



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

FOURTH SECTION

CASE OF GRZEGORZ JOŃCZYK v. POLAND

(Application no. 19789/08)

*The present version was rectified on 3 December 2010
in accordance with Rule 81 of the Rules of Court*

JUDGMENT

STRASBOURG

30 November 2010

FINAL

28/02/2011

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of Grzegorz Jończyk¹ v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 19789/08) 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 Grzegorz Jończyk (“the applicant”), on 10 April 2008.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been unlawfully detained in a regular detention centre pending his transfer to a psychiatric hospital.

4. On 1 September 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1) and to grant priority to the application (Rule 41 of the Rules of the Court).

1. Rectified on 3 December 2010: “In the case of Jończyk v. Poland ” was changed to read “In the case of Grzegorz Jończyk v. Poland.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and is currently detained in Kassel, Germany.

6. On 7 December 2007 the applicant was arrested on suspicion of uttering threats and domestic violence. On 8 December 2007 the Żary District Court ordered his detention on remand.

7. On 22 December 2007 he was admitted to a psychiatric hospital and diagnosed with paranoid schizophrenia. He was discharged from the hospital on 2 January 2008.

8. On 9 April 2008 the Żary District Court gave a decision and discontinued the proceedings against the applicant. The court found it established that the applicant had committed the offences with which he had been charged. However, he could not have been held criminally responsible as he had been suffering from paranoid schizophrenia. It further referred to the experts' opinion and ordered that the applicant be placed in a psychiatric hospital.

9. On the same date the court also refused the applicant's motion for release. The court considered that there was a reasonable suspicion that the applicant might commit another crime.

10. On 23 April 2008 the Żary District Court extended the applicant's detention until 22 September 2008. The court referred to the reasons given previously. In addition, it relied on the risk that the applicant might commit yet another offence. It stressed that it was necessary to keep the applicant in detention until his admission to a psychiatric hospital.

11. The applicant was transferred between different detention centres. After 28 March 2008 he was detained in the Nowa Sól Detention Centre.

12. On 21 May 2008 the Żary District Court was informed that the applicant had appealed against the decision of 9 April 2008. However he had filed his appeal with the Supreme Court instead of with the Regional Court. Therefore, the Supreme Court asked the lower court to examine whether the applicant's motion could be regarded as an appeal against the decision of 9 April 2008.

13. On 2 July 2008 the Zielona Góra Regional Court dismissed the applicant's appeal and upheld the decision of 9 April 2008. The court held that all the conditions for imposing the preventive measure on the applicant had been met.

14. On 7 July 2008 the Żary District Court gave a decision and ordered that the applicant be placed in the Lubiąż Psychiatric Hospital. It was also established that the applicant could be admitted to this facility on 8 August 2008. However, the applicant subsequently appealed against this

decision in so far as it related to the choice of hospital and the case file was transferred to the Zielona Góra Regional Court. On 29 August 2008 the Zielona Góra Regional Court upheld the decision of 7 July 2008.

15. The applicant was admitted to the hospital on 15 September 2008.

16. It appears that he left the hospital on a later unknown date before February 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines pre-trial detention as one of the so-called “preventive measures” (*środki zapobiegawcze*).

18. A more detailed rendition of the relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other preventive measures can be found in the Court's judgments in the cases of *Golek v. Poland* (no. 31330/02, §§ 27-33, 25 April 2006) and *Celejewski v. Poland* (no. 17584/04, §§ 22-23, 4 August 2006).

19. Article 264 § 3 of the Code of Criminal Procedure provides:

“If the proceedings are discontinued by reason of insanity of the accused, preliminary detention may be maintained pending the application of a preventive measure.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

20. The applicant complained that he had been remanded in custody despite being mentally ill. The Court considers that this complaint should be examined under Article 5 § 1 of the Convention, the relevant part of which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...

(e) the lawful detention of ... persons of unsound mind ...”

A. Admissibility

21. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

22. The applicant stressed that the period of his detention after the proceedings had been discontinued had been unlawful. He concluded that there had been a violation of Article 5 § 1 of the Convention.

2. The Government's submissions

23. The Government replied that the applicant's detention had been justified and compatible with the provisions of Article 258 of the Code of Criminal Procedure. They stressed that the final decision on the applicant's placement in a psychiatric hospital had been given on 29 August 2008 and it was only after that date that the lawfulness of the applicant's detention in an ordinary detention centre should be examined. They further agreed that the detention after 29 August 2008 fell within the scope of Article 5 § 1 (e). However, it was “in accordance with a procedure prescribed by law” and “lawful”.

24. They further stressed that the applicant made a procedural mistake and filed his appeal with the Supreme Court instead of lodging it with the Regional Court which contributed to the overall length of the proceedings.

25. They maintained that it would have been against the applicant's personal rights to place him in the psychiatric hospital before his appeal was examined and the relevant decision had become final.

26. In the Government's opinion there was no delay in the applicant's admission to a psychiatric hospital. The delay of seventeen days (between 29 August and 15 September 2008) should be regarded as fully acceptable and compatible with the standards worked out by the Court's case-law.

3. The Court's assessment

27. The Court reiterates that Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for deprivation of liberty. However, the applicability of one ground does not necessarily preclude that of another; a detention may, depending on the circumstances, be justified

under more than one sub-paragraph (see *Eriksen v. Norway*, judgment of 27 May 1997, *Reports* 1997-III, p. 861, § 76).

