



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

FOURTH SECTION

CASE OF CHOJAK v. POLAND

(Application no. 32220/96)

JUDGMENT
(Striking out)

STRASBOURG

12 October 2000

In the case of Chojak v. Poland,

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

Mr A. PASTOR RIDRUEJO, *President*,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr V. BUTKEVYCH,

Mr J. HEDIGAN,

Mrs S. BOTOCHAROVA,

Mrs N. VAJIĆ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 19 September 2000,

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

PROCEDURE

1. The case was referred to the Court by a Polish national, Mr Jacek Chojak (“the applicant”), on 8 February 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). It originated in an application (no. 32220/96) against the Republic of Poland lodged by the applicant with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention, on 20 December 1995.

2. The Polish Government (“the Government”) were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant complained, *inter alia*, that he had been a victim of a violation of Article 5 § 3 of the Convention because, after having been arrested, he had not been brought before a “judge” but before a prosecutor, who had not offered the guarantees of impartiality and independence required by that provision. He also complained that his detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention. On 23 April 1998 the Commission (sitting in plenary) declared the application partially admissible. In its report of 29 October 1998 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Article 5 § 3 of the Convention in respect of both complaints submitted by the applicant.

4. On 31 March 1999 the panel of the Grand Chamber decided that the case should be dealt with by a Chamber constituted within one of the Sections of the Court (Rule 100 § 1 of the Rules of Court). In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr Wildhaber, assigned the case to the Fourth Section.

5. Subsequently, the parties were invited to submit their memorials on the issues arising in the present case. The Government lodged their memorial with the Court on 15 July 1999, after an extension of the time-limit set for that purpose. The applicant failed to submit his memorial. In a letter of 27 October 1999 the Registrar informed the applicant of procedural consequences of his failure and asked him whether he intended to pursue his petition. On that occasion, the applicant was also informed of the terms of Article 37 of the Convention and warned that the Court might conclude from his silence that he no longer wished to continue the proceedings in his case. That letter remained unanswered. On 26 May 2000 the Registrar again sent a letter to the applicant, asking him whether he wished to pursue his application. The applicant received that letter on 7 June 2000. He has not replied.

6. In view of the above, the Chamber constituted within the Section decided to dispense with an oral hearing in the present case (Rule 59 § 2 of the Rules of Court). The parties were informed thereof.

THE FACTS

7. On 13 June 1995 the applicant was arrested by the police. On 14 June 1995 he was brought before the Trzebnica District Prosecutor (*Prokurator Rejonowy*). The prosecutor charged the applicant with robbery and detained him on remand in view of the reasonable suspicion that he had committed the offence with which he had been charged. The investigation was completed by the beginning of September 1995.

8. The trial was to be conducted before the Wrocław Regional Court (*Sąd Wojewódzki*) but, due to certain amendments to Polish legislation in respect of jurisdiction in criminal matters, it was eventually postponed to 5 August 1996 and took place before the Trzebnica District Court (*Sąd Rejonowy*). During the proceedings the applicant made several unsuccessful applications for release.

9. On 26 August 1996 the District Court released the applicant pending trial; however, the Wrocław Regional Court (*Sąd Wojewódzki*) later quashed the relevant decision and ordered that the applicant be recommitted to custody. He was redetained on 23 September 1996.

10. On 23 October 1996 the Trzebnica District Court convicted the applicant of petty robbery and sentenced him to two years and six months' imprisonment.

THE LAW

11. The Court notes that the applicant did not submit his memorial and has not resumed his correspondence with the Court since 8 February 1999, the date on which he referred his case to it. It further notes that the applicant has been informed of the terms of Article 37 of the Convention, the relevant part of which reads:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; ...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

...”

12. In the circumstances, the Court concludes that it is no longer justified to continue the examination of the application. Furthermore, the Court finds no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of the application by virtue of that Article.

13. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 12 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Antonio PASTOR RIDRUEJO
President