CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION[1]

CASE OF BRUDNICKA AND OTHERS v. POLAND

(Application no. 54723/00)

JUDGMENT

STRASBOURG

3 March 2005

FINAL

03/06/2005

1. In its composition prior to 1 November 2004.

In the case of Brudnicka and Others v. Poland,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr K. TRAJA,
Mr L. GARLICKI, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 54723/00) 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 sixteen Polish nationals, Irena Brudnicka, Maria Janicka, Anna Korzeniowska, Gabriela Łastowska, Mieczysław Okupiński, Bernadeta Olesz, Krystyna Ostrzyniewska, Stefania Subicka, Urszula Lejbschand, Celina Wawrzak, Anna Szpilman, Maria Pacek, Bożena Kolberg, Leonarda Cikota, Alicja Szczęśniak and Maria Sobocińska ("the applicants"), on 11 January 2000.

2. The applicants were represented by Mrs R. Orlikowska-Wrońska, a lawyer practising in Sopot. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, followed by Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, a violation of Article 6 § 1 of the Convention.

4. A hearing on the admissibility and merits (Rule 54 § 3 of the Rules of Court) took place in public in the Human Rights Building, Strasbourg, on 16 January 2003 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr K. DRZEWICKI, *Agent*,
Mrs R. KOWALSKA,
Mr E. JABŁOŃSKI,
Mr J. MŁYNARCZYK, *Advisers*;

(b) *for the applicants*

Mrs	R. ORLIKOWSKA-WROŃSKA,	*Counsel*,
Mr	Z. BRODECKI,	*Adviser*,
Mr	P. RYBIŃSKI,	*Assistant*.

5. By a decision of 16 January 2003, the Chamber declared the application admissible with regard to Maria Janicka, inadmissible with regard to Maria Pacek, Bożena Kolberg, Leonarda Cikota, Alicja Szczęśniak and Maria Sobocińska and admissible, without prejudging the merits, with regard to Irena Brudnicka, Anna Korzeniowska, Gabriela Łastowska, Mieczysław Okupiński, Bernadeta Olesz, Krystyna Ostrzyniewska, Stefania Subicka, Urszula Lejbschand, Celina Wawrzak and Anna Szpilman, and joined the question of their status as victims to the merits.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The latter also filed additional observations on 6 August 2003 on the admissibility of the application.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case remained with the Chamber constituted within the former Third Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are relatives of sailors who lost their lives in a shipwreck.

9. On 14 January 1993 the vessel *Jan Heweliusz* sank in the Baltic Sea. It belonged to the company Polskie Linie Oceaniczne, whose registered office is in Gdynia, and was operated by the company Euroafrica, with its registered office in Szczecin. Of the 35 passengers and 29 crew members on board, 55 died in the shipwreck and 9 survived.

10. Several commissions of inquiry were set up to establish the cause of the shipwreck.

The commission set up by the Prime Minister suspended its inquiry in March 1993 without producing a report.

The commission set up by the Ministry of Transport and Maritime Affairs submitted a report in April 1993 in which it found that the shipwreck had been due to *force majeure*.

The special commission set up within the National Labour Inspectorate concluded in May 1993 that the owner of the vessel and the crew were jointly responsible.

11. The Maritime Chamber attached to the Szczecin Regional Court (*Izba Morska przy Sądzie Wojewódzkim*) instituted proceedings seeking to establish the cause of the shipwreck. The relatives of the crew members who had died took part in the proceedings.

12. On 11 January 1994 the Maritime Chamber delivered its decision, attributing liability to the ship's captain, its technical team, the Polish Shipping Registry, which had inspected the vessel before the disaster, and the Polish rescue services.

13. On 18 November 1994 the Maritime Appeals Chamber of the Gdańsk Regional Court (*Odwoławcza Izba Morska przy Sądzie Wojewódzkim*), sitting in Gdynia, set aside the decision of 11 January 1994 and referred the case to the Maritime Chamber for a fresh examination.

14. The Gdańsk Maritime Chamber, sitting in Gdynia, examined the case between 20 March 1995 and 9 February 1996. On 23 February 1996 it gave a decision in which it held that the crew had been partly liable, that the vessel's operator had been at fault for failing to undertake the necessary repair work, and that the natural elements had also played a part.