28. The Court firstly observes that in the instant case the applicant's deprivation of liberty between 2 July 2008 and 15 September 2008 falls within the scope of Article 5 § 1 (e) (see *Mocarska v. Poland*, no. 26917/05, § 42, 6 November 2007 and *Kumenda v. Poland*, no. 2369/09, § 26, 8 June 2010). In this respect it also notes that the subsequent decisions of 7 July and 29 August 2008 concerned only the enforcement of the decision to place the applicant in a psychiatric hospital (choice of hospital) (see paragraph 14 above).

29. It must further be established whether the applicant's detention in an ordinary detention centre between 2 July 2008 and 15 September 2008 was “in accordance with a procedure prescribed by law” and “lawful” within the meaning of Article 5 § 1 of the Convention. The Convention here refers essentially to national law and states the obligation to conform to the substantive and procedural rules thereof. Reiterating that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Bouamar v. Belgium*, judgment of 29 February 1988, Series A no. 129, p. 21, § 49) the Court accepts the parties' arguments that the applicant's detention during the period under consideration was based on Article 264 § 3 of the Code of Criminal Procedure and was therefore lawful under domestic law.

30. However, for the purposes of Article 5 of the Convention, the lawfulness under domestic law of the applicant's detention is not in itself decisive. It must also be established that his detention during the relevant period was in conformity with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Witold Litwa v. Poland*, no. 26629/95, §§ 72-73, ECHR 2000-III).

31. The Court notes that the length of detention pending transfer to a psychiatric hospital is not specified by any statutory or other provision. Nevertheless, it must determine whether the continuation of detention for two and a half months after the proceedings had been discontinued can be regarded as lawful.

32. The Court observes that in the present case the Żary District Court ordered the applicant's placement in a psychiatric hospital on 9 April 2008. Following the applicant's appeal this decision was subsequently upheld by the Zielona Góra Regional Court on 2 July 2008.

33. On 7 July 2008 the Żary District Court indicated that the applicant should be placed in a psychiatric hospital in Lubiąż. The hospital replied that the applicant could be admitted on 8 August 2008. Since the applicant appealed against this decision, the admission was postponed pending the examination of his appeal. The Court observes that the applicant's appeal was examined on 29 August 2008 – that is one month and three weeks later

(see paragraph 14 above). The applicant was finally placed in a psychiatric hospital on 15 September 2008.

34. The Court accepts the Government's arguments that it would be unrealistic and too rigid an approach to expect the authorities to ensure that a place is immediately available in a selected psychiatric hospital. However, a reasonable balance must be struck between the competing interests involved. In the present case the Court agrees with the Government that the applicant's conduct contributed to the length of the proceedings. In this connection the Court observes the delay in his admission to the psychiatric hospital and thus the beginning of the treatment resulted from the fact that the applicant challenged the final decision indicating the hospital in which he was supposed to be placed (see paragraph 14 above).

35. Consequently, the Court finds that, in the circumstances of the present case, a reasonable balance was struck and the delay in the admission of the applicant to a psychiatric hospital was not excessive (*see Morsink v. the Netherlands*, no. 48865/99, §§ 61-70, 11 May 2004; *Brand v. the Netherlands*, no. 49902/99, §§ 58-67, 11 May 2004; and *Mocarska*, cited above, § 48).

36. There has accordingly been no violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

37. The applicant complained that the overall length of his detention in a regular detention centre had been unreasonable. He relied on Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

38. The Court observes that the applicant's detention started on 10 December 2007, when he was arrested and detained on remand. On 9 April 2008 the proceedings against him were discontinued. This decision was upheld on 2 July 2008. Accordingly, the period to be taken into consideration amounts to seven months.

39. The Court firstly reiterates that the general principles regarding the right “to trial within a reasonable time or to release pending trial”, as guaranteed by Article 5 § 3 of the Convention, have been set out in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 et seq., ECHR 2000-XI, and *Bqk v. Poland*, no. 7870/04, §§ 56-65, 16 January 2007).

40. Turning to the circumstances of the instant case, the Court notes that the grounds given by the judicial authorities to justify the applicant's continuous detention satisfied the requirement of being “relevant” and

“sufficient”. The Court also accepts that the risk that the applicant might commit yet another offence warranted his initial detention.

41. The Court further observes that the criminal proceedings were discontinued by the court of first-instance on 9 April 2008. The subsequent delay in the appeal proceedings resulted from the fact that the applicant erroneously filed his appeal with the Supreme Court (see paragraph 12 above).

42. For these reasons, the Court finds that the domestic authorities cannot be criticised for failure to observe “special diligence” in the handling of the applicant's case.

43. In view of the overall length of the applicant's pre-trial detention and the criteria established in its case-law in similar cases, the Court considers that the applicant's detention does not disclose any appearance of a breach of the “reasonable time” requirement of Article 5 § 3 of the Convention. This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. The applicant further complained under Article 6 § 1 alleging unfairness of the proceedings. Lastly, he invoked Articles 3 and 4 of the Convention.

45. The Court finds that the facts of the case do not disclose any appearance of a violation of the above-mentioned provisions. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 1 of the Convention (as regards the applicant's detention between 2 July 2008 and 15 September 2008) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 30 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President