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

FIRST SECTION

CASE OF BOCA v. BELGIUM

(Application no. 50615/99)

JUDGMENT

STRASBOURG

15 November 2002

FINAL

15/02/2003

In the case of Boca v. Belgium,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr G. BONELLO,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 24 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 50615/99) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mrs Stavroula Boca ("the applicant"), on 11 June 1999.

2. The applicant was represented before the Court by Mrs F. Legros, a lawyer practising in Brussels. The Belgian Government ("the Government") were represented by their Agent, Mr C. Debrulle, Head of Department, Ministry of Justice.

3. Relying on Article 6 of the Convention, the applicant alleged that the civil proceedings to which she had been a party had been excessively long.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 12 June 2001, the Court declared the application admissible and invited the parties to submit additional observations on one question (Rule 59 § 1).

6. The Government filed their written observations within the time allowed, but the applicant did not.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

8. The application relates to two sets of proceedings. The first concerns the divorce proceedings proper before the court of first instance and the second concerns the interim measures in respect of which Article 1280 of the Judicial Code gives the summary applications court special power and jurisdiction to hear applications for interim measures during the divorce proceedings.

A. Divorce proceedings: merits

9. On 17 March 1998 the applicant's husband filed a divorce petition against her on a specified ground.

10. After a hearing on 20 October 1998 judgment was reserved until 4 November 1998, when the Brussels Court of First Instance granted a divorce against the applicant and ordered each party to pay its own costs.

11. On 22 December 1998 the applicant's husband appealed against the costs order.

12. At a preliminary hearing on 26 January 1999 the parties declared that the case was ready for trial. It was immediately set down for hearing in the relevant ordinary division. On 7 May 1999, in reply to a letter from the applicant's lawyer, the registry of the Brussels Court of Appeal informed her that it would take eight months for the appeal to be heard. On 25 November 1999 the registry listed the case for hearing on 24 February 2000. At the hearing the applicant's husband stated that he was withdrawing his appeal. The court gave judgment on 16 March 2000 acknowledging that the appeal had been withdrawn.

13. The divorce decree was registered on 24 October 2000.

B. Summary proceedings

14. On 17 March 1998 the applicant was summoned before the Brussels Court of First Instance, as the court hearing summary applications, to deal with interim measures relating to the divorce petition and, more particularly, to the two children, born in 1984 and 1988, of whom the father had had custody since the couple had separated in 1995. The parties filed their main pleadings before the hearing of 17 June 1998. The applicant then filed further pleadings at the hearing. In an order of 26 June 1998 the President of the Brussels Court of First Instance provisionally granted the mother renewed contact with the children and determined the maintenance payable to the applicant by the father per child and per month.

15. On 31 July 1998 the applicant's husband appealed against that order. Neither party appeared at a preliminary hearing on 11 August 1998 and the appeal was re-listed for hearing. On 21 October 1998 the appellant asked for

the hearing date to be fixed by judicial recorded delivery. At the hearing listed for 24 November 1998 the appeal was adjourned until 12 January 1999 for the court to check that it was ready for hearing. At the hearing the parties filed their grounds of appeal and a timetable for subsequent pleadings. On 21 January 1999 the applicant filed further pleadings and a list of documents. Her ex-husband filed further pleadings on 27 January 1999. On 28 January 1999 the case, which was now ready for hearing, was set down for hearing in an ordinary division.

16. On 6 May 1999, in reply to a letter from the applicant's lawyer, the registry of the Brussels Court of Appeal stated that the case had been set down for hearing and would take approximately eight months to come to a hearing. On 14 December 1999 the registry informed the parties that the case would be heard on 24 March 2000 but did not specify how the hearing would be conducted.

17. On 16 May 2000 the parties filed joint pleadings with the registry of the Court of Appeal stating that they intended to withdraw from the proceedings. After a hearing on 23 June 2000 the Court of Appeal gave judgment on 27 June 2000 acknowledging their decision. In its judgment it noted that counsel for the parties had stated at the hearing that the parties would continue to comply with the interim measures set out in the order of 26 June 1998.

THE LAW

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

18. The applicant alleged that the length of both the divorce proceedings and the parallel summary proceedings had failed to comply with the "reasonable time" requirement set out in Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time ..."

19. She referred in particular to the delay in the summary proceedings after 28 January 1999, when the appeal was ready for hearing. The effect of this had been to leave her family situation unresolved for two years (March 1998-March 2000).