15. The operator, the ship's owner, the representative of the Ministry of Transport and Maritime Affairs and the other parties to the proceedings appealed. In a decision delivered on 26 January 1999 and served on the parties on 19 November 1999, the Gdańsk Maritime Appeals Chamber partly upheld the finding of liability with regard to the operator. It also upheld the finding that certain acts of negligence on the part of the crew, in particular the captain and the chief officer, had contributed to the disaster, as had the fact that the rescue operation had not been properly coordinated.

The relevant passages of the decision read as follows:

page 2

> "The most likely cause of the capsize of the car and train ferry the *Jan Heweliusz* and of the death by drowning and hypothermia of 27 passengers and 18 crew members and the disappearance of 8 passengers and 2 crew members was:
>
> ...
>
> the fact that the ferry turned into the wind while unevenly ballasted (towards the port side), resulting in the shifting of the ballast towards the port side; violent gusts of wind on that side; the shifting of the vehicles' loads and the vehicles themselves to the port side; the discharge of bilge water to the outside on the port side of the ferry."

page 4

> "The *Jan Heweliusz* left the port of Świnoujście at 11.35 p.m. on 13 January 1993, bound for the port of Ystad, in an unseaworthy condition, as the safety requirements were not met in the following respects:

1. measures to stabilise the vessel in the event of an accident;

2. measures to ensure that the rear door was watertight;

3. the securing of the vehicles to the deck in accordance with maritime best practice."

page 6

"Irregularities have been found in the conduct of:

1. the operator of the *Jan Heweiusz*, Euroafrica Shipping Lines, a limited liability company based in Szczecin, which allowed the ferry to be operated while in an unseaworthy condition owing to the damage sustained to the door on 10 January 1993 in Ystad, following which its class had been suspended and the safety certificate had ceased to be valid, in that it

(a) omitted to declare the ferry to the Szczecin Maritime Bureau for an interim inspection and to the Polish Shipping Registry for immediate inspection;

(b) failed to take the agreed action to repair the rear door in the proper manner;

2. the captain of the above-mentioned ferry, a Master Mariner ... who, on 13 January 1993, left the port of Świnoujście, bound for the port of Ystad, while the ferry was in an unseaworthy condition, in that he

(a) omitted to declare the ferry to the Consulate in Malmö and later to the Szczecin Maritime Bureau for an interim inspection following the damage sustained to the rear door on 10 January 1993 in Ystad, the suspension of class after the accident and the cessation of validity of the ship's safety certificate;

(b) allowed the vessel to depart without the vehicles being secured to the deck, in spite of the gale warning that had been issued;

3. the chief officer, a Master Mariner ... who, on 13 January 1993, before the ferry left the port of Świnoujście bound for Ystad, and despite the issuing of a gale warning, did not supervise the securing of the vehicles to the deck before the ferry left port."

page 8

"The lack of effectiveness of the rescue operation was the result of

...

3. the clothing of the passengers and some crew members, which did not protect them against hypothermia;

4. the inadequate training of the crew in the use of the life-saving equipment."

page 109

" ... In the Chamber's view, the evidence cited demonstrates that

...

(ii) the cargo was not secured before the vessel left dock despite the gale warning issued by the meteorological office...”

pages 129-30

“... The causes of the vessel's having turned into the wind can only be established with a high degree of probability; the possibility that the persons steering the ferry failed to observe the rules cannot be discounted ...”

page 162

“... The rescue operation revealed that, in a situation of the utmost danger, some members of the crew did not know how to use the lifejackets ...”

II. RELEVANT DOMESTIC LAW

16. The maritime chambers were introduced into the Polish legal system by an Act of 18 March 1925 which provided for the establishment of chambers at two levels of jurisdiction, attached to the courts and with jurisdiction “in cases relating to maritime incidents and accidents at sea”. The maritime chambers were considered as maritime administrative bodies.

17. The Maritime Chambers Act of 1 December 1961 incorporated most of the rules laid down in the 1925 Act and transferred powers to them which had previously been vested in the courts. Its relevant provisions read:

Section 7

“The maritime chambers shall be composed of a president, one or more vice-presidents and lay members.”

