



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

FOURTH SECTION

CASE OF CZEKIEN v. POLAND

(Application no. 25168/05)

JUDGMENT

STRASBOURG

18 May 2010

FINAL

18/08/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Czekień 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 27 April 2010,

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

PROCEDURE

1. The case originated in an application (no. 25168/05) 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, Mrs Helena Czekień (“the applicant”), on 1 July 2005.

2. The applicant was represented by her son, Mr J. Czekień. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged a breach of Article 6 § 1 of the Convention in respect of the proceedings before the Polish-German Reconciliation Foundation.

4. On 24 January 2008 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 1930 and lives in Orneta.

A. Forced labour of the applicants' husband during the war

6. The applicant submitted that M.C., her husband, had been deported (dislocated) from Vilnius to the territories occupied by Germany (Lithuania and Belarus) and had performed forced labour for a railways company under German management from July 1941 until July 1944. He constructed railway trucks. In July 1944 he returned home and continued to work for the same company. In 1945 the applicant's husband was "repatriated" from the Soviet Union to Poland. The applicant submitted that all his documents had been seized by the Soviet military.

B. Proceedings before the Polish-German Reconciliation Foundation

7. M.C. died on 28 February 2001. On 11 December 2001 the applicant, as an eligible successor of her late husband, applied to the Polish-German Reconciliation Foundation ("the Foundation") for compensation on account of her husband's forced labour during the war. That request was made under the scheme for slave and forced labourers ("the second compensation scheme") established under the Joint Statement of 17 July 2000, the German Law of 2 August 2000 on the Creation of the "Remembrance, Responsibility and Future" Foundation ("the German Foundation Act" or "GFA") and the subsequent Agreement of 16 February 2001 between the Remembrance, Responsibility and Future Foundation ("the German Foundation") and the Polish-German Reconciliation Foundation.

8. On 3 March 2003 the Foundation's Verification Commission refused the request for compensation. It found that in the case of the applicant's husband the condition of deportation had not been fulfilled.

9. The applicant appealed against that decision. She submitted that in July 1941 the German work office had assigned her husband to perform forced labour as a railways track builder. He had been performing that forced labour in various places in Lithuania, Belarus and in the General Government (*Generalna Gubernia*; administrative entity established by the Nazi government in occupied Poland) until July 1944. The applicant submitted various documents in support of the claim. One of the documents was a certificate issued by the German Railways Social Security Office. It attested that M.C. had worked as a forced labourer for the Lithuanian Railways under German Administration from July 1939 to May 1945. The second document was a certificate issued by the Lithuanian Railways. It stated that the applicant's husband had been employed by the Lithuanian Railways from 1939 to June 1945.

10. On 11 February 2004 the Appeal Commission upheld the impugned decision. It informed the applicant that under section 11 of the GFA only those forced labourers who had been deported to the German Reich or to an area occupied by it had been eligible for compensation. In addition, under

the so-called “openness clause” (*klauzula otwartości*) forced labourers who had been relocated (*osoby dyslokowane*) outside their province of residence to a province with a different administrative status had been also eligible for compensation.

11. The Appeal Commission noted that M.C. had worked on a labour train (*Bauzug*) whose home station had been Vilnius (located on the territory of Poland as its national borders had stood before the outbreak of the Second World War). Furthermore, the documents submitted by the applicant did not demonstrate that M.C. had been deported or relocated to the German Reich or to occupied territories. Accordingly, no award could have been made as M.C. had performed forced labour without having satisfied the condition of deportation or relocation.

12. The applicant strongly disagreed. She claimed that her husband had been subjected to forced labour from July 1941 to July 1944 in the occupied territories (Lithuania and Belarus).

13. On 6 May 2004, having re-examined the case on the request of an MP, the Appeal Commission upheld its previous decision. It observed that the condition of deportation (relocation) was satisfied by the claimants who had permanently lost their ties with the habitual place of residence. The Commission noted that M.C. had temporarily stayed in Belarus or on the territory of the General Government in connection with his forced labour, but he had been returning to Vilnius, his home station. Accordingly, he had had permanent contact with his place of residence. As a result, the applicant could not have been awarded compensation on account of her husband's forced labour since he had not satisfied the condition of deportation or relocation as stipulated in the GFA.

14. On 4 February 2005 the Appeal Commission, having re-examined the documents adduced in the case, informed the applicant that its previous decision remained valid.

