

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

FOURTH SECTION

CASE OF PRZEMYK v. POLAND

(Application no. 22426/11)

JUDGMENT

STRASBOURG

17 September 2013

FINAL

17/12/2013

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Przemyk v. Poland,

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

Ineta Ziemele, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges*
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 27 August 2013,

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

PROCEDURE

1. The case originated in an application (no. 22426/11) 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 Mr Leopold Przemyk on 30 March 2011.

2. The Polish Government ("the Government") were represented by their Agents, initially by Mr J. Wołąsiewicz and subsequently Ms J. Chrzanowska. The applicant was represented by Mr A. Zalewski and Ms J. Metelska, lawyers practising in Warsaw.

3. The applicant alleged that the State authorities had not properly discharged their procedural obligations under Article 2 of the Convention because they had failed to effectively and diligently determine the criminal liability arising in connection with the circumstances in which his son had been killed.

4. On 8 November 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and lives in Warsaw.

6. The case concerns criminal proceedings against former police officers (*Milicja Obywatelska*) who faced charges in connection with the

assassination, in May 1983, of Grzegorz Przemyk. The victim's mother, Barbara Sadowska, was at that time a well-known opposition activist. The applicant is the victim's father.

7. Criminal proceedings were instituted in 1983 against the police officers, charging them with beating the victim to death. In 1984 I.K. and other individuals were acquitted.

8. On 29 June 1990 the Warsaw Regional Court re-opened the trial and quashed the acquittal, finding that the original proceedings had been seriously defective, essentially because of the authorities' tampering with the evidence, and that the assessment of the evidence by the court had been fundamentally flawed. The court ordered the prosecution to carry out the investigation again.

9. On 29 June 1991 an indictment against I.K. and two other individuals on charges of battery, punishable under Article 153 § 1 of the 1969 Criminal Code, was brought before the Warsaw Regional Court. On 4 November 1991 that court remitted the case back to the prosecuting authorities, finding that there had been serious deficiencies in the investigation.

10. On 25 March 1993 the prosecution lodged an indictment against I.K. and two others, former police officers A.D. and K.O., with the Warsaw Regional Court, charging them with the offence punishable under Article 153 § 1 of the 1969 Criminal Code. The applicant had the status of auxiliary prosecutor in the proceedings (*oskarzyciel posiłkowy*).

The case remained dormant until 22 May 1995, when the first hearing in the case was held.

11. By a judgment of 4 April 1997 the Warsaw Regional Court acquitted I.K. It convicted A.D. as charged and sentenced him to four years' imprisonment. It further reduced the sentence to two years as a result of the Amnesty Act 1990. K.O. was found guilty of destroying evidence in 1990.

All the parties, including the applicant, appealed against that judgment.

12. On 22 May 1998 the Warsaw Court of Appeal quashed the judgment insofar as it concerned I.K. and remitted the case. At the same time, it acquitted K.O. and upheld, in essence, the conviction of A.D.

The applicant lodged a cassation appeal against this judgment with the Supreme Court in so far as it concerned K.O. Lawyers representing A.D. also appealed against the judgment.

13. On 22 September 1999 the Supreme Court dismissed both appeals.

14. The trial against I.K. started anew. The first hearing was scheduled for 18 April 2000. On 19 June 2000 the Warsaw Regional Court acquitted I.K.

The applicant appealed.

15. The acquittal was upheld by the Warsaw Court of Appeal on 17 January 2001. The court held that the offence with which I.K. had been charged had become prescribed on 1 January 2000, when the ten-year

prescription period provided for by Article 9 of the Transitional Provisions of the 1967 Criminal Code (see paragraph 32 below) had elapsed. It was of the view that that period could not be prolonged by the further five years provided for by Article 102 of the Criminal Code (see paragraph 30 below) because the prescription period had started to run in 1983 when the proceedings had been instituted for the first time. The provision of Article 9 of the Transitional Provisions to the Criminal Code (see paragraph 32 below) had no effect on the running of that period.

