



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

SECOND SECTION

CASE OF ZIELONKA v. POLAND

(Application no. 49913/99)

JUDGMENT

STRASBOURG

8 November 2005

FINAL

08/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zielonka v. Poland,

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

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mrs A. MULARONI,

Mr L. GARLICKI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĚ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 49913/99) 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, Mr Sławomir Zielonka (“the applicant”), on 2 March 1998.

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

3. The applicant alleged, under Article 5 § 1 that his detention from 21 to 24 February 1998 had been unlawful.

4. The application was allocated to the Second 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.

5. By a decision of 26 April 2005 the Court declared the application admissible.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant was born in 1954 and lives in Łódź.

7. On 21 November 1997 the applicant was arrested on suspicion of receiving and selling stolen goods.

8. On 22 November 1997 the Łódź District Court (*Sąd Rejonowy*) ordered that the applicant be detained on remand until 21 February 1998. The court referred to the strong probability of the applicant's guilt and to the high risk of his hindering the proper conduct of the proceedings. The court also emphasised that it was likely that the applicant, if released, would go into hiding.

9. By a decision of 24 February 1998, the Łódź District Court prolonged the applicant's detention on remand until 21 September 1998. The court considered that the reasons for which the detention had been ordered continued to exist. The decision was served on the applicant on 25 February 1998.

10. The applicant appealed, claiming that keeping him in custody between 21 February 1998 and 24 February 1998 had been unlawful since there had been no valid judicial decision authorising his detention.

11. On 25 March 1998 the Łódź Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal as unsubstantiated. However, the court altered the decision of 24 February 1998 and prolonged the applicant's detention on remand until 30 June 1998, finding that the case had not been complex and that the evidence against the applicant pointed to his guilt.

12. In a letter of 28 April 1998, the Łódź District Court admitted its mistake and confirmed that there had been no valid judicial decision authorising the applicant's detention on remand between 21 February 1998 and 24 February 1998. It added that this period would be deducted from any sentence of imprisonment eventually imposed on the applicant.

13. On 5 June 1998 the Łódź District Court convicted the applicant as charged and sentenced him to 3 years' imprisonment.

II. RELEVANT DOMESTIC LAW

14. Article 250 of the Code of Criminal Procedure ("CCP") of 6 June 1997 provides as follows:

"1. Detention on remand may only be imposed by a court order.

2. At the investigative stage of proceedings, detention on remand shall be imposed, on a prosecutor's request, by a district court in the jurisdiction of which investigations are being conducted. After a bill of indictment is lodged with a court, a decision to impose detention on remand shall be given by a court competent to deal with the merits of the case.

3. The prosecutor, when submitting to a court a request referred to in § 2, shall at the same time order that the suspect be brought before a court."

THE LAW

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

15. The applicant complained under Article 5 § 1 of the Convention about the unlawfulness of his detention on remand between 21 and 24 February 1998. This provision, in so far as relevant reads 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:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;...”

A. The parties’ arguments

16. The applicant maintained his claim as recognised by the Łódź District Court. In his opinion, there had been a violation of Article 5 § 1 of the Convention.

17. The Government conceded that the Łódź District Court should have renewed the period of the applicant’s detention on remand by 21 February 1998 at the latest, but it failed to do so. The relevant decision was taken three days later, on 24 February 1998. However, that does not mean that the applicant’s detention during those three days had been unlawful, since there had been serious reasons justifying his continued detention. They pointed out that the decision of the Łódź District Court of 24 February 1998 had validated the lawfulness of the applicant’s detention between 21 and 24 February 1998. Furthermore, the whole period of the applicant’s detention, including the three days between 21 and 24 February 1998, had been deducted from the sentence of imprisonment which had been ultimately imposed on him.

B. The Court’s assessment

18 The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While, in the first place, it is normal for the national authorities, notably the courts, to interpret and apply domestic law,

it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court may, and should exercise a certain power to review whether national law has been observed (see, among other authorities, *Douiye v. the Netherlands* [G. C.], no. 31464/96, §§ 44-45).

19. Turning to the facts of the present case, the Court notes that it is undisputed that the applicant's detention from 21 to 24 February 1998 lacked any legal basis (see paragraph 12 above). According to the Łódź District Court, there had been no valid judicial decision authorising the applicant's detention on remand for those three days.

20. Neither the factual basis for that finding nor the finding itself was contested by the Government (see paragraph 17 above). The Court is not convinced by the Government's contention that the District Court had retroactively and implicitly validated the three day period. It concludes, therefore, that there is no evidence to suggest that applicant's detention during that period was in accordance with national law.

21. Consequently, the Court finds that the applicant's deprivation of liberty was not "lawful" within the meaning of Article 5 § 1 of the Convention during those three days (cf. *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2819, § 46).

22. There has therefore been a violation of that provision in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. Under the head of pecuniary damage, the applicant claimed a sum of 15,000 Polish zlotys (PLN) for the loss of earnings caused by his unlawful detention. He also asked the Court to award him PLN 45,000 for moral suffering and distress resulting from the violation of his Convention rights.

25. The Government submitted that the applicant could not claim any pecuniary damage since his time spent in detention, including the impugned three days, had afterwards been deducted from his prison sentence. They further contested the claim for non-pecuniary damage. Lastly, they requested the Court to rule that the finding of a violation would constitute in

itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

26. The Court finds, on the material before it, that the applicant has failed to show that he incurred any pecuniary damage by virtue of the three day lapse. Consequently, there is no justification for making any award under that head.

27. However, the Court accepts that the applicant suffered certain non-pecuniary damage from his unlawful detention, which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant 500 euros under this head.

B. Costs and expenses

28. The applicant also claimed PLN 1,500 for the costs and expenses incurred before the Court. That amount corresponded in particular to the lawyer's fees and postal expenses.

29. The Government contested the claim.

30. According to the Court's case-law, an applicant is entitled to the 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, the Court observes that the applicant has not submitted any evidence in support of his claims. In particular, it notes that the applicant was not legally represented in the proceedings before it. The Court therefore makes no award under this head.

C. Default interest

31. 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

1. *Holds* by 6 votes to 1 that there has been a violation of Article 5 § 1 of the Convention;
2. *Holds* by 6 votes to 1
 - (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 500 (five hundred euros) in

respect of non-pecuniary damage, to be converted into Polish zlotys at a rate applicable at the date of the settlement, plus any tax that may be chargeable on the above amount;

(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;

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

Done in English, and notified in writing on 8 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Ms Mularoni is annexed to this judgment.

J.-P. C*.
S. D*.

DISSENTING OPINION OF JUDGE MULARONI

I voted against points 1) and 2) of the operative parts of the judgment as I consider that the applicant has lost his status as a “victim”.

As we can read in paragraph 12 of the judgment, in a letter of 28 April 1998 the Łódź District Court admitted its mistake and confirmed that there had been no valid judicial decision authorising the applicant’s detention on remand between 21 February 1998 and 24 February 1998. This period (three days) was deducted from the sentence of imprisonment which was ultimately imposed on the applicant.

In my view, the national authorities have acknowledged the violation of Article 5 § 1 and afforded redress for the breach (see *Amuur v. France*, Reports, 1996-III, p. 846, § 36).

As to the fact that no monetary compensation was awarded to the applicant at the national level, I observe that the applicant did not invoke Article 5 § 5 before the Court.