



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

FOURTH SECTION

CASE OF BIELSKI v. POLAND AND GERMANY

(Application no. 18120/03)

JUDGMENT

STRASBOURG

3 May 2011

FINAL

03/08/2011

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

In the case of Bielski v. Poland and Germany,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. de Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 18120/03) against the Republic of Poland and the Federal Republic of Germany 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 Kazimierz Bielski (“the applicant”), on 15 May 2003.

2. The applicant, who had been granted legal aid, was represented by Ms J. Jędrzejak, a lawyer practising in Poznań. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his pre-trial detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 13 June 2007 the President of the Fourth Section of the Court decided to give notice of the application to the Polish Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and is currently detained in Szczecinek Prison.

A. Criminal proceedings against the applicant and his pre-trial detention

6. On 1 July 1999 the applicant was arrested by the German police on suspicion of having committed a murder in Germany. On the same date he was remanded in custody by the German authorities.

7. On 28 January 2000 the applicant was surrendered to the Polish authorities.

8. On the same date, the Poznań District Court (*Sąd Rejonowy*) remanded him in custody, relying on the reasonable suspicion that he had committed the offence in question. It attached importance to the serious nature of those offences and the likelihood of a severe prison sentence being imposed on the applicant.

9. On 17 April 2000 the Poznań Regional Court (*Sąd Okręgowy*) extended the applicant's pre-trial detention to 26 July 2000. It stated that it resulted from the other suspects' testimonies, expert reports and other evidence that the applicant had committed the offences of which he was suspected. It stressed that the investigation was in its final stage but some additional time would be necessary for the suspects to acquaint themselves with the large volume of evidence. Finally, it drew importance to the fact that there were several suspects in the case and that the less restrictive measure would not secure the proper conduct of the proceedings.

10. The applicant's appeals against several decisions extending his detention were unsuccessful.

11. On 30 June 2000 the prosecution filed a bill of indictment with the Poznań Regional Court. There were five defendants in the case, all charged with numerous offences. The applicant was charged with murder.

12. On 4 December 2000 the trial court held the first hearing. It subsequently held some thirteen hearings in the case.

13. During the court proceedings the Poznań Regional Court further extended the applicant's pre-trial detention on several occasions, namely, on 17 July 2000 (to 30 January 2001), 22 January 2001 (to 30 April 2001) and 23 April 2001 (to 30 June 2001) repeating the reasons given previously.

14. On 28 June and 28 December 2001 the Poznań Court of Appeal (*Sąd Apelacyjny*) repeated the earlier arguments given for the applicant's continued detention, underlining the complexity of the case and the substantial volume of evidence to be examined, including expert reports from abroad.

15. On 27 June 2002 the Poznań Court of Appeal extended the applicant's pre-trial detention to 30 September 2002 stating merely that the evidence collected during the proceedings seemed to indicate that he had committed the offences with which he was charged.

16. On an unspecified date the Poznań Regional Court decided that the criminal proceedings had to start anew as more than the statutory period of 35 days elapsed between two consecutive hearings.

17. On 3 September 2002 the Poznań Court of Appeal extended the applicant's detention to 28 February 2003. It did not rely on any new arguments. It considered that the applicant's detention for the subsequent months was reasonable given that the criminal proceedings in his case had to start anew.

18. On 2 October 2002 the trial started anew. Subsequently, the court held seven hearings.

19. On 20 February 2003 the Poznań Regional Court found the applicant guilty as charged and sentenced him to life imprisonment. The applicant appealed. He remained detained pending appellate proceedings.

20. On 10 March 2004 the Poznań Court of Appeal upheld the first-instance judgment in respect of the applicant.

21. On 1 March 2005 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant's cassation appeal as manifestly ill-founded.

B. Conditions of the applicant's detention

22. On 28 January 2000 the applicant was committed to Rawicz Prison. Since that date he has been continuously detained in several penitentiary facilities. On an unspecified date in early 2008, he was transferred to Szczecinek Prison where he is currently detained.

23. The parties gave partly differing accounts of the conditions of the applicant's detention.

24. The applicant maintained that during his entire detention he was held in overcrowded cells in conditions which did not comply with the basic standards of hygiene.

25. The Government acknowledged that the applicant had spent 2 years, 6 months and 20 days in cells in which the statutory minimum size of 3 m² per person had not been respected. They maintained however that currently the applicant was detained in a cell in which the statutory minimum requirement was respected. This submission was not contested by the applicant.