The applicant and Prosecutor General appealed against that judgment. They submitted that the judgment had been in breach of substantive law in so far as the court had found that criminal liability in respect of the offence had become prescribed. The Prosecutor General argued that the crime had to be characterised as a communist crime which was not subject to prescription at all.

16. On 12 September 2001 the Supreme Court quashed the judgment of 17 January 2001 and remitted the case. The court held that the Court of Appeal had erred in the interpretation of the provisions of the Code concerning the prescription of criminal liability. In particular, it had been wrong in its interpretation of Article 102 of the Criminal Code and in holding that the prescription period had started to run in 1983. Such an interpretation would make it impossible to pursue proceedings in respect of persons who, acting as agents of the State, had committed crimes before 1 January 1990 but had subsequently been acquitted before that date because the authorities had found it politically expedient to find them not guilty. This interpretation would defeat the purpose of the provisions themselves, which were designed to bring to justice perpetrators of such crimes by way of extending the relevant prescription periods.

17. On 29 January 2002 the Warsaw Court of Appeal, having reconsidered the case, quashed the judgment of the Warsaw Regional Court of 19 June 2000 acquitting I.K. It was of the view that the first-instance court had seriously erred in its assessment of the evidence and, as a result, had failed to establish the facts of the case properly. It remitted the case. It noted, in passing, that it shared the view of the Supreme Court as to the prescription period applicable to the offence concerned expressed in its judgment of 12 September 2001.

18. The trial started anew. The first hearing was scheduled for 5 June 2003. Fourteen hearings were held from that date until 19 January 2004. On the latter date the Warsaw Regional Court acquitted I.K. The prosecutor and the applicant appealed.

19. By a judgment of 16 June 2004 the Warsaw Court of Appeal allowed both appeals, quashed the acquittal and remitted the case. It was of the view that the first-instance court had failed to take certain evidence crucial for the proper assessment of the case. In particular, it had failed to organise a confrontation between the accused and some of the witnesses, police

officers present at the scene of the offence, and the principal witness, C.F., the victim's friend who had been arrested together with him in May 1983, in the manner prescribed by the Code of Criminal Procedure. The applicant had been right in submitting that the facts of the case had not been properly established.

The court further observed that the first-instance court had failed to assess the evidence in a logical and comprehensive manner. As a result, it had wrongly had recourse to the principle of *in dubio pro reo*, which was only to be applied where there were insurmountable difficulties in establishing the facts.

20. The trial started anew on 29 November 2004. It lasted four years. Twenty-seven hearings were held. Four hearings were adjourned for various reasons.

21. On 27 May 2008 the Warsaw Regional Court found I.K. guilty as charged and sentenced him to eight years' imprisonment. However, it reduced the sentence to four years' imprisonment on the basis of the Amnesty Act 1989.

22. The judgment was appealed against by the defence.

23. On 14 December 2008 the Warsaw Court of Appeal requested the Supreme Court to answer a legal question (*pytanie prawne*) as to whether the offence of battery, punishable under Article 157 § 1 of the Criminal Code, had become time-barred. It observed, *inter alia*, that Article 105 § 2 of the Criminal Code provided that offences of wilfully causing serious bodily harm committed before 1 January 1990 by persons acting as agents of the communist State were not subject to prescription. However, it was not clear whether the offence of battery with which I.K. had been charged and which had caused serious bodily harm was covered by this provision.

24. By a decision of 23 September 2009 the Supreme Court refused to give a reply to that question, finding that it was not necessary for the determination of the case. It remitted the case to the Court of Appeal.

25. On 14 December 2009 the Court of Appeal quashed the first-instance judgment and discontinued the proceedings, having found that the offence had become time-barred on 1 January 2005. It held that the offence of battery was not covered by the provisions of Article 105 § 1 of the Criminal Code. Only intentional offences expressly listed in that provision by their statutory names were not subject to prescription.