Section 8

“(1) The president and vice-president shall be appointed and removed from office by the Minister of Justice, in agreement with the Minister of Transport and Maritime Affairs, from among the judges of the ordinary courts who have knowledge of the maritime issues dealt with in the cases before the maritime chambers.

(2) The other members [*pracownicy*] of the maritime chambers shall be recruited and dismissed by the president of the chamber concerned.”

Section 9

“(1) The presidents and vice-presidents of the maritime chambers shall retain their judicial posts and, unless the law stipulates otherwise, the rights and duties set out in the legislation applicable to judges.

(2) The status of the other members of the maritime chambers shall be governed by the legislation governing officials of State administrative bodies.”

Section 10(2)

"The Minister of Justice, in agreement with the Minister of Transport and Maritime Affairs, shall determine, by decree, the extent of the participation of the presidents and vice-presidents of the maritime chambers in the activities of the courts, taking account of the extent of their involvement in the maritime chambers and the need to have working professional judges involved in the administration of justice."

Section 20

"Subject to contrary provisions of the present Act, the provisions of the Code of Criminal Procedure shall apply to proceedings in cases before the maritime chambers concerning accidents at sea."

Section 27(1)

"Once a case has been brought before the maritime chamber, it shall be investigated by the president or the vice-president either directly or through the intermediary of the harbourmaster's office."

Section 28(1)

"The investigation shall be aimed at establishing the sequence of events and the causes and circumstances of the accident by gathering the necessary information and preserving the evidence."

Section 37(2)

"After the decision has been signed by the members of the bench who decided the case, the president shall deliver the decision, citing the main grounds. The grounds of the decision shall then be set down in writing ..."

Section 39(1)

"The decision and the reasons shall be communicated to the Minister of Transport and Maritime Affairs, his or her deputy, the maritime department concerned and the individuals concerned. In the cases referred to in section 15(4), they shall also be communicated to the Labour Inspectorate."

18. The regulations adopted by the Minister of Transport and Maritime Affairs on 12 November 1996 incorporated the rules set down in the 1961 Act. However, no express provisions were laid down concerning appeals to the maritime appeals chambers against decisions given by the maritime chambers at first instance. The chief task of the maritime chambers remains the determination of cases concerning maritime incidents and accidents at sea. Under the terms of the 1996 regulations, in cases relating to accidents at sea not governed by the 1961 Act, the rules of ordinary law and the Code of Criminal Procedure apply.

19. On 12 July 2001 a preliminary question was referred to the Supreme Court in a different case from the one before the Court, concerning the possibility of an appeal on points of law against a decision given by a maritime appeals chamber. The Supreme Court replied that no such possibility existed (IIICZP 22/01 OSNC 2001, no. 158). It observed that there had been a long-running debate among Polish commentators on the legal status of the maritime chambers, which were sometimes regarded as administrative bodies and sometimes as judicial bodies.

20. On 18 December 2002 the Government communicated to the Court a bill on maritime chambers, indicating that it would be put before the Council of Ministers for approval in early 2003, before being tabled in the Sejm.

The Act of 5 March 2004 was published in the Official Gazette on 14 April 2004. It provides a detailed definition of maritime disasters, listing in detail the conduct and facts falling within the remit of the maritime chambers. The only possibility of appeal is with the Gdańsk Court of Appeal against decisions of the maritime appeals chamber withdrawing navigation rights. Finally, it includes a new chapter on the procedure for enforcing decisions of the maritime chambers concerning the withdrawal of navigation rights.

However, the new legislation has not made provision for an appeal on points of law against decisions of the maritime appeals chambers and has not amended the procedure for appointing and removing from office the presidents and vice-presidents of the maritime chambers.

THE LAW

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

21. Relying on Article 6 § 1 of the Convention, the applicants complained that the maritime chambers which had heard their case had not been independent and impartial tribunals within the meaning of the Convention.

Article 6 § 1, in its relevant parts, provides:

> "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. The Government's preliminary objections

1. Failure to exhaust domestic remedies

22. On 6 August 2003 the Government submitted additional observations challenging the decision of 16 January 2003 on the admissibility of the application. They emphasised in particular the effectiveness of a constitutional complaint, a remedy which, they argued, had to be exercised in order to remedy the applicants' situation.