II. RELEVANT LAW AND PRACTICE

15. The relevant law and practice concerning the Polish-German Reconciliation Foundation are set out in the Court's judgment in the case of *Kadłuczka v. Poland*, no. 31438/06, §§ 19-45, 2 February 2010.

THE LAW

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

16. The applicant complained that she had been refused compensation following a flawed assessment of the relevant facts by the Polish Foundation, in particular regarding the deportation (relocation) requirement. She claimed that there had been no other authority which could have examined her claims. She did not invoke any provisions of the Convention. The Court considers that the applicant's complaint concerns the lack of access to a court in respect of the claims raised before the Polish Foundation and falls to be examined under Article 6 § 1 of the Convention, the relevant parts of which provide:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...”

A. Applicability of Article 6 § 1

17. The Government submitted no observations.

18. The applicant pursued her application but did not offer specific comments on the issue of applicability of Article 6 § 1.

19. The Court recalls that in the *Woś* judgment (see, *Woś v. Poland*, no. 22860/02, ECHR 2006-VII) it examined a similar complaint in respect of the first compensation scheme, set up on the basis of the bilateral Polish-German agreement of 16 October 1991 and found Article 6 § 1 applicable to the proceedings before the Polish-German Reconciliation Foundation.

20. In contrast, the present case concerns the second compensation scheme, which was established following multilateral negotiations with a view to providing compensation to slave and forced labourers and other victims of the National Socialist period, primarily from central and eastern Europe. The agreement reached in the negotiations, in particular in respect of the categories of persons who were eligible and the establishment of the German Foundation as a means of providing funds to victims, was subsequently incorporated in the German Foundation Act of 2 August 2000. Section 10 of the Act stipulated that partner organisations, including the Polish Foundation, were entrusted with evaluation of claims and disbursement of payment to eligible claimants. The same provision stipulated that the German Foundation was neither authorised nor obligated in respect of the approval and disbursement of payments by the partner organisations. The particular feature of the second compensation scheme was that the eligibility conditions had been specified in the GFA, while

at the same time the examination of the relevant applications was to be carried out by the partner organisations, including the Polish Foundation. The Court considers that for all practical purposes, decisions to qualify applicants as coming under a particular eligibility category and to grant payments in respect of the claimants who resided in Poland were taken by the Polish Foundation (see *Woś v. Poland* (dec.), no. 22860/02, § 66, ECHR 2005-IV; *Jakowicz v. Poland* (dec.), no. 16778/02, § 76 *in fine*, 13 October 2009).

21. In the *Woś* judgment the Court held that the Convention imposes no general obligation on the Contracting States to provide redress for wrongs inflicted in the past under the general cover of State authority (see also, *mutatis mutandis*, *Kopecký v. Slovakia* [GC], no. 44912/98, § 38, ECHR 2004-IX). This principle applies to the Federal Republic of Germany in respect of wrongs or damage caused by the German *Reich* (see *Associazione Nazionale Reduci Dalla Prigionia dall'Internamento e dalla Guerra di Liberazione (A.N.R.P.) v. Germany* (dec.), no. 45563/04, 4 September 2007; and *Ernewein and Others v. Germany* (dec.), no. 14849/08, 2 May 2009) but it is even more relevant for third States, like Poland, who bear no responsibility in connection with wrongs inflicted by a foreign occupying force or another State (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 124, ECHR 2004-V; *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 77, ECHR 2005-V).

22. The Court recalls that if a compensation scheme were to be established, the substantive regulations which determined the eligibility conditions for any compensation would in principle fall outside the Court's jurisdiction, unless the relevant conditions were manifestly arbitrary or blatantly inconsistent with the fundamental principles of the Convention (see *Woś v. Poland*, cited above, § 72). In other words, when a State decides to compensate the past wrongs for which it bore no responsibility, it enjoys a significant discretion (*grand pouvoir d'appréciation*) in determining the beneficiaries and the modalities of any compensation scheme and, in principle, no challenge to the eligibility conditions as such may be allowed (see *Maltzan and Others*, cited above, § 77; *Epstein and Others v. Belgium* (dec.), no. 9717/05, ECHR 2008-... (extracts)).