26. On 2 February 2010 this judgment was challenged by way of an appeal on points of law lodged by the Prosecutor General (*Prokurator Generalny*), i.e. by the Minister of Justice at the material time. It was submitted that a flagrant error of interpretation of substantive law had been committed by the appellate court, in that it had accepted that an intentional offence of battery committed by a State agent in connection with and during the exercise of public functions prior to 1 January 1990 could become time-barred.

27. By a judgment of 28 July 2010 the Supreme Court dismissed the cassation appeal. It held that the Court of Appeal's interpretation of the substantive law as to whether the offence of battery could become time-barred was correct. The relevant provision listed offences which were not subject to prescription by their names used in the Criminal Code, not by their results. Hence, even though battery could result in serious bodily harm, the offence of battery was not covered by this provision, while the offence of "causing serious bodily harm" was.

The court further observed that after the proceedings against I.K. had started to be conducted by the bodies of the democratic State after 1989, they had failed to sustain a conviction on the criminal charges during a period of over twenty years. This failure had mainly resulted from various steps taken immediately after the events by the communist authorities in order to make it impossible to establish the facts and the perpetrators of the crime and to thwart attempts to determine their criminal liability. The inability to determine I.K.'s liability in the case had to be regarded, having regard both to the length of the proceedings and to their final outcome, as "a failure of the justice system" ("*porażka wymiaru sprawiedliwości*"). The written grounds for this judgment were served on the applicant's lawyer on 7 October 2010.

II. PARLIAMENT'S RESOLUTIONS CONCERNING THE CASE

28. On 16 May 2013 the upper house of Parliament (*Senat*) adopted a resolution to commemorate the applicant's son as a victim of martial law rule (*uchwała Sejmu Rzeczypospolitej Polskiej w sprawie uczczenia pamięci Grzegorza Przemyka – ofiary stanu wojennego*). It read, *inter alia*:

> "Thirty years ago, on 12 May 1983, officers of the then Militia arrested in Warsaw Old Town a high school graduate, young poet Grzegorz Przemyk. He was subsequently savagely beaten up by the militia officers and by agents of the riot-control police [known at that time as ZOMO] at the nearest police station at Jezuicka Street. On 14 May 1983 he died in a hospital. Subsequently, at the orders of highest State and [communist] party authorities, evidence was fabricated with a view to assigning the responsibility for his death to medics of the emergency services, while evidence pointing to the guilt of the militia officers was suppressed. As a result, the medics were arrested and Grzegorz Przemyk's family and friends suffered various forms of harassment.
>
> The perpetrators of that murder evaded responsibility. Even when the country had become independent, it proved impossible to adjudicate on the case and impose sentences on them.
>
> Parliament condemns the perpetrators and instigators of that political murder."

29. On 22 May 2013 the lower house of Parliament of Poland (*Sejm*) adopted an identical resolution.

III. RELEVANT DOMESTIC LAW

30. Article 44 of the Constitution reads:

> "The prescription periods in respect of offences committed by, or upon the order of, public officials and which have not been prosecuted for political reasons, shall be extended for the period during which such reasons existed."

31. Article 101 § 1 of the Criminal Code of 1997 sets prescription periods for various offences: thirty years for homicide, twenty years for other crimes, ten years for offences punishable by prison sentences not exceeding three years, five years for offences punishable by prison sentences ranging from three months to three years and three years where an offence is punishable by restriction of liberty or a fine.

32. Under Article 102 of the Code, prescription periods shall be extended by five years if a criminal investigation has been instituted against the suspect before the expiry of the prescription period as defined by Article 101 § 1.

33. Article 105 provides that the provisions of Articles 101 and 103 shall not be applicable to the intentional offences of homicide, inflicting serious bodily harm, causing serious damage to health or deprivation of liberty perpetrated by a public official in connection with performing official duties.

