



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

FOURTH SECTION

CASE OF MAMEŁKA v. POLAND

(Application no. 16761/07)

JUDGMENT

STRASBOURG

17 April 2012

FINAL

17/07/2012

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

In the case of Mamełka v. Poland,

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 16761/07) 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 Wińczysław Mamełka (“the applicant”), on 10 April 2007.

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

3. The applicant complained about a delay of seven days in his release from prison following the domestic court’s decision granting him conditional release.

4. On 15 June 2009 the application was communicated 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 1962 and lives in Łódź.

6. The applicant was serving a prison sentence in Potulice Prison. The overall term of his imprisonment was due to come to an end on 26 May 2007.

7. Pursuant to the provisions of the Criminal Code, applicable to persons found guilty of offences committed while acting as members of an

organised criminal group, the applicant became eligible for early conditional release (*warunkowe przedterminowe zwolnienie*) after having served three-quarters of the overall term of his imprisonment, namely on 12 July 2006. After that date, the applicant requested a court on several occasions to grant him conditional release. However, his requests were denied.

8. On 11 January 2007 the Bydgoszcz Regional Court (*Sąd Okręgowy*) gave a decision ordering the applicant's early conditional release for a two-year probationary period. It placed the applicant under the supervision of a court officer and imposed certain other obligations on him.

9. On 19 February 2007 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) upheld the decision of the Bydgoszcz Regional Court.

10. On 20 February 2007 the applicant was served with a copy of the Gdańsk Court of Appeal's decision.

11. According to the official release certificate, the applicant was released on 26 February 2007.

II. RELEVANT DOMESTIC LAW

A. Relevant constitutional provisions

12. Article 41 § 1 of the Polish Constitution provides as follows:

"Inviolability and liberty of the person shall be afforded to everyone. Any deprivation or limitation of liberty may be imposed only in accordance with the principles and procedures laid down by statute."

B. Conditional release of a person serving a prison sentence

13. Article 77 § 1 of the 1997 Criminal Code reads as follows:

"The court may conditionally release a person serving a prison sentence from serving the remainder of that sentence only when his/her behaviour, characteristics, personal circumstances and way of life prior to the commission of the offence, the circumstances in which the offence was committed and his/her behaviour following the commission of the offence and while serving a sentence, would justify a conclusion that, following [conditional] release, the person would abide by the law and, in particular, would not re-offend."

14. Article 78 §§ 1-3 of the Criminal Code prescribes the minimum prison term, depending on the type of sentence and offender, which must be served before a convicted person may apply for conditional release. However, the decision to grant conditional release is left to the discretion of the court, which must be satisfied that the conditions laid down in Article 77 § 1 of the Criminal Code are met.

C. Execution of a decision granting conditional release

15. When conditional release is granted, a convicted person should be released on completion of the necessary administrative formalities as specified in the Ordinance (*Zarządzenie*) of the Minister of Justice of 27 August 1998 on Administrative Acts concerning Execution of Pre-Trial Detention and Sentences and Coercive Measures resulting in Deprivation of Liberty.

Paragraph 3 of that Ordinance states, in so far as relevant:

“All administrative formalities shall be carried out without delay (*niezwłocznie*) ... This concerns in particular (...) transmission of information and official notifications ... and releasing.”

Paragraph 104.2 of the Ordinance provides that the convicted person should be released upon receipt of a copy of the enforceable decision granting him or her conditional release. The release should be effected on the day of the receipt of the relevant documents by the prison (§ 104.3 of the Ordinance).

The Ordinance does not prescribe any specific time-frame for the execution of the decisions granting conditional release.

16. In its decision of 4 October 2011 setting out its observations on the lacunae in the Regulation of 13 January 2004 on Administrative Acts concerning Execution of Pre-Trial Detention and Sentences and Coercive Measures resulting in Deprivation of Liberty, the Constitutional Court indicated the need to take appropriate legislative measures to tackle the problem of delay in the release of detainees from custody.

The Constitutional Court considered that the existing regulations did not guarantee the prompt release of a detainee following a court decision. In particular, it maintained that the obligation to deliver to the penitentiary facility the original of a court warrant in respect of a detainee’s release from custody was no longer justified in the light of the development of information and communications technologies.

The Constitutional Court further observed that the current situation was incompatible both with the provisions of the Constitution and the European Convention on Human Rights. In particular, the Constitutional Court made reference to the Court’s judgments in the cases of *Gębura v. Poland*, no. 63131/00, 6 March 2007 and *Ladent v. Poland*, no. 11036/03, 18 March 2008, where the Court underlined that the right to liberty imposes on the authorities a duty to eliminate organisational shortcomings attributable to the State which may give rise to unjustified deprivation of liberty.

THE LAW

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

17. The applicant complained about a delay of seven days in his release from prison following the Gdańsk Court of Appeal decision of 19 February 2007 granting him conditional release. The applicant relied on Article 5 § 1 of the Convention, which reads, in its relevant part, 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:

(a) the lawful detention of a person after conviction by a competent court;

...”

18. The Government contested that argument.

A. Admissibility

19. The Government raised a preliminary objection that the applicant had not exhausted domestic remedies available to him under Polish law.

20. In this respect, the Government argued that the applicant 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. They relied on Article 417 taken in conjunction with Articles 445 § 2 and 444 of the Civil Code (see paragraph 23 below). The Government further submitted that it had also been possible for the applicant to lodge an action under Article 24 taken in conjunction with Article 448 of the Civil Code seeking compensation for the infringement of his personal rights.

