



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

FOURTH SECTION

CASE OF B.R. v. POLAND

(Application no. 43316/98)

JUDGMENT

STRASBOURG

16 September 2003

FINAL

16/12/2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of B.R. v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI,
Mrs E. FURA-SANDSTRÖM, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 26 August 2003,

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

PROCEDURE

1. The case originated in an application (no. 43316/98) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, B. R. ("the applicant"), on 15 July 1997.

2. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged, in particular, that the criminal proceedings in his case had exceeded a reasonable time.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth 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.

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

7. By a decision of 27 August 2002 the Court declared the application partly admissible.

THE FACTS

8. The applicant was born in 1960 and lives in Warsaw.

9. On 8 June 1994 the applicant was charged with having forced a witness in his divorce proceedings to withdraw her testimony. On 12 July 1994 the Warsaw District Prosecutor (*Prokurator Rejonowy*) submitted to the Warsaw District Court (*Sąd Rejonowy*) a bill of indictment concerning that charge.

10. On 20 June 1994 the prosecutor submitted to District Court another bill of indictment against the applicant. The applicant was charged with domestic violence against his wife.

11. On 13 July and 13 September 1994 he requested the appointment of a legal-aid lawyer.

12. On 15 September 1994 the Warsaw District Court joined those two cases.

13. On 23 September 1994 the court appointed a lawyer for the applicant.

14. On 27 September, as well as on 4 and 7 October 1994, the applicant submitted several pieces of evidence to the court.

15. The court held hearings on 10 and 11 October 1994. On the latter date it ordered the psychiatric examination of the applicant. On 2 December 1994 the psychiatric opinion was submitted to the court.

16. On 2 December 1994 another hearing was held. The court summoned certain witnesses. On 1 February 1995 it adjourned a hearing, as witness M., the examination of whom had been requested by the applicant, failed to appear. The court established that the witness resided abroad, in France or Germany. It ordered the police to find out when that witness would return to Poland.

17. On 8 February, as well as on 9, 20 and 29 March 1995, the applicant submitted further petitions concerning evidence.

18. On 24 April 1995 the police informed the court that witness M was still abroad.

19. On 14 September 1995 the applicant requested that a further hearing be scheduled in the case. On 19 September 1995 he informed the court that M had already returned to Poland. However, on 8 October 1995, upon the court's order, the police again established that M was abroad.

20. On 8 November 1995 the court informed the applicant that the only reason why the hearings were not scheduled was witness M's absence.

21. On 15 November 1995 the applicant informed the court about M's alleged return to Poland and specified his place of residence. The police again found out that M was still abroad.

22. On 27 November 1995 the Warsaw District Prosecutor submitted to the court another bill of indictment in which he charged the applicant with the evasion of the payment of maintenance for his daughter.

23. On 11 and 12 December 1995 the applicant submitted to the court further petitions concerning evidence.

24. The hearing scheduled for 18 March 1996 was adjourned because of the presiding judge's illness. After that date the court did not schedule any hearings until 8 June 2000.

25. On 18 April 1996 it joined the bill of indictment of 27 November 1995 to the proceedings.

26. On 22 April 1996 the court informed the applicant that due to the change of the presiding judge further hearings would be scheduled only in the second half of 1996.

27. On 29 April 1996 the applicant requested that all his cases which had been joined be examined separately. Subsequently, he was informed that no appeal lay against the decision of 18 April 1996 and that the case had to be re-opened due to the change of the presiding judge.

28. On 10 and 23 May 1996 the applicant again requested that witness M be summoned to appear before the court. Subsequently, he requested also that a hearing be scheduled.

29. On 8 June 2000 the court ordered the applicant's psychiatric examination, at his counsel's request.

30. On 27 June 2000 the applicant requested the appointment of another lawyer for him and expressed his doubts as to the impartiality of the court.

31. In reply to the court's request, on 14 July 2000 the applicant specified that it was not his intention to challenge the participation of the judges in the proceedings.

32. On 25 August 2000 the applicant asked permission to record the course of the hearing on his tape-recorder. After the presiding judge's refusal the applicant decided to leave the courtroom and challenged the participation in the proceedings of the presiding judge.