34. Article 9 of the Transitional Provisions to the Criminal Code provides that the prescription periods in respect of intentional offences against life, health, liberty or the administration of justice punishable by prison sentences exceeding three years and committed by State agents in the performance of their official functions from 1 January 1944 to 31 December 1989 started to run anew on 1 January 1990.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

35. On 10 October 2012 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's procedural rights under Article 2 of the Convention. In respect of non-pecuniary damage, the Government proposed to award the applicant

57,078 Polish zlotys (PLN). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

36. The applicant did not agree with the terms of the unilateral declaration. He emphasised the serious nature of the Convention complaints concerned in the present case, taken together with the fact that the case related to a crime committed by State agents during the communist regime. In his view, respect for human rights necessitated the determination of the merits of his complaint by way of a judgment. The applicant further argued that the amount proposed by the Government was not commensurate with the pain, frustration and feelings of injustice that he had been suffering for many years as a result of the protracted domestic proceedings. He asked the Court to continue the examination of his application.

37. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government, even if the applicant wishes the examination of the case to be continued. Whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case will depend on the particular circumstances of the case (see, among many other authorities, *Tahsin Acar*, cited above, § 75, and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

38. The Court has identified various factors which should be taken into consideration in this respect. They include the nature of the complaints made, whether the issues raised are similar to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the course of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue. Other relevant factors may include whether in their unilateral declaration the respondent Government have made any admissions in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which the Government intend to provide redress to the applicant (*Rantsev v. Cyprus and Russia*, no. 25965/04, § 195, ECHR 2010 (extracts). Depending on the particular facts of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 of the Convention (see *Tahsin Acar*, cited above, § 77).

39. Furthermore, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar cases, bearing in mind the principles which it has developed for assessing the amount of non-pecuniary compensation to be awarded in respect of ineffective and unreasonably long

proceedings concerning the determination of liability of agents of the State for the death of persons in custody.

40. Finally, the Court reiterates that its judgments serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25; *Guzzardi v. Italy*, 6 November 1980, § 86, Series A no. 39; *and Karner v. Austria*, no. 40016/98, § 26, ECHR 2003-IX). Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (see *Karner*, cited above, § 26, and *Capital Bank AD v. Bulgaria*, no. 49429/99, §§ 78 to 79, ECHR 2005-XII (extracts)).

41. In considering whether it would be appropriate to strike out the present application on the basis of the unilateral declaration, the Court makes the following observations. It emphasises the serious nature of the allegations made in the present case. Excessive length of judicial proceedings and delays in investigating alleged violations of human rights protected under Articles 2 and 3 of the Convention are an object of recurrent complaints brought before the Court in cases against Poland. The Court cannot but note that this appears to disclose a structural problem which calls for adequate general measures to be taken by the authorities. No such measures are mentioned in the unilateral declaration submitted by the respondent Government. Furthermore, the Court is of the view that the sum proposed in the declaration in respect of the non-pecuniary damage suffered by the applicant as a result of the alleged violation of the Convention does not bear a reasonable relation to the amounts awarded by the Court in similar cases against Poland in respect of non-pecuniary damage (see, among many other authorities, *Ciechońska v. Poland*, no. 19776/04, § 87, 14 June 2011; *Wasilewska and Kałucka v. Poland*, nos. 28975/04 and 33406/04, § 70, 23 February 2010; *Mojsiejew v. Poland*, no. 11818/02, § 69, 24 March 2009l *Dzieciak v. Poland*, no. 77766/01, § 122, 9 December 2008).

42. Having studied the terms of the Government's unilateral declaration, the Court considers that in the particular circumstances of the applicant's case, the proposed declaration does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see *Choumakov v Poland (no. 2)*, no. 55777/08, § 40, 1 February 2011, and *Ruprecht v. Poland*, no. 39912/06, § 27, 21 February 2012).

43. This being so, the Court rejects the Government's request to strike this part of the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

44. The applicant complained that no effective investigation had been conducted by the Polish authorities so as to allow for the establishment of liability for his son's death. He relied upon Article 2 of the Convention which, in so far as relevant, reads:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life ..."