23. The Court observes that the compensation scheme established under the GFA concerned claims of forced labourers and other victims of Nazi Germany (see section 2 of the GFA on the purpose of the German Foundation). As those claims date back essentially to the Second World War there could be no question of the Polish State's responsibility for the wrongs committed during that period. It is clear that the Polish State have no obligations of any kind to redress the wrongs inflicted by another

State as its citizens were victims and not perpetrators (see *Woś v. Poland* (dec.), cited above, § 85).

24. In the context of the present case, the Court underlines that the substantive eligibility conditions under the second scheme were defined in the GFA and had to be applied as such by the partner organisations, including the Polish Foundation. It follows that while processing the applications the Polish Foundation was bound to follow the substantive criteria as specified in the GFA and had no power either to review its reasonableness or to unilaterally modify or extend them. Thus, the Polish Foundation and, *a fortiori*, the Polish State cannot bear responsibility in cases where an applicant, due to the scope of the substantive eligibility conditions as such, was not included in the group of persons entitled to certain benefits. The Court emphasises that the Polish Foundation exercised only a certain measure of discretion when assessing the facts of individual cases and the evidence submitted by the claimants. Its assessment of those elements was decisive for the outcome of the proceedings before the Foundation. The Court considers that the responsibility of the Polish State may be engaged exclusively as regards those cases where the dispute concerns the application of the eligibility conditions to the facts of individual cases in the area falling within the Foundation's margin of discretion. Accordingly, in each case it is necessary to determine whether a claimant challenges the eligibility conditions or the assessment of facts and evidence by the Polish Foundation and whether that assessment remained within the Polish Foundation's margin of discretion.

25. Turning to the circumstances of the present case, the Court notes that the applicant claimed before the Foundation that her husband had been deported (relocated) to German-occupied territories and subjected to forced labour from July 1941 to July 1944. However, the Polish Foundation relying on section 11 of the GFA, dismissed those claims, having found that the condition of deportation or relocation had not been met. It established that in connection with his work M.C. had been temporarily staying in Belarus or in the General Government but he had not lost contact with his habitual place of residence in Vilnius. The applicant strongly objected to that finding.

26. The essence of the applicant's claim is that the Foundation wrongly considered that her husband had not been deported (relocated) and that consequently she was not eligible for benefits after him. In particular, she disagreed with the finding that her husband had not lost permanent contact with his abode. In the present case the thrust of the applicant's complaint is directed against the Polish Foundation's erroneous assessment of the facts underlying her claims and the resultant flawed application of the eligibility conditions to the case (compare and contrast, *Jakowicz v. Poland* (dec.), cited above, § 80). In the case of *Jakowicz* the Foundation dismissed the applicant's claims which went beyond the scope of the substantive eligibility

conditions and as such were outside the Foundation's remit. By contrast, in the present case the Foundation refused the applicant's claims while exercising its discretion as to the assessment of the relevant facts which had direct bearing on the determination of the eligibility status of the applicant's husband. In the present case the Polish Foundation recognised that the applicant's husband had, at least, temporarily performed forced labour while having been relocated. In this respect the Court notes that section 11 of the GFA which was invoked by the Polish Foundation does not appear to require that the deportation (relocation) of a forced labourer has to be of a certain minimum duration. Nor was the Court apprised of by the Government of any binding regulations issued to that effect by the German Foundation. Thus, the present case can be distinguished from the *Jakowicz* case on the ground that it concerned the dispute as to the assessment of relevant facts and not a challenge to the substantive eligibility conditions. Accordingly, the Court finds that the dispute arose between the applicant and the Polish Foundation as regards the application of the eligibility conditions to her case.

27. The Court has next to determine whether the right to receive payment from the Polish Foundation on account of forced labour or other form of persecution was recognised, at least on arguable grounds, under domestic law. The Court recalls that in the case of *Associazione Nazionale Reduci Dalla Prigionia dall'Internamento e dalla Guerra di Liberazione* (cited above), concerning the second compensation scheme, it examined the complaints of former Italian POWs about the exclusion of judicial review in respect of decisions rendered by the International Organization for Migration (one of the partner organisations). The Court found that as the applicants (former POWs) had been clearly excluded from benefits under the German Foundation Act they could not claim to have had a right to compensation. On that ground, it distinguished the case from *Woś* and held that Article 6 was not applicable to the facts of that case.

28. The Court considers that the present case is, in turn, distinguishable from the *Associazione Nazionale Reduci* decision, in that it concerns the arguable claim made by a person subjected to forced labour whose request was dismissed for failure to duly establish that he had permanently lost ties with his habitual place of residence. In contrast, the *Associazione Nazionale Reduci* case dealt with persons who had been expressly excluded from the ambit of the second compensation scheme on account of their undisputed POW status, and thus no question of a right to compensation could arise.