23. The Court notes first that it dismissed this objection on 16 January 2003. It also points out that, in the meantime, it has reaffirmed the principles of its case-law concerning Poland with regard to the effectiveness of constitutional complaints (see, conversely, *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003; see also *Międzyzakładowa Spółdzielnia Mieszkaniowa Warszawscy Budowlani v. Poland* (dec.), no. 13990/04, 26 October 2004). It sees no reason, therefore, to review its decision.

2. Lack of "victim" status of the applicants Irena Brudnicka, Anna Korzeniowska, Gabriela Łastowska, Mieczysław Okupiński, Bernadeta Olesz, Krystyna Ostrzyniewska, Stefania Subicka, Urszula Lejbschand, Celina Wawrzak and Anna Szpilman

24. The Government noted at the outset that the applicants had been unable to quote any passages from the decisions implicating members of the crew by name. The Government considered that nobody had been found guilty of the shipwreck and that irregularities had simply been noted in the conduct of, among others, the captain and the chief officer. In their view, that did not give rise to a presumption that other members of the crew had contributed to it directly or indirectly. They took the view that, as the crew members had individual liability, irregularities in the professional conduct of one or more members could not be attributed to the others.

25. The applicants pointed out that the only members of the crew mentioned by name had been the captain (whose widow had not made an application to the Court) and the chief officer. However, the maritime chambers had not held either of them liable for any act or omission, but had called them to account in their supervisory and inspection capacity. Hence, the decision of the Gdańsk Maritime Chamber, without naming each crew member, had held the crew collectively liable through those who had been in charge. That had been borne out by the fact that the decision of the maritime appeals chamber had listed in detail the charges against the crew.

26. The Court reiterates that, in order to rely on Article 34 of the Convention, an applicant must meet two conditions: he or she must fall into one of the categories of petitioners mentioned in Article 34 and must be able to make out a case that he or she is the victim of a violation of the

Convention. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act. In addition, in order for an applicant to be able to claim to be a victim of a violation of the Convention, there must be a sufficiently direct link between the applicant and the harm which they consider they have sustained on account of the alleged violation (see, among other authorities, *Tauira and Others v. France*, no. 28204/95, Commission decision of 4 December 1995, Decisions and Reports (DR) 83-B, p. 112; *Association des amis de Saint-Raphaël et de Fréjus and Others v. France*, no. 38192/97, Commission decision of 1 July 1998, DR 94-B, p. 124; *Comité des médecins à diplômes étrangers v. France* and *Ettahiri and Others v. France* (dec.), nos. 39527/98 and 39531/98, 30 March 1999; and *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, ECHR 2004-III).

27. In its admissibility decision, the Court joined to the merits the question of whether the applicants Irena Brudnicka, Anna Korzeniowska, Gabriela Łastowska, Mieczysław Okupiński, Bernadeta Olesz, Krystyna Ostrzyniewska, Stefania Subicka, Urszula Lejbschand, Celina Wawrzak and Anna Szpilman could claim the status of victims.

28. The Court considers that the proceedings did not concern only the liability of the crew members and were not aimed solely at determining whether each member was individually liable. The crew came under criticism for, among other things, not having secured the load correctly and having been inadequately trained in rescue operations. Some of its members were also criticised for failing to comply with the rules when steering the vessel and not knowing how to use the lifejackets.

29. The Court is of the opinion that the status of victim cannot be made conditional solely on a finding that an applicant's reputation has been harmed. Everyone has the right to defend his or her reputation if there is a possibility that it may be compromised. The Court also considers that the applicability of the Convention in this case should not depend on establishing whether each individual crew member was at fault.

30. In the instant case, the Court accepts that the final decision of the maritime appeals chamber upheld the charges against the crew as a whole, although it mentioned only certain members by name.

31. Accordingly, having regard to the particular circumstances of the case, the Court considers that the applicants Irena Brudnicka, Anna Korzeniowska, Gabriela Łastowska, Mieczysław Okupiński, Bernadeta Olesz, Krystyna Ostrzyniewska, Stefania Subicka, Urszula Lejbschand, Celina Wawrzak and Anna Szpilman, the heirs of sailors who died in the shipwreck, can claim to be victims within the meaning of Article 34 of the Convention of the violation which they alleged.

