



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

FOURTH SECTION

**CASE OF PŁONKA v. POLAND**

*(Application no. 20310/02)*

JUDGMENT

STRASBOURG

31 March 2009

**FINAL**

***30/06/2009***

*This judgment may be subject to editorial revision.*



**In the case of Płonka v. Poland,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 March 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 20310/02) 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 Urszula Płonka (“the applicant”), on 6 June 2001.

2. The applicant was represented by Mr A. Ryszka, a lawyer practising in Sosnowiec. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained under Article 6 § 1 read in conjunction with Article 6 § 3 (c) of a violation of her right to defend herself.

4. On 17 October 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 (Article 29 § 3).

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1949 and lives in Sosnowiec, Poland.

6. On 8 April 1999 the applicant was arrested on suspicion of homicide. She was first interviewed by a police officer. On 9 April 1999 she was charged with murdering E.L on 8 April 1999. On 9 and 10 April 1999 she

was questioned by the Sosnowiec District Prosecutor. During the questioning she stated that she had been having alcohol problems for the last 20 years. She and E.L., a former work colleague, used to drink together. On 7 April 1999 they had drunk more than half a litre of vodka and some wine. She also stated that she did not remember much of what had happened. She further confessed to killing E.L. Nevertheless, she stressed that she had not meant to kill the victim, but he had made her very angry and she had stabbed him with scissors.

7. During the arrest and subsequent questioning by the police and the prosecution authorities the applicant was not assisted by a lawyer. On 9 April 1999 the applicant signed the relevant form acknowledging that she had been informed of her rights, including the right to be assisted by a lawyer and the right to refuse to testify.

8. On 19 April 1999 the prosecutor ordered an expert report on the applicant's mental health at the time when the crime of which she was suspected was committed. The report was submitted on 26 April 1999. The applicant was considered to be criminally responsible.

9. On 21 April 1999 the applicant asked to be released from detention. The District Prosecutor refused her motion on 11 May 1999. This decision was upheld by the Regional Prosecutor on 7 June 1999.

10. On 23 April 1999 the Regional Court appointed a legal-aid-lawyer for the applicant. On 5 May 1999 the applicant appointed a lawyer of her own choice.

11. On 28 June 1999 the Sosnowiec District Prosecutor filed a bill of indictment with the Katowice Regional Court (*Sąd Okręgowy*). The applicant was indicted on charges of murder.

12. Throughout the trial the applicant maintained that she suffered from alcoholism. She retracted her confession made during police custody, alleging that she had been questioned under duress and forced by the police officers to make self-incriminating statements.

13. On 30 June 1999 the Katowice Regional Court, having regard to the fact that the applicant was represented by a lawyer of her own choice, decided to withdraw the services of the legal-aid lawyer.

14. The trial ended on 24 February 2000. The applicant was convicted as charged and sentenced to 11 years' imprisonment. The court considered that the applicant's testimony during the trial had not been credible and had merely been her line of defence. The conviction was based on the applicant's statements made during the initial phase of the investigation and on evidence given by several witnesses.

15. On 11 April 2000 the applicant's lawyer filed an appeal against the judgment. He stressed, in particular, that there had been a violation of the applicant's right to defend herself in view of the deficiencies in the preliminary investigation.

16. On 25 May 2000 the Katowice Court of Appeal (*Sąd Apelacyjny*) upheld the first-instance judgment. The court held that the applicant's right to defend herself had not been infringed. It pointed out that as of 23 April 1999 she had been assisted by a lawyer – first an officially appointed lawyer, then a lawyer of her own choice.

17. On 19 July 2000 the applicant's lawyer filed a cassation appeal with the Supreme Court (*Sąd Najwyższy*). He maintained that there had been a violation of Article 6 § 3 (c) of the Convention in that the applicant had not been assisted by a lawyer at the preliminary stage of the investigation. He relied on the case-law of the European Court of Human Rights.