45. The Government confined themselves to the submissions made in their unilateral declaration.

A. Admissibility

46. The Court reiterates that the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place, or any situation which ceased to exist, before the date of the entry into force of the Convention with respect to that Party. This is an established principle in the Court's case-law (see, among many other authorities, *Blečić v. Croatia* [GC], no. 59532/00, § 70, ECHR 2006-III) based on the general rule of international law embodied in Article 28 of the Vienna Convention on the Law of Treaties.

47. However, the obligation to carry out an effective investigation into unlawful or suspicious deaths is well-established in the Court's case-law relating to Article 2 of the Convention (for a full statement of the relevant principles by the Grand Chamber, see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 110-113, ECHR 2005-VII). While it is normally death in suspicious circumstances that triggers the procedural obligation under Article 2, this obligation binds the State throughout the period in which the authorities can reasonably be expected to take measures with the aim of elucidating the circumstances of a death and establishing responsibility for it (see *Šilih v. Slovenia* [GC], no. 71463/01, § 157, 9 April 2009, with further references). The Court has consistently examined the question of procedural obligations under Article 2 separately from the question of compliance with the substantive obligation and, on several occasions, a breach of a procedural obligation has been alleged in the absence of any complaint as to the substantive aspect of this Convention provision (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, §§ 41-57, ECHR 2002-I, and *Byrzykowski v. Poland*, no. 11562/05, §§ 86 and 94-118,

27 June 2006). It is clear from the Court's case-law that the procedural obligation to carry out an effective investigation under Article 2 has evolved into a separate and autonomous duty capable of binding the State even when the death took place before the critical date (see *Šilih*, cited above, §§ 159-160).

48. Given the principle of legal certainty, the Court's temporal jurisdiction in this regard is nevertheless not open-ended (ibid, § 161). Where the death occurred before ratification, only procedural acts or omissions occurring after that date can fall within the Court's temporal jurisdiction (ibid, § 162). Furthermore, there must be a genuine connection between the death and the entry into force of the Convention in respect of that State for the procedural obligation to come into effect. In practice, this means that a significant proportion of the procedural steps required by this provision have been, or should have been, carried out after ratification. The Court has also held that circumstances may emerge which cast doubt on the effectiveness of the original investigation and an obligation may arise for further investigations to be pursued (see *Hackett v. the United Kingdom* (dec.), no. 34698/04, 10 May 2005).

49. The Court has examined a number of cases in which the death of an individual occurred before the date of ratification of the Convention by the respondent State but the Court nevertheless had temporal jurisdiction to examine the respondent State's compliance with the procedural obligation flowing from Article 2 of the Convention owing to its "detachable" nature. Thus, in *Šilih*, the death of the applicants' son occurred a little more than a year before the entry into force of the Convention in respect of Slovenia, while, with the exception of the preliminary investigation, all the criminal and civil proceedings were initiated and conducted after that date (see *Šilih*, cited above, § 165). Similarly, the fact that all the major events of an investigation occurred after the ratification date was sufficient to establish the Court's temporal jurisdiction, even though the applicant's son had died four years and three months before the entry into force of the Convention in respect of Ukraine (see *Lyubov Efimenko v. Ukraine*, no. 75726/01, § 65, 25 November 2010). In the case of *Mladenović v. Serbia* (no. 1099/08, §§ 36-40, 22 May 2012), thirteen years elapsed between the death of the applicant's son and the ratification of the Convention by Serbia, while eight years after the date of that ratification the criminal case was still pending before the domestic courts. Similarly, albeit in a different factual context, namely that of violent events during the Romanian revolution in December 1989, the Court found in a series of cases that it had jurisdiction on account of the fact that on the date of the ratification of the Convention by Romania – 20 June 1994 – the proceedings were still pending before the prosecutor's office (see *Association 21 December 1989 and Others v. Romania*, nos. 33810/07 and 18817/08, § 117, 24 May 2011; *Şandru and Others v. Romania*, no. 22465/03, § 58, 8 December 2009; *Agache and Others*

v. Romania, no. 2712/02, § 71, 20 October 2009; and *Lăpuşan and Others v. Romania*, nos. 29007/06, etc., § 59, 8 March 2011).

