



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

COURT (CHAMBER)

CASE OF PIERSACK v. BELGIUM (ARTICLE 50)

(Application no. 8692/79)

JUDGMENT

STRASBOURG

26 October 1984

In the Piersack case,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court*, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. Thór VILHJÁLMSSON,
Mr. W. GANSHOF VAN DER MEERSCH,
Mr. G. LAGERGREN,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. R. BERNHARDT,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 26 June and 26 September 1984,

Delivers the following judgment, which was adopted on the latter date, on the application in the present case of Article 50 (art. 50) of the Convention:

PROCEDURE AND FACTS

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 14 October 1981. The case originated in an application (no. 8692/79) against the Kingdom of Belgium lodged with the Commission on 15 March 1979 by a Belgian national, Mr. Christian Piersack.

2. By judgment of 1 October 1982, the Court held that there had been a violation of Article 6 § 1 (art. 6-1) of the Convention, in that the impartiality of the "tribunal" which, on 10 November 1978, had determined the "merits" (in the French text: "bien-fondé") of a "criminal charge" against Mr. Piersack - namely, the Brabant Assize Court - "was capable of appearing open to doubt" (Series A no. 53, paragraphs 28-32 of the reasons and point 1 of the operative provisions, pp. 13-17).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. Accordingly, as regards the facts, the Court will confine itself here to giving the pertinent details; for further particulars, reference should be made to paragraphs 7 to 17 of the above-mentioned judgment (*ibid.*, pp. 6-10).

* Note by the registry: In the version applicable when proceedings were instituted. A revised version of the Rules entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

3. At the hearing of 25 March 1982, Mr. Piersack's lawyer had stated that his client was seeking under Article 50 (art. 50) his immediate release, in accordance with "arrangements to be discussed", and also financial compensation to be used to meet the fees of his lawyers before the Belgian Court of Cassation (50,000 BF) and in Strasbourg (150,000 BF), subject to deduction of certain amounts paid by the Council of Europe by way of legal aid (3,500 FF).

Counsel for the Government had replied that, were the Court to find a violation, publication of the judgment would itself constitute adequate just satisfaction.

In its judgment of 1 October 1982, the Court reserved the question and invited the Commission to submit, within the coming two months, its written observations and, in particular, to notify the Court of any friendly settlement at which the Government and the applicant might have arrived (paragraphs 34-35 of the reasons and point 2 of the operative provisions, *ibid.*, p. 17).

4. After an extension of the above-mentioned time-limit by the President of the Court, and in accordance with his Orders and directions, the Registrar received:

- on 1 February 1983, from the Secretary to the Commission, brief observations by its Delegate and copies of the correspondence it had exchanged with the Government and the applicant between October 1982 and January 1983;
- on 14 February and 4 May, from the Agent of the Government, certain supplementary remarks;
- on 7 and 24 March, two letters from Mr. Piersack's lawyer.

These documents revealed that no friendly settlement had been arrived at.

5. Acting on the President's instructions, the Registrar wrote to the Agent of the Government on 23 March. The letter, which made reference to the wording of and the case-law on Article 50 (art. 50), enquired - "without prejudice to the decision which the Court might take on the point in question" - whether the Belgian authorities considered that Belgian law provided "any means whereby full reparation can be made for the consequences of the breach found ... by the judgment of 1 October 1982".

In his reply dated 29 April and received at the registry on 4 May, the Agent indicated that two days previously the Belgian Minister of Justice had requested the procureur général (State prosecutor) attached to the Court of Cassation to challenge before the latter Court the judgment of 10 November 1978 whereby the Brabant Assize Court had sentenced the applicant to eighteen years' hard labour for murder (see paragraph 2 above). The Minister had taken this step pursuant to Article 441 of the Code of Criminal Procedure, which provides as follows:

"Where, on production of formal instructions which he has received from the Minister of Justice, the procureur général attached to the Court of Cassation impugns, before the Chamber hearing appeals on points of law in criminal cases involving serious, lesser and petty offences (en matière criminelle, correctionnelle et de police), judicial acts or judgments as being contrary to the law, such acts or judgments may be annulled. ..."

6. The subsequent developments in the case appear from letters which the Registrar received from the Agent of the Government on 3 June, 10 October and 7 November 1983 and 16 January 1984.

(a) The procureur général referred the matter to the Court of Cassation on 29 April. In his submissions, he urged that the Court of Cassation had "to recognise that the European Court's judgment had the force of *res judicata*" and "consequently to conclude that ... the procedural acts before the [Brabant] Assize Court and the latter's judgment" had violated Article 6 § 1 (art. 6-1) of the Convention and "were therefore contrary to the law, within the meaning of Article 441 of the Code of Criminal Procedure". He also expressed the view that the fact that Mr. Piersack's appeal on points of law against the judgment in question had been dismissed on 21 February 1979 (Series A no. 53, p. 10, § 17) did not prevent the Court of Cassation from applying Article 441, notably because at the relevant time it had been unaware of "two facts" on which "the European Court had based ... its decision": "firstly, Mr. Van de Walle, the President of the Assize Court, had until 1 November 1977 been the head of the section in the Brussels public prosecutor's department that was responsible for Piersack's prosecution"; "secondly, in that capacity, [he] had in fact played a certain part in the proceedings" (*ibid.*, pp. 15-16, § 31).

