



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

FOURTH SECTION

CASE OF GE̢URA v. POLAND

(Application no. 63131/00)

JUDGMENT

STRASBOURG

6 March 2007

FINAL

06/06/2007

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 Gębura v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 63131/00) 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 Leszek Gębura (“the applicant”), on 12 May 2000.

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

3. The applicant alleged that a delay in releasing him from prison had given rise to a violation of Article 5.

4. On 17 March 2005 the President of the Fourth Section decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

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

5. The applicant was born in 1954 and lives in Starachowice.

6. The applicant was serving a prison sentence in Tarnów Mościce Prison following three separate convictions. The overall term of his imprisonment was due to come to an end on 6 January 2002.

7. Pursuant to the provisions of the Criminal Code applicable to re-offenders, the applicant became eligible for conditional release after having

served three-quarters of the overall term of his imprisonment, namely on 6 January 1999. After that date, the applicant requested a court on several occasions to grant him conditional release. However, his requests were denied on grounds of insufficient progress in his rehabilitation. On 20 March 2000 the prison governor requested the Tarnów Regional Court (*Sąd Okręgowy*) to order the applicant's release (*warunkowe przedterminowe zwolnienie*) in view of his satisfactory rehabilitation. The Tarnów Regional Prosecutor objected to that request.

8. On 22 March 2000 the Tarnów Regional Court gave a decision ordering the applicant's conditional release for a three-year probationary period. It placed the applicant under the court officer's supervision and imposed certain other obligations on him.

9. The Tarnów Regional Prosecutor appealed against that decision. The Regional Court did not amend its decision and transmitted the prosecutor's appeal to the Cracow Court of Appeal (*Sąd Apelacyjny*).

10. The hearing before the Court of Appeal was scheduled for 12 April 2000 at 8.45 a.m. On that day the Cracow Court of Appeal upheld the decision of the Regional Court. No further appeal lay against the decision of the Court of Appeal. In the applicant's submission, the Court of Appeal's decision was delivered at 9 a.m.

11. Later on 12 April 2000, a certified copy of the Court of Appeal's decision was sent to the Tarnów Regional Court, which received it on 13 April 2000. On the same day the Tarnów Regional Court ordered the governor of the Tarnów Mościce Prison to release the applicant and served him with a copy of the Court of Appeal's decision. The governor received these documents on 14 April 2000.

12. According to the official release certificate, the applicant was released on 14 April 2000. The applicant submitted that he had been released on that date at 4 p.m.

II. RELEVANT DOMESTIC LAW

A. Relevant constitutional provisions

13. 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

14. 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.”

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 concern 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 the 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.

D. The State's liability for torts committed by its officials

16. The relevant domestic law and practice concerning the State's liability for torts committed by its officials are set out in paragraphs 34-37 of the Court's judgment in the case of *Krasuski v. Poland*, no. 61444/00, ECHR 2005–V (extracts).

THE LAW

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

17. The applicant complained about a delay of over 48 hours in his release from prison following the final decision granting him conditional release given by the Court of Appeal in the morning of 12 April 2000. He relied on Article 5 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 Court 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. The arguments of the parties

20. The applicant submitted that on 12 April 2000 at 9 a.m. the Cracow Court of Appeal had upheld the Regional Court's decision granting him conditional release. The applicant argued that he should have been released on the same day, given that the distance between Cracow and Tarnów was only about 100 km. Nevertheless, he had been released from prison only on 14 April 2000 at 4 p.m.

21. The Government submitted that the Convention permitted deprivation of liberty only in those cases which were enumerated in Article 5 and only in accordance with a procedure prescribed by law. Article 5 § 1 (a) of the Convention provided for the lawful detention of a person after conviction by a competent court. This category of permissible detention concerned any prisoner serving a sentence where “the lawful detention” was based on “conviction by a competent court”. This normally referred to a

prison sentence, although that was not specifically indicated in the text. The Government further observed that the execution of a prison sentence was, as a rule, dependent on a further decision which was not a matter for the courts but for the prosecution or prison authorities. The actual order to serve the sentence might not therefore emanate from a “competent court” but the detention would still be lawful under Article 5 § 1 (a). This would be so even where a prisoner's conditional release was revoked for a breach of the conditions, entailing re-imprisonment for the remaining term.