B. The merits

1. Applicability of Article 6 § 1

32. The Government contested the applicability of Article 6 to the impugned proceedings, taking the view that they did not relate to a civil right or obligation or to the determination of a criminal charge. The applicants disputed that argument.

33. The Court reiterates that the "civil" nature of the right to enjoy a good reputation is not in dispute and has been established in its case-law (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 13, § 27).

34. In the instant case, given that it dismissed the Government's preliminary objection, finding that the proceedings before the maritime chambers related to the right of the victims of the disaster to enjoy a good reputation, the Court considers that Article 6 § 1 applies to the proceedings before the maritime chambers.

2. Compliance with Article 6 § 1

35. The applicants contended that the maritime chambers which had heard the case had not been independent and impartial tribunals within the meaning of the Convention. They argued that the lack of fairness was a direct result of the provisions of the 1961 Maritime Chambers Act.

36. The Government argued that the application was manifestly ill-founded. They submitted that, during the proceedings before the maritime chambers, the applicants had enjoyed all the guarantees of a fair trial. That was borne out by the fact that the proceedings had provided the guarantees laid down in the Code of Criminal Procedure.

37. The Court notes that the decisions given by the maritime chambers are final, and that they are not amenable under Polish law to any form of judicial review. Its task is therefore to determine whether, in the instant case, the independence and impartiality of the maritime chambers were open to question.

38. In order to establish whether a tribunal can be considered to be "independent" within the meaning of Article 6 § 1, regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see, among many other authorities, *Findlay v. the United Kingdom*, judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 281, § 73).

39. There are two aspects to the requirement of "impartiality". Firstly, the tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. Secondly, the tribunal

must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect (see *Pullar v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, p. 792, § 30).

40. As the concepts of independence and objective impartiality are closely linked, the Court will consider them together as they relate to the instant case.

41. In maintaining confidence in the independence and impartiality of a tribunal, appearances may be important. Given that the members of the maritime chambers (the president and vice-president) are appointed and removed from office by the Minister of Justice in agreement with the Minister of Transport and Maritime Affairs, they cannot be regarded as irremovable, and they are in a subordinate position *vis-à-vis* the Ministers. Accordingly, the maritime chambers, as they exist in Polish law, cannot be regarded as impartial tribunals capable of ensuring compliance with the requirement of "fairness" laid down by Article 6 of the Convention. In the Court's view, the applicants were entitled to entertain objective doubts as to their independence and impartiality (see, *mutatis mutandis*, *Sramek v. Austria*, judgment of 22 October 1984, Series A no. 84, p. 20, § 42). There has therefore been a violation of Article 6 § 1 of the Convention.

42. The Court notes that Poland has recently amended its legislation on the maritime chambers (see paragraph 20 above). However, it also notes that the new legislation still makes no provision for an appeal on points of law against the decisions of the maritime appeals chamber; nor has it altered the manner in which the presidents and vice-presidents of the maritime chambers are appointed and removed from office. Accordingly, the legislation does not answer the applicants' complaint concerning the lack of independence and impartiality of these tribunals.

43. The conclusion reached by the Court in paragraph 41 above makes it unnecessary for it to examine the other complaints under Article 6 § 1, set forth in its admissibility decision of 16 January 2003.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicants claimed 4,600 euros (EUR) each in respect of non-pecuniary damage.

46. The Government requested the Court to hold, should it find that there has been a violation, that such a finding would constitute sufficient just satisfaction.

47. Making its assessment on an equitable basis, the Court considers that the applicants should be awarded EUR 4,600 each in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicants, who received legal aid from the Council of Europe, did not submit any claim for the reimbursement of costs and expenses.

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. *Dismisses* the Government's preliminary objection of failure to exhaust domestic remedies;

2. *Dismisses* the Government's preliminary objection regarding the lack of victim status of the applicants Irena Brudnicka, Anna Korzeniowska, Gabriela Łastowska, Mieczysław Okupiński, Bernadeta Olesz, Krystyna Ostrzyniewska, Stefania Subicka, Urszula Lejbschand, Celina Wawrzak and Anna Szpilman;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*

(a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,600 (four thousand six hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in French, and notified in writing on 3 March 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President