On 18 May 1983, the Court of Cassation, adopting these submissions, annulled the procedural acts subsequent to the committal for trial before the Assize Court (16 June 1978; *ibid.*, p. 7, § 13) and the judgment of 10 November 1978 to the extent that it had convicted the applicant of, and sentenced him for, the manslaughter (*meurtre sans préméditation*) of one Michel Dulong (*ibid.*, pp. 6-7, §§ 8 and 14); with these limitations, the case was referred back to the Hainaut Assize Court.

(b) On 7 and 8 June, Mr. Piersack instituted, before the President of the Mons Court of First Instance, sitting as judge hearing urgent applications (*siégeant en référé*), proceedings against the Belgian State, the procureur général attached to the Mons Court of Appeal, the procureur du Roi (public prosecutor) attached to the Mons Court of First Instance and the Governor of Mons Prison. He claimed that he had been "arbitrarily detained since 18 May 1983"; accordingly, he requested the President to "order [his] immediate release" and to direct the Belgian State to pay to him 3,000 BF "per day since 18 May 1983, by way of damages for unlawful imprisonment".

The President of the Mons Court of First Instance held on 7 September 1983 that he had no jurisdiction in the matter, since "the defendants ha[d]

not committed any manifest illegality (*voie de fait*): he found that following the judgment of 18 May 1983 the plaintiff had re-acquired "the status of a detainee on remand"; the legal basis for that detention lay in the judgment of 16 June 1978 by the *chambre des mises en accusation* (Indictments Chamber) (see Series A no. 53, p. 7, § 13), which judgment had not been annulled by the Court of Cassation.

(c) The Hainaut Assize Court, by seven votes to five, convicted Mr. Piersack on 17 October 1983 and sentenced him to eighteen years' hard labour, a sentence identical to that which had been imposed on 10 November 1978.

The applicant did not appeal on points of law against this judgment since he considered that "this time" he had received a "fair trial".

7. On 7 February, 16 March, 22 June and 25 September 1984, the applicant, the Commission's Delegate and the Government lodged with the registry, in accordance with the Orders and directions of the President of the Court, further observations on the application of Article 50 (art. 50) in the present case in the light of the events described above.

On 17 September, the Registrar also received from the Secretary to the Commission the reply to a request for information which the Registrar had made on 28 June on the instructions of the Court.

8. After consulting, through the Registrar, the Agent of the Government and the Delegate of the Commission, the Court decided on 26 September 1984 that there was no call to hold hearings.

9. Mr. Thór Vilhjálmsson and Mr. F. Matscher, substitute judges, replaced Mr. L. Liesch and Mr. J. Pinheiro Farinha, who were prevented from taking further part in the consideration of the case (Rules 22 § 1 and 24 § 1 of the Rules of Court).

AS TO THE LAW

10. Article 50 (art. 50) of the Convention provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

11. At the hearings on 25 March 1982, Mr. Piersack's lawyer had stated that his client was seeking, in addition to financial compensation to meet the fees of his lawyers before the Belgian Court of Cassation and in Strasbourg, his immediate release "in accordance with arrangements to be discussed". By letters of 6 December 1982 and 3 March 1983 to the Secretary to the Commission, he further stated that "immediate conditional release alone"

would be capable of being satisfactory for his client. Thereafter he did not revert to the matter.

In point of fact, as was rightly affirmed by the Delegate of the Commission, the proceedings subsequently brought in Belgium (see paragraph 6 above) essentially redressed the violation found by the Court on 1 October 1982; those proceedings brought about a result as close to *restitutio in integrum* as was possible in the nature of things (see, *mutatis mutandis*, the Neumeister judgment of 7 May 1974, Series A no. 17, p. 18 in fine). Following the annulment by the Court of Cassation on 18 May 1983 of the judgment delivered by the Brabant Assize Court on 10 November 1978, the case was referred back to the Hainaut Assize Court which retried the applicant. Whilst it is true that on 17 October 1983 the Hainaut Assize Court gave him a sentence identical to that originally imposed, the trial before that Court was attended by all the guarantees laid down by the Convention. The applicant himself acknowledged, moreover, that this was so (see paragraph 6 in fine above).

Accordingly, the applicant's loss of liberty is in no way a consequence of the breach of Article 6 § 1 (art. 6-1) found in the judgment of 1 October 1982.

12. Mr. Piersack henceforth limited himself to claiming certain sums in respect of his costs incurred in the domestic proceedings and the proceedings before the Convention institutions. The Court will apply the various criteria which emerge from its case-law on the subject (see, amongst many other authorities, the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 14, § 36). Like the Delegate of the Commission, the Court will proceed from the principle that the applicant should as far as possible be put in the position he would have been in had the requirements of Article 6 (art. 6) not been disregarded.