50. Whilst the cases against Romania referred to above differ from the present one and from the other cases referred to above as the their factual context, their common feature was the fact that a significant proportion of the steps required for ensuring compliance with the procedural obligation under Article 2 of the Convention was carried out after the ratification date.

51. Turning to the facts of the instant case, the Court first observes that the applicant's son died as a result of injuries suffered at the hands of the police in May 1983. It should not be overlooked that the Polish legislator clearly intended to make it possible to determine criminal liability for serious crimes committed under the totalitarian regime and that legal provisions designed specifically for the purpose of prolonging prescription periods in respect of such crimes were adopted after the regime collapsed in 1989 (see paragraph 32 above).

52. The Court further notes that the criminal proceedings concerning the applicant's son's death were instituted in June 1983. In 1984 the courts found that the police officers, including I. K., had no case to answer and acquitted them. However, the proceedings were reopened in 1990. The Warsaw Regional Court quashed the judgment given in 1984, finding that it had been fundamentally flawed because the authorities had seriously tampered with the evidence and reopened the proceedings. Subsequently, the prosecuting authorities investigated the case again and ultimately brought an indictment against I.K. and other individuals before the Warsaw Regional Court on 25 March 1993.

53. The Court observes that the period which falls under its competence *ratione temporis* began on 1 May 1993, when the recognition by Poland of the right of individual petition took effect. The judicial proceedings in the present case were, for the most part, conducted after that date. A number of judgments were given by the courts and subsequently quashed in appellate proceedings. Ultimately, the Supreme Court gave judgment on 28 July 2010, twenty years after the proceedings had been reopened in 1990. The proceedings therefore spanned a period of twenty years, out of which over seventeen years fell after the Convention had become binding with respect to Poland.

54. The Court notes that the applicant's procedural complaint related precisely to the alleged ineffectiveness of the judicial proceedings conducted after the entry into force of the Convention with a view to establishing the circumstances in which his son had died and determining the criminal liability arising in this connection.

55. Having regard to the above, the Court finds that the alleged breach of Article 2 in its procedural aspect falls within the Court's temporal jurisdiction and that it is therefore competent to examine this part of the application. It will confine itself to determining whether the events that

occurred after the entry into force of the Convention in respect of Poland disclosed a breach of that provision.

56. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 applicant's submissions

57. The applicant complained that the State authorities had not discharged their positive obligations under Article 2, as they had failed to effectively and diligently determine the criminal liability arising in connection with the circumstances in which his son had been killed. As a result of the inordinate length of the judicial proceedings and the authorities' inability to conduct the proceedings properly, the criminal liability of I.K. had become time-barred and the perpetrators of the crime had gone essentially unpunished.

58. The applicant further submitted that the domestic proceedings had not concerned an ordinary crime: they had related to a crime committed by State agents during the communist regime for reasons of political intimidation and repression. That crime had obviously constituted an act contrary to the values underpinning the Convention. The State was obliged to promptly investigate such unlawful killings because of the obvious public interest in obtaining the conviction of the perpetrators. A failure to investigate properly was tantamount to a denial of justice and was contrary to the public order. The Polish Institute of National Remembrance (*Instytut Pamięci Narodowej*) had for years been investigating public officials of the communist regime on suspicion of acting to the detriment of the original investigation conducted in 1983 and 1994. However, the applicant had not been a party to these proceedings and had not been invited to join them.

59. The applicant argued that his rights in the present case had also been affected by the courts' inconsistent and contradictory decisions as to whether criminal liability for the crime committed against his son had been subject to prescription or not.