18. On 26 January 2001 the Supreme Court dismissed the applicant's cassation appeal. That decision did not contain any reasons.

## II. RELEVANT DOMESTIC LAW

19. Pursuant to Article 78 § 1 of the 1998 Code of Criminal Procedure, an accused who had proved that he or she could not afford legal assistance (i.e. that the costs of such assistance “would entail a substantial reduction in his and his family's standard of living”) could ask the trial court to appoint him a defence counsel.

20. Article 80 of the Code lays down the principle known as “compulsory assistance of an advocate” (*przymus adwokacki*). That Article provides, in so far as relevant:

“An accused must have an officially appointed lawyer when a Regional Court is competent to deal with his case as a court of first instance, a crime is involved within the meaning of the Criminal Code, or the individual is remanded in custody. The counsel must take part in the main hearing; he must also take part in any appellate hearing if the president of the court or the court itself has found this necessary.”

This provision does not apply to the investigative stage of the proceedings but only after the case is sent for trial, as was expressly confirmed by the Supreme Court in its resolution of 20 January 2004 (III KK 226/03).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

21. The applicant complained that her right to a fair trial had been breached as she had not had legal aid at the initial stage of the criminal proceedings against her. Article 6 in its relevant part reads as follows:

“1. In the determination (...) of any criminal charge against him, everyone is entitled to a fair and public hearing...

3. Everyone charged with a criminal offence has the following minimum rights:

(...)

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require

(...)”

22. The Government contested that argument.

### **A. Admissibility**

23. The Government raised a preliminary objection that the applicant had failed to exhaust the required domestic remedies. She had not availed herself of the possibility to request legal assistance during her interview with the police. The applicant had been informed of her rights and despite that she had neither refused to testify nor asked for a lawyer to be appointed.

24. The applicant disagreed. She claimed that she had not been properly informed about the possibility to obtain a lawyer's assistance during questioning.

25. The Court considers that the Government's plea of non-exhaustion raises issues as to the conduct of the preliminary investigation and the conditions in which the applicant was questioned. They are thus closely linked to the merits of the complaint under examination. Therefore the Court joins the preliminary objection to the merits of the applicant's complaint.

26. In view of the above, 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. It must therefore be declared admissible.

### **B. Merits**

#### *1. The parties' submissions*

27. The applicant stated that it was true that she had been informed of her right to be assisted by a lawyer. However, she was not offered any help in appointing one, nor was she asked whether she could afford the cost of legal counsel.

28. The Government submitted that the applicant had been informed of her rights and could have requested to be assisted by a lawyer. They stressed

that according to Polish law the trial court could decide a case only on the basis of the facts and circumstances that were established during the trial.

29. The Government maintained that the applicant had not been questioned by the police but had merely had “a conversation” with a police officer, and that the conversation had been recorded in a note of 9 April 1999.

30. In the Government’s opinion, unlike in the case of *Brennan v. the United Kingdom* (no. 39846/98, ECHR 2001-X), in the present case the applicant had not been deprived of access to a lawyer and she could have requested his presence. In addition, the applicant had been represented throughout the trial by a lawyer of her choice and her case had been heard at three levels of jurisdiction. The trial court had been free to assess the evidence before it. As it happened, in the present case the explanations given by the accused at the initial stage of the proceedings had merely prevailed over the evidence gathered during the course of the trial.

31. The Government concluded that there was no violation of Article 6 § 1 in conjunction with Article 6 § 3 (c) of the Convention.

## 2. The Court’s assessment.

### (a) The general principles

32. The Court reiterates that Article 6 § 3 (c) may be relevant at the stage of the preliminary investigation in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions. The manner in which Article 6 § 3 (c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case (see *Imbrioscia v. Switzerland*, judgment of 24 November 1993, and *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, § 62).