21. The applicant disagreed.

22. The Court reiterates that, according to its established case-law, the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see *Dankevich v. Ukraine*, no. 40679/98, § 107, 29 April 2003). Where the respondent State claims non-exhaustion of domestic remedies, it bears the burden of proving that the applicant has not used a remedy that was both effective and available (*McFarlane v. Ireland* [GC], no. 31333/06, § 107), ECHR 2012....

23. The Court notes that the Government submitted several examples of successful actions in tort against the State Treasury from the practice of the domestic courts. However, none of those examples concern specifically belated release from detention. They refer in particular to the execution of a

wrongly calculated cumulative prison sentence (cases no. III Ca 1646/06, Gdańsk Regional Court, of 31 January 2007; brought by J.Z. and no. II Ca 1355/2008, Poznań Regional Court, of 7 October 2008, brought by T.C.), the unlawful execution of a disciplinary custodial penalty (*kara porządkowa aresztu*)(case no. IC 127/08, Wrocław-Śródmieście District Court, of 20 October 2008; brought by T.A.) and the execution of an unlawfully revoked suspended prison sentence (case no. III Ca 39/05, Nowy Sącz Regional Court, of 15 February 2005; brought by W.O.). The Court observes that the domestic case-law relied on by the Government does not constitute evidence of a sufficiently well-established judicial practice to show that a claim for compensation based on Article 417 taken in conjunction with Articles 445 § 2 and 444 of the Civil Code was at the material time an effective remedy in the particular circumstances of the present case.

24. The Court also observes that the Government did not provide any relevant examples from the domestic case-law to substantiate the effectiveness at the relevant time of an action under Article 24 taken in conjunction with Article 448 of the Civil Code.

25. Accordingly, the Court concludes that in the particular circumstances of the case the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. The arguments of the parties

27. The applicant submitted that he was unlawfully detained in prison between 19 and 26 February 2007.

28. The Court notes that the Government refrained from taking a position on the merits of this complaint.

2. The Court's assessment

29. The Court reiterates that any detention must be lawful. The words "in accordance with a procedure prescribed by law" essentially refer to domestic law and lay down an obligation to comply with its substantive and procedural provisions, but also require that any measure depriving the individual of his liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; and *Lukanov*

v. Bulgaria, 20 March 1997, § 41, *Reports of Judgments and Decisions* 1997-II).

30. The Court further reiterates that the list of exceptions to the right to liberty secured in Article 5 § 1 of the Convention is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim and purpose of that provision. The Court must, therefore, scrutinise complaints of delays in release of detainees with particular vigilance (see *Quinn v. France*, 22 March 1995, § 42, Series A no. 311; *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports of Judgments and Decisions* 1997-IV; *K.-F. v. Germany*, 27 November 1997, §§ 70, *Reports of Judgments and Decisions* 1997-VII; *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; and *Nikolov v. Bulgaria*, no. 38884/97, § 80, 30 January 2003).

31. As regards the characteristics of conditional release under Polish law as it stood at the material time, the Court notes that the applicant had had a right to apply for conditional release after having served the statutory minimum term of his prison sentence. Once conditional release had been granted, the applicant had the right to be released without delay, as provided for in the Ordinance of the Minister of Justice of 27 August 1998 and on completion of the necessary formalities.

32. Turning to the circumstances of the present case, the Court notes that the applicant was serving a prison sentence and became eligible for conditional release on 12 July 2006. On 11 January 2007 the Bydgoszcz Regional Court granted the applicant conditional release for a two-year probationary period. That decision was upheld by the Gdańsk Court of Appeal on 19 February 2007. The applicant was served with the Court of Appeal's decision on 20 February 2007. He was released from prison on 26 February 2007.

33. The Court observes that although the applicant's continued detention, following the final decision of the Court of Appeal on his conditional release, ceased to be justified, he could not have expected to be released instantly. The Court has previously accepted that, in certain circumstances, there may be some limited delay before a detained person is released. Practical considerations relating to the running of the courts and the completion of administrative formalities mean that the execution of such a court order may take time which, nevertheless, should be kept to a minimum and, in any event, not exceed several hours (see *Quinn*, cited above, § 42; *Giulia Manzoni*, cited above, § 25; *Labita*, cited above, § 171; *Nikolov*, cited above, § 82; and *Gębura v. Poland*, cited above, § 34).

34. The Court notes that the Ordinance of the Minister of Justice of 27 August 1998 sets out in paragraph 3 a general principle that all administrative formalities have to be carried out without delay, in particular those concerning transmission of information and official notifications and related to the release of a detainee (see relevant domestic law). The Court

also reiterates that it is incumbent on the respondent Government to provide a detailed account of the relevant events (see, *Labita*, cited above, § 170). In this connection the Court notes that the Government did not present a timeline of the administrative formalities completed for the applicant's release. The Court further observes that there was a delay of seven days between the delivery of the Court of Appeal's decision and the applicant's release. Consequently, in the Court's view, the relevant administrative formalities should in the present case have been carried out more swiftly. In this regard, the Court observes that the paramount importance of the right to liberty imposes on the authorities a duty to do away with organisational shortcomings attributable to the State which may occasion unjustified deprivation of liberty (see *Gębura*, cited above, § 35).

35. In conclusion, the Court considers that it cannot be said that the relevant authorities attempted to keep to a minimum the delay in implementing the decision to release the applicant as required by the relevant case-law. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government contested this claim as exorbitant.

39. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

40. The applicant submitted no claim for costs and expenses.

C. Default interest

41. 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 application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State 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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President