



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

FOURTH SECTION

CASE OF WŁOCH v. POLAND (No. 2)

(Application no. 33475/08)

JUDGMENT

STRASBOURG

10 May 2011

FINAL

28/11/2011

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

In the case of Włoch 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,

Sverre Erik Jebens,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 12 April 2011,

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

PROCEDURE

1. The case originated in an application (no. 33475/08) 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 Adam Włoch (“the applicant”), on 26 June 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 not had an enforceable right to compensation for his pre-trial detention in breach of Article 5 § 5 of the Convention.

4. On 19 January 2009 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Kraków.

6. Between 20 September 1994 and 11 January 1995 the applicant was detained on charges of trafficking in children on account of his suspected involvement in illicit adoptions, and incitement to false testimony. The proceedings as regards the charge of trafficking in children were

discontinued on 24 November 2000 by the Tarnobrzeg Regional Court. The court found that the applicant's actions did not fulfil the description of such an offence. The decision was upheld on 30 January 2001 by the Rzeszów Court of Appeal. The remainder of the charges against the applicant were discontinued on 26 August 2003.

7. On 16 May 2000 the applicant was charged with using a forged power of attorney authorising him to represent Mr and Mrs C. On 16 June 2005 the Tarnobrzeg District Court found him guilty on this charge and sentenced him to a fine of 2,280 Polish zlotys (PLN), calculated as 228 daily rates, each equivalent to PLN 10. At the same time the court decided, under Article 63 § 1 of the Criminal Code, to credit the period of the applicant's pre-trial detention from 20 September 1994 to 11 January 1995 towards the fine. Since, according to the Criminal Code, one day of deprivation of liberty equalled two daily rates of a fine, the period of the applicant's detention of 114 days was credited in its entirety towards the fine. An appeal by the applicant against that judgment was dismissed on 10 October 2005 by the Tarnobrzeg Regional Court.

8. On 21 January 2002 the applicant lodged an application for compensation for unjustified detention. He sought PLN 500,000 in respect of non-pecuniary damage and PLN 150,000 for pecuniary damage (at the material time these sums amounted to 160,000 euros (EUR) in total).

9. On 15 December 2005 the Tarnobrzeg Regional Court dismissed the application. On 18 April 2006 the Rzeszów Court of Appeal quashed the judgment and remitted the case.

10. On 30 June 2006 the Tarnobrzeg Regional Court dismissed the application. The court established that the applicant's detention between 20 September 1994 and 11 January 1995 had undoubtedly been unjustified within the meaning of Article 552 § 4 of the Code of Criminal Procedure. It relied on the Supreme Court's interpretation to the effect that pre-trial detention was undoubtedly unjustified if it had been imposed in violation of the Code of Criminal Procedure as well as if it had caused the applicant suffering to which, taking into account all the circumstances and particularly the outcome of the case, he should not have been subjected. Accordingly, the final outcome of the case was to be considered decisive for finding that the pre-trial detention in a case had been "undoubtedly unjustified". In this connection the court established that the applicant had not been convicted of any of the offences which had been the basis of his pre-trial detention. Moreover, it pointed to the findings of the courts, which had discontinued the proceedings against him on the ground that the applicant's actions did not fulfil the description of the offences he had been charged with. Taking into account all these arguments, the court concluded that the applicant's pre-trial detention had undoubtedly been unjustified.

11. However, the Regional Court dismissed the applicant's application for compensation, reiterating that on 16 June 2005 he had been convicted

of forgery, for which he had been fined PLN 2,280 (approximately EUR 550). In accordance with Article 63 § 1 of the Criminal Code, the total period of the applicant's pre-trial detention had been credited towards the fine in such a way that one day of pre-trial detention had equalled two daily rates of PLN 10. The court thus considered that the State Treasury had no longer been liable for undoubtedly unjustified detention, because the damage that had been sustained by the applicant had been correctly compensated for by crediting the period of his deprivation of liberty towards the fine ordered against him.

12. The applicant appealed against the judgment, relying, *inter alia*, on Article 5 § 5 of the Convention. He argued that the crediting of a period of deprivation of liberty towards a fine should not be automatic and that the courts should assess the actual damage sustained by a detainee.

13. On 5 October 2006 the Rzeszów Court of Appeal (*Sąd Apelacyjny*) dismissed the appeal. The court agreed with the lower court's findings, and those expressed in the Supreme Court's Resolution of 15 September 1999, which had stated that if the pre-trial detention had been compensated for by being credited towards a fine, even one ordered in another set of proceedings, no compensation would be granted.

14. The applicant lodged an appeal on points of law against that judgment.

15. The Supreme Court applied to an extended bench of the Supreme Court for a resolution which would answer the following question:

"In the event that a period of pre-trial detention ordered in another set of proceedings is credited towards a fine – under Article 417 of the Code of Criminal Procedure and Article 63 of the Criminal Code – should the claim for compensation for undoubtedly unjustified detention be considered to have already been satisfied; or, in application of Article 553 of the Code of Criminal Procedure (*a contrario*) and the principles on calculating compensation as encompassing both [pecuniary and non-pecuniary] damage, would there still be a claim in so far as the just amount of compensation would exceed the amount of the fine that had been ordered?"