33. The Court further reiterates that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of fair trial (*Poitrimol v. France*, 23 November 1993, § 34, Series A no. 277-A, and *Dembukov v. Bulgaria*, no. 68020/01, § 50, 28 February 2008). Nevertheless, Article 6 § 3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court’s task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial. In this respect, it must be remembered that the Convention is designed to “guarantee not rights that are theoretical or illusory but rights that are practical and effective” and that assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused (*Imbrioscia*, cited above, § 38).

34. National laws may attach consequences to the attitude of an accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent criminal proceedings. In such circumstances, Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation.

35. The Grand Chamber has recently stressed that in order for the right to a fair trial to remain sufficiently “practical and effective” Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (see *Salduz v. Turkey* [GC], no. 36291/02, § 55, 27 November 2008).

**(b) Application of the principles to the above case**

36. The Court firstly observes that according to the record of the questioning and the relevant form that was signed by the applicant, she was informed of her rights and in particular the right to remain silent or to be assisted by a lawyer throughout the proceedings and during her questioning by the police (see paragraph 7 above). It would further appear that the applicant, a suspect in the present case, did not request to be assisted by a lawyer. However, there is no indication that the applicant expressly waived her right to be represented by a lawyer during her questioning on 8, 9 and 10 April 1999 (see paragraph 7 above).

37. In this respect the Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his or her own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial (see *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000). However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance (see *Salduz* cited above § 59). In the circumstances of the present case, the assertion in the form stating her rights that the applicant had been reminded of her right to remain silent or to be assisted by a lawyer (see paragraph 7 above) cannot be considered reliable. The Court does not find, accordingly, that there was a clear and unequivocal waiver of the applicant’s right to the guarantees of a fair trial.

38. The Court stresses in this connection that one of the specific features of the instant case was the applicant’s alcoholism. During the first police



interview the applicant admitted that she had been suffering from an alcohol problem for many years. She further confessed to having drunk a substantial amount of alcohol the day before her arrest (see paragraphs 6 and 12 above). These circumstances clearly suggest that the applicant was in a vulnerable position at the time of interview, and that the authorities should have taken this into account during questioning and in particular when apprising her of her right to be assisted by a lawyer.

39. It is true that the applicant was represented by a lawyer as from 23 April 1999 and throughout the proceedings before the Katowice Regional Court and the Katowice Court of Appeal (see paragraphs 10 and 16 above). During the criminal proceedings she was also able to call witnesses on her behalf and had the possibility of challenging the prosecution's arguments. The applicant subsequently denied the content of her statement to the police. However, her initial confession made in the absence of a lawyer had a bearing on her conviction. While the statements made by the applicant during police custody and her confession were not the sole basis for her conviction, the Katowice Regional Court nevertheless based its final decision on them, observing that her testimony during the hearings was not credible.

40. In view of the circumstances the guarantee of fairness enshrined in Article 6 required that the applicant had the benefit of the assistance of a lawyer from the very first stage of police questioning. In this regard, it is not for the Court to speculate on what the applicant's reaction or her lawyer's advice would have been had she had access to a lawyer at the initial stage of the proceedings (see *Salduz*, cited above, § 58).

41. The Court considers that in the present case the applicant was undoubtedly directly affected by the lack of access to a lawyer during her questioning by the police. Neither the assistance provided subsequently by a lawyer or the adversarial nature of the ensuing proceedings could cure the defects which had occurred during the police custody.

42. The foregoing considerations are sufficient to enable the Court to conclude that there has been a breach of Article 6 § 1 of the Convention in conjunction with Article 6 § 3 (c). Having regard to this finding, the Government's preliminary objection must be rejected.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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**

44. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

45. The Government contested this claim.

46. The Court considers that the applicant must have suffered frustration and a feeling of injustice. It awards the applicant EUR 2,000 in this respect.

**B. Costs and expenses**

47. The applicant did not ask to be reimbursed for any costs and expenses.

**C. Default interest**

48. 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. *Joins* to the merits the Government's preliminary objection and *declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in conjunction with Article 6 § 3 (c) and *dismisses* the above mentioned preliminary objection;
3. *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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President