



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

FOURTH SECTION

CASE OF CHOUMAKOV v. POLAND (No. 2)

(Application no. 55777/08)

JUDGMENT

STRASBOURG

1 February 2011

FINAL

01/05/2011

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

In the case of Choumakov v. Poland (no. 2),

The European Court of Human Rights (Fourth Section), sitting 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 11 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 5777/08) 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 Russian national, Mr Oleg Choumakov (“the applicant”), on 6 November 2008.

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

3. On 13 July 2009 the Court 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). The Government of the Russian Federation did not exercise their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE****A. Criminal proceedings and the applicant's detention**

4. The applicant, Mr Oleg Choumakov, is a Russian national who was born in 1971. He is currently serving a prison sentence in the Gdańsk Detention Centre.

5. On 29 May 2003 the applicant was arrested by the police on suspicion of robbery and the murder of a taxi driver.

6. On 30 May 2003 the Braniewo District Court (*Sąd Rejonowy*) decided to remand the applicant in custody, relying on a reasonable suspicion that the applicant had committed the offences in question and the high probability that a heavy sentence would be imposed on him. The court further considered that there was a risk that the applicant might interfere with the course of the proceedings and bring pressure to bear on witnesses.

7. The applicant's pre-trial detention was subsequently extended on several occasions.

8. On 30 June 2005 the Elbląg Regional Court convicted the applicant and his co-accused and sentenced them to twenty-five years' imprisonment. The applicant lodged an appeal against the judgment.

9. On 21 December 2005 the Gdańsk Court of Appeal quashed the impugned judgment and remitted the case for fresh consideration. On the same day, the appeal court extended the applicant's pre-trial detention.

10. The applicant's pre-trial detention was further extended.

11. On 30 April 2007 the Elbląg Regional Court again convicted the applicant as charged and sentenced him to twenty-five years' imprisonment. The applicant lodged an appeal.

12. On 28 December 2007 the Gdańsk Court of Appeal allowed the appeal and quashed the impugned judgment. It remitted the case to the Elbląg Regional Court. The court further extended the applicant's detention until 28 June 2008. In addition to the grounds invoked previously, the court found that the applicant and the second co-accused had made an attempt to contact each other illegally and to exchange information about the trial, which justified the finding that the applicant might interfere with the proper course of the proceedings. Moreover, the court found that the co-accused had contacted the witnesses through other persons.

13. On 30 April 2008 the Gdańsk Court of Appeal dismissed a request by the applicant for release.

14. On 17 June 2008 the Elbląg Regional Court extended the applicant's detention until 30 December 2008, relying on the high probability that the applicant had committed the offence in question. It also noted that he had already been convicted twice by the first-instance court. The court also considered that the likelihood of a severe sentence being imposed on the applicant created a presumption that he would obstruct the proceedings, and that the fact that the applicant had contacted third persons created a presumption that he might tamper with evidence.

15. The applicant appealed against that decision.

16. On 2 July 2008 the Gdańsk Court of Appeal upheld the challenged decision, repeating the grounds invoked by the Regional Court.

17. On 1 December 2008 the applicant's lawyer requested the court to release the applicant from detention and apply a less severe measure, namely police supervision combined with the seizure of the applicant's passport. He relied, *inter alia*, on the fact that on 29 July 2008 the European Court of Human Rights had given judgment and found that the applicant's detention had exceeded a reasonable time.

18. On 5 December 2008 the Elbląg Regional Court refused the applicant's lawyer's request. The court considered that the grounds for the applicant's detention remained valid and, therefore, the continued detention of the applicant did not violate the procedural guarantees safeguarded by Articles 5 and 6 of the European Convention on Human Rights. As regards the Court's judgment, the Regional Court expressed the opinion that neither the Convention nor the Code of Criminal Procedure placed an obligation on the court to release an applicant following a judgment of the European Court of Human Rights. The Regional Court noted that the applicant had been granted 1,500 euros (EUR), which constituted sufficient just-satisfaction for the violation found.

19. On 22 December 2008 the Elbląg Regional Court again extended the applicant's detention until 30 June 2009. The court copied the reasoning from its own decision of 5 December 2008.

20. On 5 January 2009 the applicant's lawyer appealed.

21. On 21 January 2009 the Gdańsk Court of Appeal upheld the challenged decision. It again repeated the grounds previously invoked by the Regional Court. As regards the judgment given by the Court, it considered that it was of a "declaratory nature" and "did not constitute a source of law but rather an application of the law".