16. On 20 September 2007 the Supreme Court, sitting as a bench of seven judges, dismissed the application for a resolution in the applicant's case. The court considered that the law and practice were clear and that further interpretation of them in a resolution was not required. It considered that there existed two ways of compensating for damage caused by unjustified pre-trial detention. The first was of non-pecuniary nature, and applied when there was a possibility to credit a period of detention towards another penalty ordered against the same person in the same or another set of proceedings. The second was of a pecuniary nature, under Article 552 of the Code of Criminal Procedure, and was applicable only if the first way was not practicable. These two methods were mutually exclusive in that making use of one excluded the possibility of using the other. The Supreme Court concluded:

“... crediting of a period of pre-trial detention towards a penalty ordered in the same or in another set of proceedings precludes the possibility of subsequently bringing an effective claim for compensation [under the relevant provisions of the Code of Criminal Procedure] for the same period [of pre-trial detention] ...”

17. On 15 November 2007 the Supreme Court, sitting as a panel of three judges, dismissed the applicant’s appeal on points of law following the interpretation provided by the Supreme Court in the above-mentioned decision. The court considered that there were no provisions of Polish law that would allow for supplementary compensation in cases where the period of detention had been credited towards another penalty.

18. The applicant was notified of the Supreme Court decision on 2 January 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Article 552 of the Code of Criminal Procedure provides:

“1. An accused who, as a result of the reopening of proceedings or an appeal on points of law, has been acquitted or re-sentenced under a more lenient provision, shall be entitled to receive from the State Treasury compensation for the pecuniary and non-pecuniary damage which he has suffered as a result of having served all or part of the sentence unjustifiably imposed on him.

2. The provisions of paragraph 1 shall also be applicable if, after the sentencing judgment has been reversed or declared null and void, the proceedings have been discontinued by reason of material circumstances not duly considered in prior proceedings.

3. A right to compensation for pecuniary and non-pecuniary damage shall also arise if a preventive measure has been applied under the conditions specified in paragraphs 1 and 2.

4. A right to compensation for pecuniary and non-pecuniary damage shall also arise in the event of undoubtedly unjustified (*niewątpliwie niesłuszne*) pre-trial detention or arrest.”

20. Article 63 (1) of the Criminal Code deals with the crediting of a period of actual deprivation of liberty towards other penalties ordered in the same set of proceedings. It provides:

“The period of actual deprivation of liberty in a given case, rounded to a full number of days, shall be credited towards the penalty ordered, with one day of actual deprivation of liberty equalling one day of the penalty of deprivation of liberty, or two days of the penalty of restriction of liberty, or two daily rates of a fine.”

21. On 8 February 2007 the Kraków Court of Appeal partly upheld the first-instance court judgment and awarded compensation for unjustified detention to Mr U.M.K. in the amount of PLN 35,000 as regards non-pecuniary damage and PLN 23,500 for pecuniary damage (in total approximately EUR 15,000). The claimant was detained for a total period of

twenty-four days in October 1995. The criminal proceedings against him, linked to the applicant's case and also concerning trafficking in children, were finally discontinued in 2002.

On 5 October 2005 the Włocławek Regional Court gave a judgment in which it granted compensation for unjustified detention to Mr B.R. in the amount of PLN 50,000 as regards pecuniary damage and PLN 25,000 in respect of non-pecuniary damage (in total approximately EUR 20,000). It appears that Mr B.R. was also detained in connection with the same investigation as the applicant.

THE LAW

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

22. The applicant complained under Article 5 § 5 of the Convention that he had not had an effective and enforceable right to compensation for unlawful detention. Article 5 § 5 reads as follows:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

23. The Government failed to submit any comments regarding the admissibility or merits of the case.

24. The applicant complained that he had been deprived of the right to obtain compensation for his pre-trial detention between 20 September 1994 and 11 January 1995. He submitted that he had used the only available domestic remedy; however, his claim for compensation failed. The applicant argued that the domestic courts' practice of crediting a period of deprivation of liberty towards a fine was unfair and had not compensated for the damage sustained by him.

25. The Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *N.C. v. Italy* [GC], no. 24952/94, § 49, ECHR 2002-X; *Pantea v. Romania*, no. 33343/96, judgment of 3 June 2003, § 262; and *Fedotov v. Russia*, no. 5140/02, § 83, 25 October 2005).

26. The facts of the instant case had been examined by the Court in the first application brought by the applicant against Poland. In its judgment of 19 October 2000 the Court found that the applicant's detention between 20 September 1994 and 11 January 1995 had not been unlawful, and thus

there had been no violation of Article 5 § 1 of the Convention. However, the Court found a breach of Article 5 § 4 of the Convention in respect of lack of procedural guarantees in examining the applicant's appeal against the detention order and speediness of review of the lawfulness of his continued detention (see *Włoch v. Poland*, no. 27785/95, §§ 130-136, ECHR 2000-XI).

