



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

FORMER FIRST SECTION

CASE OF BAUMANN v. AUSTRIA

(Application no. 76809/01)

JUDGMENT
(Revision)

STRASBOURG

9 June 2005

FINAL

30/11/2005

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 Baumann v. Austria (request for revision of the judgment of 7 October 2004),

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mrs G. BONELLO,

Mrs A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 19 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 76809/01) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mrs Ulrike Baumann (“the applicant”), on 30 October 2001.

2. In a judgment delivered on 7 October 2004, the Court held that there had been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings. The Court also decided to award the applicant 9,000 euros (EUR) for non-pecuniary damage and EUR 5,906.91 for costs and expenses, plus any tax that might be chargeable on these amounts, and dismissed the remainder of the claims for just satisfaction.

3. On 5 November 2004 the Government requested a revision or rectification of the judgment as regards the award made for domestic costs and expenses.

4. On 1 February 2005 the Court decided to deal with the Government's request under the procedure of revision of a judgment under Rule 80 of the Rules of Court and to give the applicant three weeks in which to submit any observations. Those observations were received on 24 February 2005.

THE LAW

THE ORIGINAL JUDGMENT OF THE COURT

5. The Court's judgment of 7 October 2004 recorded the Government's submissions as regards costs and expenses claimed by the applicant as follows:

“59. The Government pointed out that only costs incurred in an attempt to redress the violation found could be reimbursed. Assessing the claim on the basis of the applicable law, only EUR 2,906.91 could possibly be claimed for the two applications under Section 91 of the Courts Act. The Government did not comment on the costs claim concerning the Convention proceedings.”

6. The Court, subsequently, made the following cost awards for the domestic and the Convention proceedings:

60. According to the Court's case-law, an applicant is entitled to the reimbursement of such costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court agrees with the Government as regards the amount to be reimbursed for the applications under Section 91 of the Austrian Courts Act. It accordingly awards the sum of EUR 2,906.91. However, the Court does not consider it necessary to determine whether the applicant's costs related to her requests for the resumption of the proceedings meet this requirement as she has failed to specify them. Nevertheless, it cannot be excluded that the excessive duration of the proceedings increased the overall costs incurred (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999). It therefore awards EUR 1,000 in this respect.

61. As to the costs in the Convention proceedings, the Court notes that the applicant, who was represented by counsel, did not have the benefit of legal aid. It considers it reasonable to award the applicant EUR 2,000 under this head.”

THE REQUEST FOR REVISION

7. On 5 November 2004 the Government requested a revision or rectification of the judgment of 7 October 2004 because it gave undue account of their observations of 1 December 2003. They noted that the Court, referring to the Government's observations, had awarded EUR 2,906.91 for the two applications under Section 91 of the Courts Act. However, in their observations, the Government had not referred to this amount in respect of the two applications under Section 91 of the Courts Act, but as a reasonable amount in respect of the costs of the proceedings before the Court. The Government now suggested that the costs award for domestic proceedings should be reduced to EUR 335, corresponding to the

amount chargeable for the two applications under Section 91 of the Courts Act under the applicable law.

8. On 24 February 2005 the applicant commented on this request. As regards the Government's request for rectification of the judgment, she submitted that such a request could only be made within one month of the delivery of the judgment and was, therefore, in all likelihood submitted out of time. The applicant further argued that the impugned amounts for costs and expenses had been awarded by discretionary decision of the Court and that there had not been any obvious mistakes. As regards the Government's request for revision, she maintained that the Government had not submitted any facts, which, when the judgment was delivered, were unknown to the Court. The applicant, therefore, urged the Court to find that the request for a rectification or a revision was unfounded.

THE COURT'S CONSIDERATION

9. Rule 80 § 1 of the Rules of Court reads as follows:

“ A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment”

Rule 81 of the Rules of Court reads as follows:

“Without prejudice to the provisions on revision of judgments and on restoration to the list of applications, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision of a judgment, rectify clerical errors, errors in calculation or obvious mistakes”

10. In the present case, in its judgment of 7 October 2004, the Court, referring to the Government's observations, awarded the applicant EUR 2,906.91 in order to cover the costs for two applications made under Section 91 of the Courts' Act, and a lump sum of 2,000 EUR as regards the costs of the proceedings before the Court. In their request for a rectification or a revision the Government submitted that they did not refer to EUR 2,906.91 as an amount to be awarded for the two applications under Section 91 of the Courts' Act, but as a reasonable amount for the costs of the proceedings before the Court. They now suggested that the cost award for the two applications under Section 91 of the Courts' Act should be reduced to EUR 335, corresponding to the amount chargeable for such applications under applicable domestic law.

11. The Government's arguments suggested that the Court had incorrectly interpreted their submissions, a fact that the Court was not aware of before the Government's comment on 5 November 2004. The Government could not acquire knowledge of the Court's interpretation of its submissions before the delivery of the judgment of 7 October 2004.

12. The Court finds that the Government's arguments do not relate to a clerical error, an error in calculation or an obvious mistake within the meaning of Rule 81 of the Rules of Court.

13. The Court further notes that its reading of the Government's submissions had decisive influence on the outcome of the judgment within the meaning of Rule 80 of the Rules of Court, namely the allocation of the amounts of costs.

14. It accordingly decides to revise the judgment of 7 October 2004 as regards its findings concerning the award of costs and expenses.

15. Having regard to the parties' submissions of 5 November 2004 and 24 February 2005, the Court now awards the applicant the sum of EUR 335, including VAT, in respect of the two applications filed under Section 91 of the Courts' Act. The Court considers that this sum now correctly reflects the costs incurred for the applicant in her attempts to accelerate the domestic proceedings. The Court further finds that it cannot be excluded that the excessive duration of the proceedings increased the overall costs incurred (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999). It awards a lump sum of EUR 1,000 in this respect. In sum, the Court awards a total amount of EUR 1,335, including VAT, in respect of costs incurred in domestic proceedings.

16. As to the costs in the Convention proceedings, the Court notes that the applicant, who was represented by counsel, did not have the benefit of legal aid. Making an assessment on an equitable basis and having regard to the submissions made by the Government, the Court considers it reasonable to award the applicant EUR 2,906.91, including VAT, under this head.

17. In sum, the Court awards a total of EUR 4241.91, including VAT, for the applicant's costs and expenses

18. 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

Decides to revise its judgment of 7 October 2004 as regards its findings concerning the award of costs and expenses;

accordingly,

Holds

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 4241.91 (four thousand two hundred forty one euros and ninety one cents), including VAT, in respect of costs and expenses.

Done in English, and notified in writing on 9 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President