29. The Court notes that international public law does not establish individual claims for compensation for forced labour (see *Associazione Nazionale Reduci* decision which referred to the judgment of the Federal Constitutional Court of 28 June 2004). Such claims could be established exclusively through domestic law, and in such a case the legislator enjoys a wide margin of discretion. In this respect the Court observes that the

conditions and procedures with which a claimant had to comply before a payment could be awarded by the Foundation were first agreed in the course of multilateral negotiations, then laid out in the GFA and subsequently transposed into the regulations binding on the Foundation via the Partnership Agreement of 16 February 2001 and any subsequent agreements concluded in the framework of the so-called openness clause. The Foundation's statutes were subsequently amended with a view to implementing the provisions of the GFA and the Agreement of 16 February 2001. Thus, the Foundation's regulations stipulated the conditions which had to be fulfilled by a person seeking benefits. It is noteworthy that the Supreme Court in its Resolution of 27 June 2007 found that the basis of the rights of a person seeking payment from the Foundation were the Foundation's statutes, the rules of the Verification Commission and the relevant provisions of the GFA. The Court is mindful of the particular character of the legal regime governing the second compensation scheme which defined the categories of eligible claimants. Nevertheless, it finds that the Foundation's regulations could be considered to create a right for a claimant arguably fulfilling the relevant eligibility conditions to claim compensation from the Foundation (see, *mutatis mutandis*, *Woś v. Poland* (dec.), cited above, § 83).

30. The Court notes that the payments at issue were voluntary in the sense that the States were free to establish the scheme and to determine the scope of its beneficiaries. However, once such general scheme has been adopted and once a claimant could be reasonably considered to have complied with the eligibility conditions stipulated in the GFA and in the Foundation's regulations, he or she had a right to be awarded payment by the Foundation (see *Rolf Gustafson v. Sweden*, 1 July 1997, § 40, Reports 1997-IV and *Woś v. Poland*, cited above, § 75). The Court points out that in the somewhat similar area of social security and welfare benefits, many domestic legal systems provide for those benefits to be paid - subject to the fulfilment of the conditions of eligibility – as of right (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, ECHR 2005-X, § 51). In conclusion, the Court finds that the Polish Foundation's bodies had thus to determine a dispute concerning a right asserted by the applicant.

31. As to the “civil” character of the right asserted by the applicant, the Court reiterates that the concept of “civil rights and obligations” is not to be interpreted solely by reference to the respondent State's domestic law. Article 6 § 1 of the Convention applies irrespective of the status of the parties, the character of the legislation which governs how the dispute is to be determined and the character of the authority which is invested with jurisdiction in the matter (see, among other authorities, *Georgiadis v. Greece*, 29 May 1997, § 34, Reports 1997-III).

32. The Court reiterates that in the *Woś* judgment, which concerned similar claims under the first compensation scheme, it held that those claims could be considered “civil” within the meaning of Article 6 § 1 (see *Woś v. Poland*, cited above, § 76). In reaching that conclusion, the Court had regard, *inter alia*, to the similarities between the compensation claims asserted before the Foundation and disputes over entitlement to social security and welfare benefits, which generally fall within the scope of Article 6 (see *Mennitto v. Italy* [GC], no. 33804/96, § 28, ECHR 2000-X; *Tsfayo v. the United Kingdom*, no. 60860/00, § 39, 14 November 2006).

33. Further, the Court notes that the Supreme Court in its resolution of 27 June 2007, referring extensively to the *Woś* judgment, found that a claim against the Foundation was to be considered a “civil” claim in a formal sense for the purposes of establishing court jurisdiction. The Court consequently finds that the applicant's right to claim compensation from the Foundation on account of her husband's deportation (relocation) and forced labour could be considered “civil” for the purposes of Article 6 § 1 of the Convention. For the above reasons the Court finds that the right to compensation asserted by the applicant under the second compensation scheme is a civil right within the meaning of Article 6 § 1 of the Convention and that this provision is applicable to the proceedings before the Foundation in the applicant's case.

