



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

FOURTH SECTION

CASE OF BOGACZ v. POLAND

(Application no. 60299/00)

JUDGMENT

STRASBOURG

9 May 2006

FINAL

09/08/2006

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 Bogacz v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 April 2006,

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

PROCEDURE

1. The case originated in an application (no. 60299/00) 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 a Polish national, Mr Edward Bogacz ("the applicant"), on 23 February 2000.

2. The applicant was represented before the Court by Mr Z. Cichoń, a lawyer practising in Kraków. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant complained that the length of criminal proceedings in his case had exceeded a reasonable time.

4. 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.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 15 November 2005 the Court declared the application admissible and considered that the applicant's widow had a legitimate interest to pursue the application in her late husband's stead.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1958 and lived in Warszawa. He died in 2000.

8. On 28 June 1994 a bill of indictment in respect of the applicant, then a police officer, and four other individuals was submitted to the Warsaw District Court (*sąd rejonowy*). They were charged with accepting bribes.

9. The court placed the applicant under police supervision.

Despite the applicant's numerous petitions the District Court did not hold any hearings.

10. On 11 October 2000 the applicant died.

11. On 12 February 2002 the Warsaw District Court issued a decision to discontinue the proceedings with respect to the applicant due to his death.

THE LAW

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

12. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

13. The Government contested that argument. They have not provided an explanation as to why no hearing was held in the case for over six years, except for the excessive workload of the domestic courts.

14. The period to be taken into consideration began, at the latest, on 28 June 1994 and ended on 12 February 2002. It thus lasted approximately 7 years and 8 months years.

15. 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 following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

16. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

17. Having examined all the material submitted to it and having, in particular, regard to the fact that there was no activity in the proceedings between 28 June 1994, when the bill of indictment against the applicant was lodged with the court competent to deal with the merits of the case, and 12 February 2002 when the court eventually discontinued the proceedings, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

18. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed EUR 20,000 in respect of pecuniary and non-pecuniary damage.

21. The Government contested these claims.

22. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,600 in respect of the non-pecuniary damage he must have suffered as a result of the protracted character of the proceedings.

B. Costs and expenses

23. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court.

24. The Government contested these claims.

25. According to the Court’s case-law, an applicant is entitled to reimbursement of his 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 (*Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, §36). In the present case, regard being had to the information in its possession and the above criteria, the Court considers

it reasonable to award the sum of EUR 500 in respect of costs of the proceedings before the Court.

C. Default interest

26. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* :
 - (a) that the respondent State is to pay to the applicant's widow, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses, 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 amounts 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 9 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President