I. COSTS INCURRED IN BELGIUM

13. On 21 February 1979, when dismissing the appeal on points of law brought against the judgment of the Brabant Assize Court (see Series A no. 53, p. 10, § 57), the Court of Cassation ordered the appellant to bear the attendant court costs. According to the concurring evidence submitted by the Delegate of the Commission and by the Government, these costs amounted to 2,145 BF. The applicant, who has not settled them, is entitled to release from his resultant liability towards the State since the sixth and final ground of his appeal sought "redress", "through the domestic legal order", of the breach of Article 6 (art. 6) (see the above-mentioned Zimmermann and Steiner judgment, *ibid.*).

The applicant further claimed 50,000 BF in respect of fees said to be owed to his lawyer in connection with the same proceedings. This figure must, however, be regarded as excessive since, as the Government pointed

out, only one part of the appeal concerned the issue submitted to the Commission and then the Court (see Series A no. 53, p. 7, § 15). Deciding on an equitable basis, the Court awards the sum of 25,000 BF.

14. The proceedings that culminated in the annulment, on 18 May 1983, by the Court of Cassation of the judgment by the Brabant Assize Court (see paragraph 6 (a) above) are not material for the present purposes: as is shown by the uncontested information supplied by the Government, these proceedings neither involved the intervention of a defence lawyer, nor entailed any court costs to be borne by Mr. Piersack.

15. There remain the trial proceedings before the Brabant Assize Court (1978) and subsequently the Hainaut Assize Court (1983). On both occasions, the applicant was ordered to bear half the court costs, that is to say 144,566 BF and 194,399 BF respectively, neither of which sums he has paid. In addition, he claimed to owe 300,000 BF in fees to Mr. Lancaster and Mrs. Motte de Raedt, the two lawyers who represented him in 1983. Before the Brabant Assize Court delivered its decision the applicant raised no objection as to the composition of the bench. However, following annulment by the Court of Cassation of the judgment of 10 November 1978, the Belgian State may not enforce recovery of the above-mentioned sum of 144,566 BF; nor indeed has the Belgian State ever claimed to be entitled to do so.

The second trial constituted a means of "obtaining reparation" of the breach of Article 6 § 1 (art. 6-1) (see the above-mentioned Zimmermann and Steiner judgment, *ibid.*), such that it must be taken into consideration for the purposes of an award of just satisfaction.

The applicant is therefore entitled, in principle, to be relieved of any claim on the part of the State to recover the 194,399 BF which he was ordered to pay by the Hainaut Assize Court on 17 October 1983. However, the proceedings instituted against him before the Brabant Assize Court had been prompted by the criminal charge pending against him. Had it not been for the violation of Article 6 § 1 (art. 6-1), he would have had to settle the 144,566 BF awarded against him on 10 November 1978. Whilst he certainly ought not to suffer financially for the failure to observe the requirements of the Convention found to have occurred in his case, neither should he profit therefrom. Accordingly, the relief from liability to be granted to the applicant should be limited to the difference between the two sums that is 49,833 BF.

The Delegate of the Commission found "somewhat excessive" the sum of 300,000 BF claimed as lawyer's fees. The Government, for their part, did not see why Mr. Piersack should have needed a second defence lawyer in 1983 instead of one as in 1978. The applicant has adduced no evidence to refute this argument. Deciding on an equitable basis, the Court awards the sum of 150,000 BF.

II. COSTS INCURRED AT STRASBOURG

16. Finally, Mr. Piersack sought to recover, in connection with his legal representation in the proceedings brought in his case in Strasbourg, 150,000 BF to cover the fees of Mr. Lancaster and his associates. These fees were made up as follows: preparation of the brief before the Commission (50,000 BF), oral argument before the Commission (50,000 BF), preparation of the brief and appearance at a hearing before the Court (50,000 BF); he conceded that 3,500 French Francs received in legal aid (see the Addendum to the Commission's Rules of Procedure) could be deducted therefrom.

Mr. Piersack may indeed have incurred liability to pay his lawyer rates higher than those applied by the Commission. The Government, moreover, did not dispute this, but they drew attention to the lack of particulars supplied, the almost automatic valuation of each service rendered at 50,000 BF and the absence of corroborating documentary evidence.

Having regard to the foregoing considerations and to the fact that there was no exchange of written pleadings before it prior to the delivery of the judgment of 1 October 1982 on the merits, the Court adjudges it equitable to award a sum of 100,000 BF, less the 3,500 FF already paid by the Council of Europe.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that the respondent State is to

1. refrain from recovering, out of the court costs which the Belgian Court of Cassation and the Hainaut Assize Court ordered the applicant to bear on 21 February 1979 and 17 October 1983 respectively, a sum totalling fifty-one thousand nine hundred and seventy-eight Belgian Francs (51,978 BF = 2,145 BF + 49,833 BF);
2. pay to the applicant two hundred and seventy-five thousand Belgian Francs (275,000 BF), less three thousand five hundred French Francs (3,500 FF), in respect of lawyer's costs before the Belgian Court of Cassation (25,000 BF), the Hainaut Assize Court (150,000 BF) and the Convention institutions (100,000 BF).

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, on 26 October 1984.

Gérard WIARDA
President

Marc-André EISSEN
Registrar