60. The applicant stressed that there had been a number of periods of total inactivity during the judicial proceedings in the case. During the examination of the case the judgments on the merits had been quashed on five occasions. As a result of the slowness with which the case had been examined, the criminal liability of I.K. had ultimately become prescribed and his crime had gone unpunished.

61. The applicant averred that there had been serious shortcomings in the original investigation which had subsequently resulted in the inadequacy

and inefficiency of the judicial proceedings. On several occasions the appellate courts had allowed appeals having regard to the errors committed by lower courts as to the admissibility and taking of the evidence. As a result, the courts had ultimately failed to establish the facts of the case properly.

62. The conduct of the judicial proceedings had testified to the domestic authorities' reluctance to uncover, in an objective and conclusive manner, the whole truth about the circumstances of the applicant's son's death. On the whole, the domestic authorities had failed to effectively and diligently determine the criminal liability arising in connection with the circumstances of the applicant's son's killing by agents of the totalitarian regime, as required by Article 2 of the Convention.

2. General principles developed in the Court's case-law

63. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, § 137, ECHR 2002-IV; *Mojsiejew v. Poland*, no. 11818/02, § 53, 24 March 2009; *Wasilewska and Kałucka v. Poland*, nos. 28975/04 and 33406/04, § 59, 23 February 2010; and *Dzieciak v. Poland*, no. 77766/01, § 104, 9 December 2008).

64. For an investigation into alleged unlawful killing by State agents to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice (see *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports of Judgments and Decisions* 1998-IV; *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III; and *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports* 1998-IV).

65. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible (see *Oğur*, cited above, § 88). The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including the gathering of eye-witness accounts and forensic evidence. The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant factors and must apply a standard comparable to the "no more than absolutely necessary"

standard required by Article 2 § 2 of the Convention. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the identity of the person(s) responsible is liable to fall foul of the required measure of effectiveness (see *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 96-97, 4 May 2001, and *Anguelova*, cited above, §§ 139 and 144).

66. The Court has held on many occasions that the procedural requirements of Articles 2 (and 3) of the Convention go beyond the preliminary investigation stage when, as in this case, the investigation leads to legal action being taken before the national courts: the proceedings as a whole, including the trial stage, must meet the requirements of the prohibition enshrined in Article 2. This means that the domestic judicial authorities must on no account be prepared to let any physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see, *mutatis mutandis*, *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006 XII (extracts)); *Muta v. Ukraine,* no. 37246/06, § 62, 31 July 2012; *Mojsiejew v. Poland*, cited above, § 53, 24 March 2009; *Wiktorko v. Poland*, no. 14612/02, § 58, 31 March 2009).

3. Application of the principles to the circumstances of the present case

67. The Court first notes that on 29 June 1991 an indictment against I.K. and two other former police officers was brought before the Warsaw Regional Court. On 4 November 1991 that court remitted the case back to the prosecuting authorities, finding that there had been serious defects in the investigation. As the Court's competence *ratione temporis* does not extend to the period prior to 1 May 1993, it can only have regard to these facts as part of the background of the present case.

68. The Court observes that on five subsequent occasions the judgments on the merits of the case were set aside and the case was remitted for re-examination (see paragraphs 12, 16, 17, 19 and 25 above). The appellate courts repeatedly had regard to the failure of the lower courts to establish all the facts of the case and sufficient grounds on which to base a decision or to errors of substantive law. The Court notes that in its judgments of 29 January 2002 (see paragraph 17 above) and 16 June 2004 (see paragraph 19 above) the Warsaw Court of Appeal criticised the lower court for its failure to take certain evidence crucial for the proper determination of the facts of the case.

69. The Court considers that, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the operation of the judicial system (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November

2003). This finding of the Court, initially made in the context of cases concerning allegations of excessive length of judicial proceedings, also holds true for cases relating to obligations of the States to conduct a prompt investigation in the context of complaints made under Article 2 of the Convention (see *Byrzykowski v. Poland*, no. 11562/05, § 111, 27 June 2006).