33. On 30 August 2000 the Warsaw District Court declined the applicant's request.

34. On 11 September 2000 the applicant petitioned the court to quash the decisions of 25 and 30 August 2000.

35. On 11 October 2000 the court ordered another psychiatric examination of the applicant, considering that the two psychiatric opinions issued in the course of those proceedings were incomplete and superficial.

36. The applicant did not attend the examination scheduled for 2 November 2000.

37. On 7 March 2001 the court ordered an inquiry as to whether the applicant had undergone the examination scheduled for December 2000 and when the psychiatric opinion would be submitted. The court's registry established that the examination was arranged for 30 May 2001. The presiding judge ordered that the applicant be brought to the psychiatric hospital by the police.

38. In June 2001 the psychiatric and psychological opinions were submitted to the court. The experts stated that the overall examination of the applicant's mental health would require his observation in a psychiatric hospital.

39. On 13 November 2001 the court ordered the applicant's observation. On 8 January 2002 the Warsaw Regional Court dismissed his appeal against that decision. The applicant was taken under observation in May 2002.

40. The District Court held hearings on 5 August and 16 October 2002, as well as 15 January, 24 March, 15 April, 8 May and 12 June 2003. The applicant filed motions concerning the correction of minutes and a challenge to the participation of certain judges in the proceedings.

41. On 24 March 2003 he was fined for contempt of court. On 6 May 2003 the Regional Court upheld that decision.

42. The proceedings are still continuing.

THE LAW

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

43. The applicant complained that the proceedings in his case had exceeded a reasonable time, within the meaning of Article 6 § 1 of the Convention, which provides, in so far as relevant:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. The parties' submissions

44. The Government were of the opinion that the case was complex, because three different counts against the applicant were examined in one set of proceedings. They further noted that doubts as to the applicant's mental health and his accountability had made it necessary for the court to order his psychiatric examination. The Government made reference to the difficulties in summoning witness M before the court.

45. The Government maintained that the applicant had greatly contributed to the prolongation of the proceedings. They referred to his failure to appear in a psychiatric hospital in November 2000, which had entailed the necessity to fix another date for the examination and order the police to bring him there. The Government observed that the applicant had insisted on the examination of witness M, whose absence in Poland had made it impossible for one year to conduct the proceedings. They made reference to a number of petitions concerning evidence submitted by the

applicant and his challenges to various court decisions. The Government submitted that the applicant's request for another legal representative and his challenge to the participation in the proceedings of the presiding judge had prolonged the proceedings.

46. The Government admitted that there had been some periods of inactivity on the part of the trial court, but rather short. They mentioned the illness of a judge, which had affected to some extent the length of the proceedings.

47. The Government pointed out that the applicant had been neither arrested, nor detained in the course of the proceedings and therefore "special diligence" had not been required of the national authorities.

48. The applicant submitted that it was evident to him that there had been a violation of Article 6 of the Convention.

B. The Court's assessment

49. The Court notes that the proceedings were initiated on 8 June 1994 and they have thus already lasted 9 years, 2 months and 18 days.

50. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

51. The Court notes that the case does not seem particularly complex.

52. It observes that the applicant's conduct contributed to the delay, especially his petitions challenging the participation of judges in the proceedings and failure to attend a psychiatric examination.

53. The Court considers that, contrary to the Government's view, the periods of inactivity were far from short. It is to be emphasised that no action was taken by the trial court between April 1996 and June 2000, that is for over 4 years. The Government did not supply any explanations in this respect.

54. Assessing the circumstances of the case as a whole, the Court considers that an overall period of over nine years exceeds a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 100,000 zlotys (PLN) in respect of non-pecuniary damage.

57. The Government considered that claim exorbitant.

58. The Court is of the view that the applicant can reasonably be regarded as having suffered non-pecuniary damage on account of the length of the proceedings. Accordingly, the Court considers that, in the particular circumstances of the case and deciding on an equitable basis, the applicant should be awarded 5,000 euros (EUR).

B. Costs and expenses

59. The applicant did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

60. 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 (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, to be published in ECHR 2002-VI).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand 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;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 September 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President