B. Conclusion as to admissibility

34. The Court notes 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. It must therefore be declared admissible.

C. Compliance with Article 6 § 1

35. The Government submitted no observations. The applicant maintained her application.

36. Article 6 § 1 requires that in the determination of civil rights and obligations, decisions taken by administrative or other authorities which do not themselves satisfy the requirements of that Article be subject to subsequent control by a judicial body that has full jurisdiction (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 51, Series A no. 43; *Woś v. Poland*, no. 22860/02, § 92, ECHR 2006-VII). The Court must therefore first ascertain whether the Foundation's adjudicating bodies – the Verification Commission and the Appeal Commission – could be considered as tribunals conforming to the requirements of Article 6 § 1.

37. According to the Court's settled case-law, a tribunal within the meaning of that provision must satisfy a series of requirements – independence, in particular of the executive, impartiality, duration of its members' terms of office, and guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 itself (see *Belilos v. Switzerland*, 29 April 1988, § 64, Series A no. 132; *Demicoli v. Malta*, 27 August 1991, § 39, Series A no. 210; and *Cyprus v. Turkey* [GC], no. 25781/94, § 233, ECHR 2001-IV). In the present case, as regards structural guarantees, the Court notes that the members of the Verification Commission and the Appeal Commission were appointed and dismissed by the Foundation's management board and, in respect of the latter, in consultation with the Foundation's supervisory board. The Foundation's statutes also specified that the rules governing the operation of the Foundation's adjudicating bodies were to be set out in the regulations drafted by the management board and adopted by the supervisory board. The Foundation's governing bodies were in turn appointed and dismissed by the Government Minister at his or her full discretion. Furthermore, a degree of control and supervision over the Foundation was exercised by the Government Minister. Furthermore, it appears that the members of the Verification Commission and the Appeal Commission did not have tenure. Thus, the Court considers that the independence of the Foundation's adjudicating bodies was open to serious doubt. As regards procedural guarantees, it appears that the adjudicating commissions had no clear and publicly-available rules of procedure (see *H v. Belgium*, 30 November 1987, § 53, Series A no. 127-B) and did not hold public hearings. For these reasons, they cannot be regarded as tribunals within the meaning of Article 6 § 1.

38. Therefore, in order for the obtaining situation to be in compliance with Article 6 § 1, the decisions of the Foundation's adjudicating bodies should have been subject to review by a judicial body having full jurisdiction. However, the Court notes that until June 2007 the domestic courts' prevailing position, as confirmed in the Supreme Court's Resolution of 27 June 2007, was that judicial review by either administrative or civil courts in respect of the Foundation's decisions was excluded (see *Kadłuczka v. Poland*, cited above, §§ 41-44). At this juncture, the Court observes that the Government put forward no arguments to the effect that the Supreme Court's Resolution could have been relied on by the applicant to assert his claims in civil proceedings, in particular having regard to the fact that the Foundation determined his claims long prior to the adoption of the said Resolution. Accordingly, the Court considers that it has not been established that the applicant was required to institute civil proceedings in order to review the Foundation's decisions. In addition, such a possibility arose only after he had lodged his application with the Court.

39. The Court observes that the major change in respect of the availability of judicial review in civil proceedings came with the Supreme

Court's Resolution of 27 June 2007. The Supreme Court revisited the existing practice and held that claims against the Polish Foundation in respect of Nazi persecution were civil claims in the formal sense. Accordingly, the civil courts had jurisdiction to examine such claims. The Court very much welcomes such a positive development in the Supreme Court's case-law which, at least in part, was prompted by its judgment in the *Woś* case. However, as noted above it has not been demonstrated that the applicant was obliged to pursue her claims before civil courts.

40. Having regard to the above considerations, the Court considers that the exclusion of judicial review in respect of the decisions given by the Foundation in the applicant's case impaired the very essence of the right of access to a court within the meaning of Article 6 § 1 of the Convention.

41. It follows that there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed an unspecified amount as just satisfaction for her husband's suffering related to his deportation and forced labour in the occupied territories.

44. The Government did not comment.

45. The Court considers that the applicant sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the sum of EUR 5,000 to the applicant under this head.

B. Costs and expenses

46. The applicant also claimed 347,01 Polish zlotys (approximately 86 euros) for postage and photocopying.

47. The Government did not comment.

48. The Court, regard being had to the documents produced by the applicant and the applicable criteria, awards the sum claimed in full.

C. Default interest

49. 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 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 applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Polish zloty at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 86 (eighty six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 18 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President