22. On an unspecified date the applicant's lawyer requested again that a less severe preventive measure be applied to the applicant, namely police supervision combined with the seizure of the applicant's passport.

23. On 13 May 2009 the Elbląg Regional Court refused to grant that request, finding that two expert reports had still to be prepared and the case was a particularly difficult one. It also noted that the applicant, as a foreigner without a fixed address in Poland, might abscond if released. Further, it repeated the same grounds as previously.

24. On 20 May 2009 the applicant's lawyer appealed. He argued, *inter alia*, that the applicant's professional and family life prior to his arrest had been based in Elbląg and that the sole fact that the applicant was a Russian citizen could not be regarded as creating a danger that he might abscond.

25. On 2 June 2009 the Elbląg Regional Court upheld the challenged decision. It relied on the same grounds as invoked previously.

26. On 16 June 2009 the Elbląg Regional Court again extended the applicant's detention for a further six months, that is, until 30 December 2009. It again relied on the same grounds as previously and

added that the expert witnesses had to be heard again because “the accused persons [had] again changed their version of events”.

27. On 22 June 2009 the applicant and his lawyer lodged appeals against the further extension of the detention.

28. On 1 July 2009 the Gdańsk Court of Appeal found the appeals partly justified and decided that the applicant's detention should be extended only until 30 October 2009. It noted that the proceedings had “without doubt been considerably lengthy” and considered that the Regional Court should terminate them before the expiry of the detention time-limit.

29. On 13 November 2009 the Elbląg Regional Court convicted the applicant as charged and sentenced him to twenty-five years' imprisonment.

30. On 11 March 2010 the applicant's lawyer lodged an appeal.

31. On 27 October 2010 the Gdańsk Court of Appeal upheld the challenged judgment.

B. Proceedings under the 2004 Act

32. On 1 September 2008 the applicant lodged a complaint under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”). He sought a declaration that the criminal proceedings against him were lengthy, and compensation in the amount of 10,000 Polish zlotys (PLN).

33. On 28 October 2008 the Gdańsk Court of Appeal dismissed the applicant's complaint (II S 30/08). It considered that there had been no unjustified delays in the proceedings and pointed to the complicated nature of the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

34. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are set out in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V; *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII; and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

35. On 14 December 2009 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* (*Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI), and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 5 § 3 and Article 6 § 1 of the Convention as a result of the unreasonable length of the applicant's detention and the criminal proceedings in which the applicant was involved. In respect of non-pecuniary damage, the Government proposed to award EUR 2,500 to the applicant. The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

36. The applicant did not agree with the Government's proposal. He considered that the amount proposed did not constitute sufficient just satisfaction for the damage he had sustained and requested the Court to continue the examination of the application.

37. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application or part of an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75, and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

38. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar length-of-proceedings cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded where it has found abreach of the "reasonable time" requirement (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-... *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 193-215, ECHR 2006-...; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004).

39. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the

Government, the Court considers that the sum proposed in the declaration in respect of the non-pecuniary damage suffered by the applicant as a result of the alleged violations of the Convention does not bear a reasonable relation to the amounts awarded by the Court in similar cases in respect of non-pecuniary damage. Furthermore, the domestic proceedings are pending (see paragraph 31 above).

40. On the facts, and for the reasons set out above, the Court finds that the Government failed to submit a statement offering a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see, by contrast, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

41. This being so, the Court rejects the Government's request for the application to be struck out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

42. The applicant complained that the length of his pre-trial detention was excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, 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.”

A. Admissibility

43. 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. *Period to be taken into consideration*

44. The applicant's detention started on 29 May 2003, when he was arrested on suspicion of having committed murder and robbery. On 30 June 2005 the Elbląg Regional Court convicted him as charged.

From that date he was detained “after conviction by a competent court” within the meaning of Article 5 § 1 (a), and, consequently, that period of his

detention falls outside the scope of Article 5 § 3 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104 *et seq.*, ECHR 2000-XI).

45. On 21 December 2005 the Gdańsk Court of Appeal quashed the applicant's conviction. After that date his detention was again covered by Article 5 § 3. The period to be taken into consideration ended on 30 April 2007 when the applicant was again convicted by the trial court. On 28 December 2007 the Gdańsk Court of Appeal again quashed the Regional Court's judgment and, on 13 November 2009, the Elbląg Regional Court again convicted the applicant as charged. On 27 October 2010 the judgment of 13 November 2009 was upheld by the Gdańsk Court of Appeal.