26. The applicant lodged several complaints to the Ombudsman and the penitentiary authorities regarding the conditions of his detention. All of them were found groundless. The applicant did not bring a civil action in tort to seek compensation for the infringement of his personal rights.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

27. The relevant domestic law and practice concerning the imposition of pre-trial detention (*tymczasowe aresztowanie*), the grounds for its extension,

release from detention and rules governing other, so-called “preventive measures” (*środki zapobiegawcze*) are stated 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 May 2006.

B. Conditions of detention

28. A detailed description of the relevant domestic law and practice concerning general rules governing the conditions of detention in Poland and domestic remedies available to detainees alleging that conditions of their detention were inadequate are set out in the Court’s pilot judgments given in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) on 22 October 2009 (see §§ 75-85 and §§ 45-88 respectively). More recent developments are described in the Court’s decision in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

THE LAW

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

29. The applicant complained that the length of his pre-trial detention had been 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.”

30. The Government contested that argument.

A. Admissibility

31. The Court notes that the Government raised a preliminary objection that the applicant had failed to exhaust the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention, in that he did not appeal against most of the decisions extending his detention.

32. The applicant contested this argument.

33. In the present case, the applicant appealed against several decisions which had extended his detention. The Court considers that the purpose of the remedy used by the applicant was to obtain a review of his detention pending trial. In the circumstances of the case this remedy constituted an

adequate and effective remedy within the meaning of Article 35 of the Convention as its aim was to obtain his release. It follows from the Court's case-law that the applicant is not required to appeal against each and every decision extending his detention (see, by contrast, *Bronk v. Poland* (dec.), no. 30848/03, 11 September 2007).

34. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in previous cases against Poland (see *Tomecki v. Poland*, no. 47944/06, §§ 19-21, 20 May 2008, and *Buta v. Poland*, no. 18368/02, §§ 25-27, 28 November 2006) and that the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

35. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further 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

36. The applicant's detention started on 28 January 2000, when the Poznań District Court remanded him in custody, relying on the reasonable suspicion of having committed a murder. On 20 February 2003 the Poznań Regional Court convicted him as charged.

As 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*, cited above, § 104).

Accordingly, the period to be taken into consideration amounts to three years and twenty-three days.

2. The parties' submissions

(a) The applicant

37. The applicant submitted that his detention exceeded a reasonable time within a meaning of Article 5 § 3 of the Convention. He also argued that his lengthy detention violated the relevant provisions of the Code of Criminal Procedure.

(b) The Government

38. The Government were of the opinion that there was no violation of Article 5 § 3 of the Convention in the applicant's case.

3. *The Court's assessment*

(a) General principles

39. The Court 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 were stated in a number of its previous judgements (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

(b) Application of the above principles in the present case

40. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely, (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he was liable; and (3) the complexity of the case owing to the volume of evidence to be obtained from various sources.

41. The applicant was charged with murder. The Court acknowledges that the seriousness and the nature of the accusations against the applicant could initially warrant his detention.

42. Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a risk that he would obstruct the proceedings. The Court reiterates that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the gravity of the charges cannot by itself justify long periods of pre-trial detention (see *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006).

43. The Court further observes that the proceedings were of considerable complexity, regard being had to the serious nature of the charge and the extensive scope of the evidence to be obtained (see paragraph 14 above). In these circumstances, the Court considers that the need to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-defendants, constituted relevant and sufficient grounds for the applicant's initial detention.

44. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts unlimited powers to extend this measure. Even if the particular circumstances of the case required detention to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify further extensions of the applicant's pre-trial detention (see *Wolf v. Poland*, no. 15667/03 and 2929/04, § 90, 16 January 2007). In this respect, the Court observes that the applicant was held in custody over three

years and that the reasons relied upon by the domestic courts in their decisions to extend the applicant's detention were often limited to repeating the wording of the decisions previously given (see paragraphs 13, 15 and 17 above).

45. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention.

46. Consequently, it is not necessary to examine whether the proceedings were conducted with special diligence. However, the Court cannot but note that between 4 December 2000 and 2 October 2002 (when the proceedings started anew) the Poznań Regional Court held only thirteen hearings that is less than one hearing per month. Furthermore, the trial had to start anew as the Poznań Regional Court failed to hold hearings at the statutorily required interval of 35 days. It cannot therefore be said that the authorities displayed "special diligence" in the conduct of the criminal proceedings against the applicant.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant alleged a breach of Article 3 of the Convention in that he had been detained in overcrowded cells and that the State had failed to secure to him adequate conditions throughout his detention.

