



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

FOURTH SECTION

CASE OF Z.R. v. POLAND

(Application no. 32499/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

15 January 2002

This judgment may be subject to editorial revision.

In the case of Z.R. v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr M. PELLONPÄÄ,

Mr A. PASTOR RIDRUEJO,

Mrs E. PALM

Mr J. MAKARCZYK,

Mrs V. STRÁŽNICKÁ,

Mr S. PAVLOVSKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 11 December 2001,

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

PROCEDURE

1. The case originated in an application (no. 32499/96) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Z. R. ("the applicant"), on 22 July 1996.

2. The applicant was represented before the Court by Mrs Romana Orlikowska-Wrońska, a lawyer practising in Sopot, Poland. The Polish Government ("the Government") were represented by their Agent, Mr Krzysztof Drzewicki, the Ministry of Foreign Affairs. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged, in particular, that the length of his detention on remand violated Article 5 § 3 and that he was never brought before a court in the proceedings concerning judicial review of his detention in breach of Article 5 § 4.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 5 October 2000 the Chamber declared the application partly admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

8. On 26 October and 20 November 2001 the Agent of the Government and the applicant's representative respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

9. The applicant is a Polish national, born in 1960 and living in Szczecin, Poland.

1. The arrest and detention on remand

10. On 20 October 1994 the applicant was arrested. On 22 October 1994 the Stargard Szczeciński District Prosecutor (*Prokurator Rejonowy*) detained him on remand on suspicion of forging motor vehicles' registration certificates. The prosecuting authorities suspected that the applicant took part in a criminal organisation which stole motor vehicles. In addition, they considered that the offence in question caused a significant danger to society, that the applicant could put witnesses under pressure to give false evidence and otherwise interfere with the investigation. The applicant did not appeal against that decision.

11. On 14 November 1994 the Stargard Szczeciński District Prosecutor prolonged the applicant's detention until 20 January 1995.

12. On 28 November 1994 the applicant applied to the Szczecin Regional Court (*Sąd Wojewódzki*) for release from detention. On the same date the court rejected his application.

13. On 30 December 1994 the Szczecin Regional Court decided to extend the applicant's detention until 4 April 1995. The applicant appealed that decision. On 3 February 1995 the Poznań Court of Appeal (*Sąd Apelacyjny*) rejected his appeal. The court pointed out that the taking of evidence in the case had not been finished.

14. On 22 June 1995 the Szczecin Regional Court allowed the prosecutor's request, and prolonged the applicant's detention until 30 September 1995. The applicant appealed that decision. On 27 July 1995 the Poznań Court of Appeal dismissed his appeal.

15. On 19 August and 18 September 1995 the Szczecin Regional Prosecutor charged the applicant with respectively twelve and eight additional criminal offences.

2. The bill of indictment

16. On 29 September 1995 the Szczecin Regional Prosecutor lodged with the Szczecin Regional Court a bill of indictment against the applicant and his seven accomplices.

17. In November 1995 the applicant applied to the Szczecin Regional Court for release from detention. He submitted that, in view of the fact that the investigation had been completed and the bill of indictment had been lodged with the court, his continued detention had ceased to be justified. The court refused his application.

18. On 22 May 1996 the applicant asked the Szczecin Regional Court to replace his detention with police supervision but on 28 May 1996 the court dismissed his request. On 11 June 1996 the applicant appealed to the Poznań Court of Appeal against that decision.

19. On 4 July 1996 the Poznań Court of Appeal dismissed the appeal. The court observed that the applicant was charged with serious criminal offences which involved the significant danger to society. It further pointed out that the other defendants who were not detained obstructed the proceedings, as they failed to attend hearings. Finally, the Court of Appeal was of the view that the situation of the applicant's family did not disclose extreme hardship requiring his release.

20. On 29 July 1996 the applicant filed with the Szczecin Regional Court a fresh application for release from detention. He again emphasised the difficult situation of his family. The applicant also submitted that his detention on remand had ceased to serve its purpose, as the investigation had been completed and evidence had been taken. He could not therefore do anything to jeopardise the proceedings. Moreover, the applicant insisted that he would not interfere with the proceedings and would not go into hiding.

21. On 2 August 1996 the Szczecin Regional Court dismissed the application. The court pointed out that the applicant was charged with several offences. It also referred to the nature of the offences, circumstances in which they were committed and the fact that the charges against the applicant were brought under Article 60 § 1 of the Criminal Code which concerned habitual offenders.

22. On 11 August 1996 the applicant appealed to the Poznań Court of Appeal against that decision. He pointed out that the Regional Court erroneously considered that he was a habitual offender since he did not have criminal record.

23. On 28 August 1996 the Poznań Court of Appeal dismissed the appeal. It observed that the case was very complicated, as it involved several charges and numerous co-defendants who allegedly formed a criminal organisation. As a result, the proceedings were lengthy and interrupted by numerous adjournments. The court also considered that the submissions made by the applicant in his appeal showed that he was aware of the existence of serious evidence of his guilt.

24. On 18 September 1996 the applicant again applied to the Szczecin Regional Court for release from detention but on 20 September 1996 his application was dismissed. The court considered that although the applicant's guilt would be decided at the trial, there existed serious evidence of his guilt and therefore his detention was justified.

25. On 7 January 1997 the Supreme Court extended the applicant's detention until 30 April 1997 considering that it was necessary to ensure the proper conduct of the proceedings.

3. The conviction

26. On 11 April 1997 the Szczecin Regional Court convicted the applicant of aggravated theft, forgery of documents and use of forged documents, handling stolen goods and fraud. It also sentenced him to a six-year prison term. The applicant appealed against that judgment to the Poznań Court of Appeal.

THE LAW

27. On 26 October 2001 the Court received the following declaration from the Government:

"I declare that the Government of the Republic of Poland offer to pay Mr Z(...) R(...) a sum of 12,000 (twelve thousand) PLN with a view to securing a friendly settlement of the application no. 32499/96 pending before the European Court of Human Rights in Strasbourg. This sum shall cover any eventual pecuniary and non-pecuniary damage as well as costs, and it will be payable to the applicant after signing the declarations by the parties concerned, however not later than three months after the notification of the decision delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

I declare at the same time that the offer of the above-mentioned amount has been made in connection with duration of the proceedings in the applicant's case before the organs of the Polish judiciary.

This declaration does not entail any acknowledgement by the Government of a violation of the European Convention on Human Rights in the present case.

I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the European Convention."

28. On 20 November 2001 the Court received the following declaration signed by the applicant's representative:

"I note hereby that the Government of the Republic of Poland are prepared to pay to me a sum of 12,000 (twelve thousand) PLN covering any eventual pecuniary and non-pecuniary damage as well as costs with a view to securing a friendly settlement of the application no. 32499/96 pending before the European Court of Human Rights. This

payment will constitute the final resolution of the case under the terms stipulated in the Declaration of the Government Agent.

I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the European Convention.”

29. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

30. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties’ undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 15 January 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O’BOYLE
Registrar

Nicolas BRATZA
President