46. Accordingly, the applicant's detention for the purposes of Article 5 § 3 lasted over five years and four months.

47. However, the length of the applicant's detention has already been examined by the Court. In its judgment of 29 July 2008 (*Choumakov v. Poland*, no. 33868/05) the Court found a violation of Article 5 § 3 of the Convention on account of the excessive length of detention, which, at the relevant time, had already lasted almost four years, between 29 May 2003 and 30 April 2007, with the exclusion of periods covered by Article 5 § 1 (a) of the Convention (see paragraph 46 above). After the Court's judgment of 29 July 2008 the applicant's conviction was quashed by the second-instance court on 28 December 2007 and the case was remitted for fresh consideration. The applicant was again convicted on 13 November 2009. It follows that the period to be taken into consideration by the Court in the present case commenced on 29 December 2007 and ended on 13 November 2009 (see, *mutatis mutandis*, *Rotondi v. Italy*, no. 38113/97, § 13, 27 April 2000). It thus lasted one year, ten months and fifteen days.

48. The Court observes that this period of detention might not, in itself, give rise to the finding of a violation of Article 5 § 3 of the Convention, especially taking into account that the applicant was charged with murder and that he and the second co-accused had made an attempt to contact each other illegally and to exchange information about the trial (see paragraph 13 above). However, this period cannot be examined in isolation from the fact that the applicant had already been detained for almost four years.

2. *The parties' submissions*

(a) *The applicant*

49. The applicant submitted, in general terms, that his detention had exceeded a reasonable time. He also claimed that the judgment given by the Court on 29 July 2008 had not been complied with by the Polish authorities because he was still detained, and that the courts, in extending his detention, had relied on the same grounds as previously.

(b) The Government

50. The Government, having submitted a unilateral declaration, did not produce observations on that matter.

3. The Court's assessment

51. The Court notes 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, *Kudla*, cited above, § 110 *et seq.*, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

52. The Court recalls that, on 29 July 2008, it gave a judgment in which it found that the applicant's detention in the same set of proceedings had been excessive. However, after the Court's judgment, the applicant continued to be detained.

53. In their decisions given after 29 July 2008, the authorities which extended the detention or refused to release the applicant and apply a different, less severe preventive measure to him relied on the same grounds as those previously invoked, namely the serious nature of the offences with which the applicant had been charged, the severity of the penalty to which he was liable, the need to secure the proper conduct of the proceedings, and the risk that the applicant might tamper with evidence or abscond (see paragraphs 17-29 above). It follows that after the delivery of the judgment by the Court no new relevant reasons capable of justifying the lengthy detention were considered.

In these circumstances, and taking into consideration that after the Court's judgment the detention lasted for a further one year, ten months and fifteen days, the Court finds that the authorities failed to respect the applicant's right of a detained person to a trial within a reasonable time or to be released pending trial.

There has accordingly been a violation of Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

54. The applicant complained that the length of the proceedings was incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of any criminal charge against him ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

55. The Government, having submitted a unilateral declaration, did not produce observations on that matter.

56. The period to be taken into consideration began on 29 May 2003 and has not yet ended. It has thus lasted over seven years at two levels of jurisdiction.

A. Admissibility

57. 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

58. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

59. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above). Furthermore, the Court considers that in dismissing the applicant's complaint that the proceedings in his case exceeded a reasonable time the Gdańsk Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

60. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings is excessive and fails to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

61. The applicant further complained that the remedy provided for by the 2004 Act was not "effective" within the meaning of Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

62. The Court reiterates that the expression “effective remedy” within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, e.g., *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006, and *Figiel v. Poland (no. 1)*, no. 38190/05, 17 July 2008). The mere fact that the complaint was dismissed by the domestic court does not of itself render the remedy provided for in the 2004 Act ineffective.

63. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

64. Lastly, the applicant complained under Article 3 that his detention amounted to inhuman treatment, and under Article 6 § 2 that his lengthy detention violated the principle of the presumption of innocence.

65. Having examined all the material in its possession and regardless of other possible grounds of inadmissibility, the Court finds nothing in the case file which might disclose any appearance of a violation of the provisions relied on.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

67. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage, and EUR 300,000 in respect of non-pecuniary damage.

68. The Government considered these claims inappropriate and unsubstantiated.

69. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,500 under that head.

B. Costs and expenses

70. The applicant did not make any claim for the costs and expenses involved in the proceedings.

C. Default interest

71. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the complaints under Article 5 § 3 of the Convention concerning the excessive length of the pre-trial detention and under Article 6 § 1 of the Convention concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President