

**Press release issued by the Registrar**

**Chamber judgment<sup>1</sup>**

**[Poncelet v. Belgium](#)** (application no. 44418/07)

**BREACH OF SENIOR CIVIL SERVANT'S RIGHT TO BE PRESUMED INNOCENT IN  
CRIMINAL PROCEEDINGS**

***Violation of Article 6 § 2 (presumption of innocence)  
of the European Convention on Human Rights***

**Principal facts**

The applicant, Jean Poncelet, is a Belgian national who was born in 1952 and lives in Herstal (Belgium).

As a senior civil servant in the Ministry for Civil Works, he was assigned in 1980 to the administration of the Liège Electricity Board, one of his responsibilities being the management of public procurement contracts.

An inquiry by the Supervisory Monitoring Committee revealed anomalies in the performance of public procurement contracts for the maintenance of electronic and electromechanical equipment used for the traffic infrastructure in the province of Liège.

As a result, a judicial investigation was opened on 30 March 1995 into the conduct of the applicant, who was charged with various offences: forgery of invoices and offers concerning public procurement contracts, embezzlement, fraud, bribery and bid rigging.

On 7 September 2006 the Liège Criminal Court declared that the criminal proceedings were time-barred on account of the excessive length of the judicial investigation and that the right of the accused to be presumed innocent had been breached more than once. The court found that the administrative investigator had, from the outset, shown evident bias against the applicant.

On 15 January 2007 the Liège Court of Appeal, on an appeal from the public prosecutor, dismissed two objections to admissibility submitted by the applicant, alleging that his right to be presumed innocent had been breached and that the length of the proceedings was

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<sup>1</sup> Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

unreasonable. The court found that the right of an accused to be presumed innocent was guaranteed by the impartiality with which the judge examined the evidential value of the material, even if it was unfavourable, that had been collected by the police or public prosecutor. It took the view that the length of the judicial investigation had in this case been justified by the complexity of the facts and an effort to gather as much evidence as possible, both for and against the accused. In any event, the court did not find that length to have been detrimental to the applicant, who had nevertheless been able to challenge the basis of the accusations against him and to develop his defence. The applicant appealed to the Court of Cassation but was unsuccessful.

The case was remitted to the Liège Criminal Court, which, in a decision on the merits of 19 June 2009, held that the trial had not been fair because the investigator's biased observations, which had led to the opening of the judicial investigation for forgery and bribery had breached the rights of the defence, and that the exceeding of a reasonable time (more than 10 years of proceedings) had prevented the accused from properly challenging the evidence against him.

The Liège Court of Appeal, to which the public prosecutor again appealed, set that judgment aside on 10 June 2009. It declared the criminal proceedings against the applicant admissible and observed that any fresh examination of arguments about their inadmissibility was impossible because those arguments had already been assessed on the merits. However, the Court of Appeal also declared the prosecution time-barred.

### **Complaints, procedure and composition of the Court**

Relying on Article 6 § 2, the applicant complained that his right to be presumed innocent had not been respected by the administrative investigators or by the investigating judge, who had not reacted to the manner in which the administrative inquiry had been conducted. Under Article 6 § 1 (right to a fair trial) and Article 13 (right to an effective remedy) the applicant also complained of the excessive length of the proceedings.

The application was lodged with the European Court of Human Rights on 1 October 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Ireneu **Cabral Barreto** (Spain), **President**,  
Françoise **Tulkens** (Belgium),  
Vladimiro **Zagrebelky** (Italy),  
Danutė **Jočienė** (Lithuania),  
Dragoljub **Popović** (Serbia),  
András **Sajó** (Hungary),  
İşıl **Karakaş** (Turkey), **Judges**,

And also Françoise **Elens-Passos**, **Deputy Section Registrar**.

### **Decision of the Court**

#### Article 6 § 2

In its judgment of 10 June 2009 the Court of Appeal had declared the criminal proceedings admissible and had held that the trial court could no longer examine Mr Poncelet's arguments as to their inadmissibility. Even though the Court of Appeal had not yet delivered its judgment when the European Court of Human Rights gave the Belgian Government

notice of the application, having regard to the Court of Appeal's subsequent findings, which precluded any rehearing on the matter, the Court unanimously declared the applicant's complaint under Article 6 § 2 admissible.

The Court reiterated that this Article of the Convention secured an individual's right not to be described or treated as guilty of an offence before being found guilty by a court of law.

The Court took the view that it could not be determined whether there had been a breach of the right to be presumed innocent merely on the basis of an examination of the judicial investigation stage, without ascertaining the findings of the trial court. The Criminal Court, on 19 June 2008, had in fact found breaches of the right to be presumed innocent and of defence rights. That court had thus observed that the opening of a judicial investigation in respect of the forgery and bribery charges had been based on opinions that were biased against the accused from the beginning of the administrative inquiry.

Whilst the judgment of the Court of Appeal had not in any way indicated that it considered Mr Poncelet to be guilty, the Court nevertheless found that by setting aside the judgment of 19 June 2008 it had crystallised the feeling that only the limitation period prevented the applicant's conviction. The Court of Appeal had in fact declared the criminal proceedings against him admissible, whilst finding that the prosecution had become time-barred.

The Court accordingly held, by four votes to three, that there had been a breach of the applicant's right to be presumed innocent and therefore a violation of Article 6 § 2.

#### Article 6 § 1 and 13

The applicant had not appealed to the Court of Cassation under Articles 1382 and 1383 of the Belgian Civil Code, as he could have done in order to challenge the length of the proceedings against him. The Court observed that it had already established that those provisions applied to the length of criminal proceedings. The Court thus rejected this part of the application, unanimously, for failure to exhaust domestic remedies.

#### Article 41

Under Article 41 (just satisfaction), the Court held, by four votes to three, that Belgium was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 for costs and expenses.

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Judges Cabral Barreto, Zagrebelsky and Sajó expressed a joint dissenting opinion which is annexed to the judgment.

The judgment is available only in French. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<http://www.echr.coe.int>).

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.