20. The Government contested that submission. They pointed out, among other things, that the order made at first instance – which had been made in summary proceedings – had been immediately enforceable *ipso jure* and that the applicant could have had the measures she had obtained enforced straight away. Furthermore, in May 2000 when her husband had

withdrawn his main appeal, the order of 26 June 2000 had become final. In both sets of proceedings the delays between finalising the case and obtaining a hearing date in the Brussels Court of Appeal had been due to a temporary backlog of cases before that court. However, substantial measures had now been taken to reduce the number of cases pending before it, prevent subsequent delays in dealing with them and thus increase the courts' efficiency. The Government had therefore taken the necessary steps to absorb the backlog.

A. Periods to be taken into consideration

21. The substantive divorce proceedings need to be distinguished from the summary proceedings.

22. The substantive proceedings began on 17 March 1998 when the applicant's husband filed a divorce petition on a specified ground and ended with the Court of Appeal's judgment of 16 March 2000 acknowledging his decision to withdraw his appeal. They therefore lasted two years for two levels of jurisdiction.

23. The summary proceedings also started on 17 March 1998 when the applicant was summoned before the Brussels Court of First Instance, sitting as the court hearing summary applications, for a final decision to be made with regard to the interim measures. They ended on 27 June 2000 with the judgment acknowledging the parties' withdrawal from the proceedings and their agreement to continue with the interim measures set out in the order made at first instance. The proceedings therefore lasted more than two years and three months for two levels of jurisdiction.

B. Reasonableness of the length of both sets of proceedings

24. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the behaviour of the applicant and the conduct of the relevant authorities. In cases relating to civil status, what is at stake for the applicant is also a relevant consideration and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (see, among other authorities, *Laino v. Italy* [GC], no. 335158/96, § 18, ECHR 1999-I). According to the Court's established case-law, a chronic backlog of cases in a court's list is not a valid explanation (see *Probstmeier v. Germany*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1138, § 64). Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a

reasonable time (see *Portington v. Greece,* judgment of 23 September 1998, *Reports* 1998-VI, p. 2633, § 33).

1. The substantive proceedings

25. The Court considers that the case was not particularly complex. As regards the applicant's behaviour, it is not apparent from the case file that she caused undue delays. Not much was at stake for the applicant in the substantive proceedings: the appeal – lodged by her husband – concerned only the costs order (each party to pay its own).

26. As regards the conduct of the relevant authorities, the Court notes that the first-instance judgment was delivered less than eight months after the petition had been lodged. At the appeal stage, the thirteen-month period that elapsed between 26 January 1999, when the case was ready for hearing, and 24 February 2000, when the hearing was held, was indeed due to a backlog of cases before the Brussels Court of Appeal. Nevertheless, having regard to the circumstances of the case, the Court considers that the total length of the substantive proceedings (two years) cannot be considered to be excessive.

27. The Court concludes that the length of the substantive divorce proceedings complied with the reasonable-time requirement laid down in Article 6 § 1 of the Convention. Accordingly, in that connection, there has not been a violation of that provision.

2. The summary proceedings

28. With regard to the summary proceedings, the Court notes that the case was not complex but that a lot was at stake because the question of custody of the children, then aged 16 and 12, had to be dealt with. Summary proceedings should by definition not be delayed, even at the appeal stage and notwithstanding the enforceability of the order made at first instance. There is nothing in the case file to suggest that the applicant behaved in such a way as to cause any undue delays.

29. With regard to the conduct of the relevant authorities, the Court notes that the first-instance proceedings lasted just over three months. The applicant's husband appealed to the Brussels Court of Appeal on 31 July 1998 and the case was ready for hearing on 28 January 1999, six months later. Owing to the backlog of cases before the court, it was set down for hearing on 24 March 2000, a year and two months after it had been finalised. The Government have not provided a proper explanation for that delay. In the particular circumstances of this case and having regard to the nature of summary proceedings, the Court considers that the total length of the proceedings cannot be regarded as reasonable.

30. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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."

32. The applicant did not submit any claim for just satisfaction after the decision on admissibility, despite having been informed by letter of 15 June 2001 that, under Rule 60 of the Rules of Court, any claim for just satisfaction under Article 41 of the Convention must be set out in the written observations on the merits. Accordingly, as the applicant has failed to reply within the time-limit stipulated in the letter accompanying the admissibility decision, the Court holds that no amount shall be awarded under Article 41 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the length of the substantive proceedings;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the summary proceedings.

Done in French, and notified in writing on 15 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President