

Poghosyan and Baghdasaryan v. Armenia

(application no. 22999/06)

Judgment 12.06.2012 [Section III]

Article 3 of Protocol No. 7

Compensation

Inability of victim of miscarriage of justice to claim compensation in respect of non-pecuniary damage: *violation*

Article 13

Effective remedy

Inability to claim compensation in respect of non-pecuniary damage sustained as a result of ill-treatment by the police: *violation*

Facts – In 1999 the first applicant was found guilty of murder and rape and sentenced to fifteen years' imprisonment. However, he continued to protest his innocence and in 2004 his conviction was quashed and he was released from prison. Two of the police officers who had dealt with the initial investigation into the murder were subsequently convicted of exceeding their powers after a regional court found that they had ill-treated the first applicant in order to extract a confession. In separate civil proceedings, the first applicant was awarded compensation in respect of lost earnings, but his claim in respect of non-pecuniary damage was dismissed on the grounds that damage of that type was not covered by the Civil Code.

Law – Articles 3 and 13 of the Convention: The existence of an actual breach of another provision of the Convention was not a prerequisite for the application of Article 13. All that was required for that provision to apply was an arguable claim in terms of the Convention. The first applicant had undoubtedly had such a claim as the domestic courts had unequivocally established that he had been ill-treated by the police. Article 13 was therefore applicable despite the fact the Court could not examine the first applicant's substantive complaint under Article 3 because his ill-treatment had occurred before the Convention

entered into force in respect of Armenia. The Court had found in previous cases that compensation in respect of non-pecuniary damage should in principle be available as part of the range of possible remedies for violations of Articles 2 and 3, the most fundamental provisions of the Convention. Since no such compensation had been available to the first applicant under the domestic law, he had been deprived of an effective remedy.

Conclusion: violation (unanimously).

Article 3 of Protocol No. 7: Inasmuch as the first applicant's conviction had been quashed and he had applied for compensation after the date Protocol No. 7 had entered into force in respect of Armenia, the Court had temporal jurisdiction in respect of this complaint and Article 3 of Protocol No. 7 was applicable. While that provision guaranteed payment of compensation according to the law or the practice of the State concerned, compensation was due even where the domestic law or practice made no provision for such compensation. Furthermore, the purpose of Article 3 of Protocol No. 7 was not merely to recover any pecuniary loss caused by wrongful conviction but also to provide a person convicted as a result of a miscarriage of justice with compensation for any non-pecuniary damage such as distress, anxiety, inconvenience and loss of enjoyment of life. No such compensation had been available to the first applicant.

Conclusion: violation (unanimously).