it dismissed the allegations concerning the inactivity of the authority since it established that the Office had been collecting additional evidence in the applicant's case.

15. On 28 May 1997 the applicant lodged another complaint with the Supreme Administrative Court alleging inactivity on the part of the President of the Veterans and Persecuted Persons' Office. On 6 February 1998, the Supreme Administrative Court discontinued the proceedings because in the meantime, on 3 December 1997, the President had given a decision. In this decision the President of the Veterans and Persecuted Persons' Office again dismissed the applicant's application to grant him "veteran status."

16. On 16 December 1997 the applicant appealed against this decision by lodging an application for the case to be reconsidered by the President of the Veterans and Persecuted Persons' Office.

17. On 24 June 1998 the President of the Veterans and Persecuted Persons' Office dismissed the applicant's appeal.

18. The applicant lodged a complaint against this decision with the Supreme Administrative Court.

19. On 4 April 2000 the Supreme Administrative Court dismissed the complaint. The applicant was notified about this decision on 23 June 2000.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

20. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement in Article 6 § 1 of the Convention, which 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..."

21. The Government contested that argument.

22. With regard to the applicability of Article 6 of the Convention to the proceedings concerned, the Court observes that the proceedings complained of concerned the question of whether or not the applicant should be granted "veteran status" and that the final ruling in those proceedings was decisive for his pecuniary rights, in particular an entitlement to "veteran benefit", i.e. a specific sum of money. The Court therefore considers that the proceedings involved a "dispute" over the applicant's "civil rights" and that, consequently, Article 6 § 1 of the Convention applies (see *Domalewski v. Poland* (dec), no. 34610/97, 15 June 1999).

23. The Court considers that the period to be taken into consideration began on 2 October 1993 when the applicant lodged a complete application with the Veterans and Persecuted Persons' Office, as established by the Supreme Administrative Court in its judgment of 24 June 1994. The proceedings ended on 23 June 2000 when the Supreme Administrative Court's judgment was notified to the applicant. It follows that they lasted six years, eight months and twenty-one days.

## A. Admissibility

24. The Court notes that this complaint 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 Court therefore declares it admissible.

## B. Merits

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

25. The Government submitted that the case did not involve any complex legal issues. However, they contended that it involved a certain degree of factual complexity since the case concerned events which had taken place during WWII.

26. The Government further argued that the applicant contributed to some extent to the length of the proceedings by not sufficiently proving his claim. In particular, the Government submitted that the applicant had been on several occasions requested to provide additional documents and that his first application had been lodged directly with the Veterans and Persecuted Persons' Office and not with a veterans association.

27. The Government finally contended that the authorities acted with due diligence and that what was at stake for the applicant was of a pecuniary nature solely.

28. The applicant disagreed with the Government's submissions. He argued that the proceedings were of extreme importance to him because the "veteran status" would have been a formal recognition of his sacrifices during the defence of Warsaw in 1939. Moreover, an additional financial benefit would have given him access to better health care which was necessary given his advanced age and poor health.

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

29. 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 applicant and of the relevant authorities and what was at stake for the applicant in the dispute (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).

30. The Court considers that the case involved some degree of factual complexity as the authorities had to obtain evidence relating to facts which

took place over 50 years ago. However, the complexity of the case does not explain the overall length of the proceedings.

31. With regard to the applicant's conduct, the Court takes note of the Government's contention that his first application in 1992 had not been lodged with a competent authority (see paragraph 26 above). However, this argument cannot be examined by the Court since it referred to a fact which had taken place before 1 May 1993 which is the date on which the declaration whereby Poland recognised the right to individual petition took effect. Accordingly, the Court holds that the information before it does not indicate that the applicant by his behaviour contributed to the length of the proceedings.

32. As regards the conduct of the domestic authorities, the Court observes that several substantial periods of inactivity occurred in the course of the proceedings. In particular, despite the Supreme Administrative Court's decision of 24 June 1994 ordering the President of the Veterans and Persecuted Persons' Office to give a decision on merits within two months, the Office took no action for eight months and in total twelve months elapsed until the President gave his decision (see paragraphs 9, 10 and 11 above). Another substantial period of inactivity occurred before the Supreme Administrative Court which did not take a decision on the applicant's complaint against the Office's decision of 24 June 1998 until 4 April 2000. The Court notes that the Government had not provided any explanation for these delays.

33. Consequently, the Court considers that, in the particular circumstances of the instant case, a period of six years, eight months and twenty one days exceeds a reasonable time.

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

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

34. Lastly, the applicant alleged a breach of Article 6 § 1 in that he did not have a "fair trial" because he was not heard in person by the Veterans and Persecuted Persons' Office.

35. However, the Court reiterates that the absence of a public hearing before an administrative body will be remedied from the standpoint of Article 6 if the case is dealt with on appeal by a court that does satisfy the public hearing requirement (*see Le Compte, Van Leuven and De Meyere v Belgium*, judgment of 23 June 1981, Series A no. 43, § 51). In the present case the applicant appealed twice to the Supreme Administrative Court against the decisions given by the President of the Veterans and Persecuted Persons' Office. On 4 April 2000 the Supreme Administrative Court, having examined the applicant's complaint at the public hearing, gave a final

decision dismissing his claim for “veteran status.” Finally, the Court observes that the scope of review of the Supreme Administrative Court is sufficient to comply with Article 6 § 1 (see *Potocka and others v. Poland*, no. 33776/96, § 59, 4 October 2001).

36. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

### III. 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 did not claim any particular sum in respect of pecuniary and non-pecuniary damage. However, he requested the Court to grant him just satisfaction given the detriment suffered by him on account of the length of the proceedings in his case.

39. The Government did not comment on the applicant’s claim.

40. The Court is of the view that the applicant suffered damage of non-pecuniary nature such as distress and frustration resulting from the protracted length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the instant case and deciding on equitable basis, the applicant should be awarded EUR 4,500 in respect of non-pecuniary damage.

#### B. Default interest

41. 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 complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings;
3. *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 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the settlement, plus any tax that may be chargeable;
  - (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;

Done in English, and notified in writing on 15 June 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President