

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

FOURTH SECTION

DECISION

Application no. 28198/07
by Teresa PIEKARZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 18 January 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi,
Vincent A. de Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 22 June 2007,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

PROCEDURE

The applicant, Ms Teresa Piekarz, is a Polish national who was born in 1939 and lives in Łańcut. She was represented before the Court by Mr J. Rejman, a lawyer practising in Łańcut. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

The circumstances of the case

A full account of the facts as submitted by the applicant can be found in the case as communicated to the Government on 11 May 2009.

On 8 September 2005 the applicant's husband, who was seventy years old, was found by the police in Słonia in a condition of deep intoxication and was taken to the Rzeszów Sobering-up Centre. He was admitted to the centre at 1.50 p.m. on that day.

The applicant submitted that her husband had not received medical assistance at the sobering-up centre despite his requests. She stated that on 9 September 2005 at about 9 a.m. a nurse at the sobering-up centre had telephoned her to inquire about her husband's ailments and the medication he was taking. According to the applicant, the nurse informed her that her husband was in a serious condition. The applicant told the nurse that her husband had had a myocardial infarction and suffered from other serious ailments. She also asked her to call an ambulance.

The applicant's husband was released on 9 September 2005 at 9.30 a.m. Shortly after his release he collapsed and died in the vicinity of the sobering-up centre.

Subsequently, the Rzeszów District Prosecutor opened an investigation into the alleged unintentional homicide of Edward Piekarz (Article 155 of the Criminal Code). On 12 September 2005 the prosecutor ordered a forensic expert to carry out a post-mortem examination and determine the cause of death of the applicant's husband. The post-mortem examination was carried out on 14 September 2005.

It appears that subsequently the investigation was conducted by the Rzeszów Police under the supervision of the Rzeszów District Prosecutor. On 3 February 2006 the Rzeszów District Prosecutor endorsed the police decision to discontinue the investigation. It found that no unintentional homicide as specified in Article 155 of the CC had been committed.

The applicant appealed. She claimed that the relevant facts concerning her husband's death had not been established.

On 10 March 2006 the Rzeszów Regional Prosecutor quashed the District Prosecutor's decision and ordered him to take further investigative measures.

On 5 June 2006 the Rzeszów Police instructed the Collegium Medicum of the Jagiellonian University to prepare an expert opinion. On 30 October 2006 the experts submitted their report to the Rzeszów Police.

On 30 November 2006 the Rzeszów District Prosecutor discontinued the investigation into the alleged unintentional homicide of Edward Piekarz (Article 155 of the CC) and his exposure to a direct danger of loss of life by the sobering-up centre doctor (Article 160 § 1 of the CC). The prosecutor found that the features of those offences had not been made out.

The applicant lodged an appeal against this decision, which she considered erroneous. She complained that the prosecutor had not thoroughly determined the circumstances of the incident and all the details regarding the telephone conversation she had had with the staff of the sobering-up centre. She also contested the report prepared by the experts of the Collegium Medicum of the Jagiellonian University.

On 13 April 2007 the Rzeszów District Court upheld the District Prosecutor's decision.

The Government contested the applicant's version of the facts and claimed that the medical care given to the applicant's husband had been adequate in the circumstances.

COMPLAINTS

1. The applicant complained under Article 5 § 1 of the Convention that her husband had been wrongly arrested and detained in the sobering-up centre although he had not presented a risk to himself or others.

2. Relying on Article 2 § 1 of the Convention, the applicant alleged that her husband had not been provided with adequate medical care in the sobering-up centre and consequently had died very shortly after his release.

3. The applicant also complained under Article 6 § 1 that the Rzeszów District Court's decision upholding the prosecutor's decision to discontinue the investigation had not contained relevant reasons.

THE LAW

On 16 December 2010 the Court received the following declaration from the Government:

> "I, Jakub Wołąsiewicz, Agent of the Polish Government, declare that the Government of Poland offer to pay PLN 22,000 (twenty two thousand Polish zlotys) to Ms Teresa Piekarz, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable and it will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

On 16 December 2010 the Court received the following declaration signed by the applicant's lawyer:

> "I, Jan Rejman, note that the Government of Poland are prepared to pay to Ms Teresa Piekarz the sum of PLN 22,000 (twenty two thousand Polish zlotys), with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> This sum, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable and it will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. 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.
>
> Having consulted my client, I would inform you that she accepts the proposal and waives any further claims against Poland in respect of the facts giving rise to this application. She declares that this constitutes a final resolution of the case."

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention). In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Lawrence Early
Registrar

Nicolas Bratza
President