70. The Court further observes that after 1 May 1993 the proceedings lasted for seventeen years. It notes that there were significant periods of inactivity on the part of the courts: the first one between 29 March 1993 and 22 May 1995 and the subsequent one between 22 May 1998, when the judgment of the Warsaw Regional Court of 4 April 1997 was quashed and the case remitted, and 22 September 1999 when the Supreme Court dismissed the appeals against that judgment. Subsequently, there was another period of inactivity between the latter date and 18 April 2000, when the first hearing was held before the Warsaw Regional Court. Likewise, there was no progress in the proceedings between 29 January 2002, when the Warsaw Court of Appeal again remitted the case, and 5 June 2003, when the first hearing was held before the Warsaw Regional Court.

71. The Court observes that the criminal proceedings were ultimately discontinued on 28 July 2010, as the domestic court found that the criminal liability of the accused had become prescribed. The Court notes that the issue of prescription was also examined in the judgments given on 17 January 2001, 12 September 2001 and 14 December 2010. Moreover, in his appeal against the judgment of 17 January 2001 the Prosecutor General argued that the court had wrongly applied provisions concerning criminal liability arising in connection with crimes committed by agents of the communist regime prior to 1 January 1990. Hence, serious differences arose in the interpretation of the applicable legal provisions and their application to the circumstances of the present case. It is true that the Court's power to review compliance with domestic law is limited (see, *mutatis mutandis*, *Fredin v. Sweden (no. 1)*, 18 February 1991, § 50, Series A no. 192, and *Stankiewicz v. Poland*, no. 46917/99, § 65, ECHR 2006-VII). The Court has already noted the intention of the domestic legislator to come to terms with the country's totalitarian past (see paragraph 52 above). However, as regards I.K.'s case, as a result of the excessive length of the judicial proceedings, partially caused by the diverging opinions of various courts on the issue of prescription, the offence became prescribed.

72. In addition, in the present case the proceedings concerned were conducted against three police officers. K.O. was acquitted of charges of destroying evidence in 1990. A.D. was convicted of battery and sentenced to four years, but this sentence was reduced, in accordance with the Amnesty Act 1989, to two years' imprisonment.

73. Last but not least, the Court cannot overlook, in the assessment of the circumstances of the case, the fact that the Supreme Court in its final

judgment given in the case observed that the way in which the present case had been dealt with by the domestic courts amounted to a failure of the criminal justice system. The Court fully shares this opinion.

74. Consequently, the Court finds that, far from being rigorous, the criminal justice system as applied in this case was not sufficiently dissuasive to either contributing to coming to terms with the legacy of the totalitarian past or to effectively prevent illegal acts of the type complained of by the applicant. In the particular circumstances of the case, the Court thus arrives at the conclusion that the conduct of the criminal proceedings did not afford the applicant appropriate redress for the infringement of the principle enshrined in Article 2 of the Convention.

75. There has accordingly been a violation of this provision in its procedural limb.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 50,000 euros (EUR) in respect of the non-pecuniary damage he had suffered as a result of the frustration, distress and anguish caused by the unduly protracted and ineffective proceedings and the authorities' unwillingness to mete out appropriate punishment to the persons guilty of his son's killing.

78. The Government did not comment.

79. The Court, having regard to the circumstances of the case, awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

80. The applicant, who was represented by lawyers, did not claim reimbursement of any costs and expenses.

C. Default interest

81. The Court considers it appropriate that the default interest rate 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

1. *Rejects,* by a majority, the Government's request to strike the application out of its list of cases under Article 37 of the Convention;

2. *Declares,* unanimously, the application admissible;

3. *Holds,* unanimously, that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds,* unanimously,
   (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 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; to be converted into Polish zlotys at the rate applicable at the date of 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;

5. *Dismisses,* unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 September 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President