27. Article 5 § 5 is therefore applicable and the Court must establish whether or not the applicant had an enforceable right to compensation for the breach of Article 5 § 4.

28. The Court has found that there were two possibilities available under Polish law of claiming compensation in relation to pre-trial detention (see *Ryckie v. Poland*, no. 19583/07, 30 January 2007, § 54; and *Bruczyński v. Poland*, no. 19206/03, § 67, 4 November 2008). The applicant could have instituted proceedings for compensation for unjustified detention (Article 552 § 4 of the Code of Criminal Procedure) or he could have claimed compensation from the State Treasury for damage caused by the unlawful action of a State official carried out in the course of performing his duties (Article 417 of the Civil Code).

29. The applicant brought the claim for compensation under Article 552 § 4 of the Code of Criminal Procedure. However, his claim was finally dismissed by the Supreme Court on 15 November 2007. The domestic courts found that the proceedings against the applicant had ultimately been discontinued, a circumstance which, under Polish law, rendered his pre-trial detention "undoubtedly unjustified" within the meaning of Article 552 of the Code - a prerequisite for obtaining compensation under this provision. The Court has held in similar circumstances that the compensation due to an applicant as a result of his acquittal was indissociable from any compensation he might have been entitled to under Article 5 § 5 of the Convention as a consequence of his deprivation of liberty being contrary to paragraphs 1 to 4 (see *N.C. v. Italy* [GC], cited above, § 57; and *Staykov v. Bulgaria*, no. 49438/99, § 108, 12 October 2006).

30. However, no compensation was awarded to the applicant in the instant case, as the period of his pre-trial detention had been credited towards a fine imposed on him for a different offence. Indeed, from the Supreme Court's decision of 20 September 2007 it is clear that crediting a period of pre-trial detention towards another penalty is considered a non-pecuniary manner of compensating for damage sustained by an applicant. Since in the instant case the totality of the applicant's pre-trial detention was calculated towards a fine, it precluded the possibility of subsequently bringing an effective claim for compensation for the same period of pre-trial detention (see paragraph 16 above) and, it follows, for the breach of Article 5 § 4.

Thus, the applicant's compensation claim under Article 552 of the Code was doomed to failure.

31. The claim for compensation under Article 417 of the Civil Code was not an effective remedy either, as it could not be used in respect of unlawful actions which occurred before 1 September 2004, whereas the events giving rise to this complaint took place in 1995 (see *Bruczyński*, cited above, § 68).

The Government failed to advance any argument indicating the existence of any other compensatory remedy.

32. Finally, the Court reiterates that paragraph 5 of Article 5 does not prohibit the Contracting States from making an award of compensation dependent upon the ability of the person concerned to show damage resulting from the breach (see *Wassink v. the Netherlands*, judgment of 27 September 1990, Series A no. 185-A, p. 14, § 38). However, the domestic courts in the applicant's case never examined whether the applicant had actually sustained any pecuniary or non-pecuniary damage. No consideration was given to the issue of whether crediting his pre-trial detention towards the EUR 580 fine compensated fairly for any pecuniary and non-pecuniary damage actually sustained by the applicant.

In the absence of the Government's submissions the Court is unable to establish whether, when a court credits a period of pre-trial detention towards a fine or other penalty, it gives any consideration to the issue of damage sustained by the applicant as a result of pre-trial detention and its proportionality to the penalty to which it is credited. However, it notes that according to domestic practice such crediting is clearly meant to be of a non-financial character, the more so if the period of pre-trial detention is calculated towards a penalty of deprivation or limitation of liberty. Moreover, a court credits a period of deprivation of liberty without making any assessment of the legality of the pre-trial detention. Accordingly, the Court considers that the fact that the total period of the applicant's pre-trial detention was automatically credited towards another penalty imposed in respect of an unrelated offence cannot be considered compliant with the enforceable right to compensation contained in Article 5 § 5 of the Convention.

33. Regard being had to the above considerations, the Court finds that the applicant had no enforceable right to compensation for his detention, which has been found to be in violation of Article 5 § 4 of the Convention. There has therefore been a breach of Article 5 § 5 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

34. The applicant also complained under Article 6 § 1 of the Convention that the length of the proceedings was unreasonable.

35. The Court observes that after the entry into force, on 17 September 2004, 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”) it was open to anyone involved in judicial proceedings to lodge a complaint of unreasonable length with the relevant domestic court.

36. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it to be effective in respect of complaints of excessive length of judicial proceedings in Poland. In particular, it has considered that that remedy is capable both of preventing a violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42, ECHR 2005-V).

37. However, the applicant has chosen not to avail himself of that remedy. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed EUR 46,000 in respect of pecuniary damage. He also requested the Court to award him compensation for non-pecuniary damage, without specifying any amount, for his distress and suffering caused by violation of the Convention.

40. The Government did not comment on the applicant’s claims.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It further considers that in the particular circumstances of the case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which may have been sustained by the applicant.

B. Costs and expenses

42. The applicant did not claim reimbursement of any costs and expenses incurred before domestic courts or the Court.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 5 § 5 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 5 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President