A. The Government's objection based on exhaustion of domestic remedies

Article 35 § 1 of the Convention reads, in so far as relevant, as follows:

"1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

49. The Government argued that the applicant had not exhausted domestic remedies available to him, as required by Article 35 § 1 of the Convention. They raised a preliminary objection similar to that relied on in the case of *Latak v. Poland* (see *Latak v. Poland* (dec.) no. 52070/08, 12 October 2010, §§ 63-64). In particular, they stressed that the applicant had been moved to a cell in which he had been secured at least the statutory minimum standard space of 3 m² per person shortly after the delivery of the *Orchowski* and *Norbert Sikorski* pilot judgments. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed and the applicant should bring a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code in order to seek compensation for the past violation.

50. In view of the foregoing, the Government invited the Court the Court to reject the applications for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

B. The applicant's position

51. The applicant in general disagreed with the above arguments and maintained that the remedy suggested by the Government could not be considered "effective" for the purposes of Article 35 § 1 of the Convention.

C. The Court's conclusion

52. The Court has already examined the same objection raised by the Government in the above-mentioned case of *Latak v. Poland* and considered their arguments not only in the context of that particular applicant but also in respect of other actual or potential applicants with similar cases (see *Latak*, cited above, §§ 71-85).

53. In so doing, the Court had regard to the fact that on the date of the adoption of its decision there were 271 cases pending before it where the applicants had raised complaints similar in substance, alleging a violation of Article 3 in that at various times and for various periods they had been adversely affected by the same structural problem, having been detained in overcrowded, insanitary cells (*ibid.* § 84).

54. Having found that a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code could be considered an "effective remedy" for the purposes of Article 35 § 1 of the Convention as from 17 March 2010 and having regard to the 3-year limitation period for lodging such an action, the Court held that essentially in all cases in which in June 2008 the alleged violation had either been remedied by placing the applicant in Convention-compliant conditions or had ended *ipso facto* because the applicant had been released, the applicants concerned should bring a civil action for the infringement of personal rights and compensation (*ibid.* § 85 and § 76 respectively).

55. In the present case, the situation giving rise to the alleged violation of Article 3 ended after June 2008 when the applicant was placed in a cell in which the minimum size requirement of 3 m² per person was respected. That being so and having regard to the fact that he still has adequate time to prepare and lodge with the Polish civil courts an action under Article 24 taken in conjunction with Article 448 of the Civil Code, he should, before having their Convention claim examined by the Court, be required to seek redress at the domestic level.

56. In any event, as from 6 December 2009, the date on which Article 110 § 2 (f) of the Code of Execution of Criminal Sentences entered into force, a detainee placed in conditions where the area per person is less

than the statutory minimum may lodge a complaint with the court and contest a decision of the prison administration to reduce his cell space (see *Latak*, cited above, §§ 42-43 and 86-87).

57. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. Invoking Article 5 § 2 of the Convention the applicant complained that he had not been informed by the German authorities of the reasons for his arrest in a language he understood. He further complained under Article 5 § 3 of the Convention about the length of his pre-trial detention in Germany. Invoking Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, he also alleged that after his arrest, the German authorities had failed to secure his apartment in a way to prevent burglars from breaking into it.

59. The Court notes that the applicant failed to raise his complaints -either in form or in substance – before any relevant German authorities. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

60. Under Article 6 of the Convention the applicant further complained about the alleged unfairness of the criminal proceedings against him.

61. The Court observes that the applicant did not allege any particular failure to respect his right to a fair hearing on the part of the relevant courts and authorities. Indeed, his complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the applicant's right to a fair trial was not respected in the impugned proceedings. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

62. Finally, the applicant complained about the negative coverage of the criminal proceedings against him by countrywide media, about being denied access to the prison chapel and not being offered a job within an employment scheme in prison.

63. The Court has examined those complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant has failed to substantiate his complaints. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 25,000 euros (EUR) in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage.

66. In respect of the applicant’s claim for non-pecuniary damage, the Government found it exorbitant. Regarding, his claim for pecuniary damage, the Government submitted that there was no causal link between the alleged violations and the applicant’s claim under this head.

67. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant claimed 100,000 Polish zlotys (PLN) for the costs and expenses incurred before the domestic courts. The applicant further submitted that all costs related to the proceedings before the Court should be borne by the Government, including the cost of photocopies in the amount of 2,000 PLN. He did not submit any documents in support of his claims.

69. The Government noted that the applicant had not presented any invoices in support of his claims.

70. The Court notes that the applicant was represented by a lawyer and received EUR 850 by way of legal aid from the Council of Europe. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being to the above criteria and the fact that the applicant failed to submit any documents in support of his claim, the Court makes no award under this head (see, *Adamiak v. Poland*, no. 20758/03, § 49, 19 December 2006).

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. *Declares* the complaint concerning the length of detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the Republic of Poland is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President