22. The Government submitted that in the present case the applicant had been serving a prison sentence in Tarnów Mościce Prison following three separate convictions. The overall term of his imprisonment was due to come to an end on 6 January 2002. Thus, the Government maintained that his detention had been lawful in that it was based on a conviction by a competent court.

23. The Government further argued that the applicant had been released as soon as the decision on his conditional release had been served on the prison governor. Having regard to the foregoing, they maintained that his detention between 12 April 2000 and 14 April 2000 had been lawful under the Convention and in conformity with the applicable domestic law, in particular the Ordinance 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.

24. Finally, the Government noted that the applicant could have lodged a compensation claim against the State Treasury under Article 417 of the Civil Code if he had considered that he had been unlawfully deprived of his liberty between 12 and 14 April 2000.

2. The Court's assessment

25. The Court recalls that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a “democratic society” within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, p. 36, § 65, and *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, p. 16, § 37). Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-...).

26. All persons are entitled to the protection of that right, that is to say, not to be deprived, or to continue to be deprived, of their liberty (see *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 22, § 40), save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see *Amuur v. France*, judgment of 25 June 1996, *Reports*

of *Judgments and Decisions* 1996-III, p. 848, § 42; *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; and *Assanidze v. Georgia* [GC], no. 71503/01, § 170, ECHR 2004-II).

27. 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 enshrine the obligation to conform to substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, p. 753, § 41, and *Assanidze v. Georgia*, cited above, § 171).

28. However, the “lawfulness” of detention under domestic law is the primary but not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (see, among many other authorities, *Winterwerp*, cited above, pp. 19-20, § 45, and *Baranowski v. Poland*, no. 28358/95, § 51, ECHR 2000-III).

29. On this last point, the Court stresses that where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2735, § 54).

30. In the instant case, the applicant was serving a prison sentence and became eligible for conditional release on 6 January 1999. On 22 March 2000 the Tarnów Regional Court gave a decision granting the applicant conditional release for a three-year probationary period. That decision was upheld by the Cracow Court of Appeal on 12 April 2000. In the applicant's account, which was not contested by the Government, the Court of Appeal's decision was delivered on 12 April at 9 a.m.

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. It is true that the granting of

conditional release is left to the court's discretion. However, 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. The Government argued that, despite the Court of Appeal's final decision of 12 April 2000, the applicant's continued detention until his release on 14 April 2000 remained justified under Article 5 § 1 (a) as constituting "the lawful detention of a person after conviction by a competent court". The Court does not accept that proposition. It is true that the Convention does not guarantee a right to have a penalty imposed by a court in criminal proceedings suspended for a probationary period (see *X v. Switzerland*, no. 7648/76, Commission decision of 6 December 1977, Decisions and Reports 11, p. 190). However, in so far as the domestic law provided for such a right and once the conditional release had been granted, the applicant had a right to be released. Consequently, his continued detention following the final decision on his conditional release cannot be considered "lawful" under Article 5 § 1 (a). That finding is not affected by the possibility of a revocation of conditional release in cases where a person has failed to comply with the relevant conditions or committed a new offence, provided that there is a sufficient connection between his conviction and a recall to prison (see *Stafford v. the United Kingdom* [GC], no. 46295/99, § 81, ECHR 2002-IV).

33. The Government next argued that the applicant had been released as soon as the decision on his conditional release was served on the governor of Tarnów Mościce Prison. The applicant's release had been effected in accordance with the Ordinance of the Minister of Justice of 27 August 1998, under which the release of a convicted person depended on the receipt of a certified copy of the enforceable decision granting him or her conditional release.

34. In this connection 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 immediately. The Court reiterates that some delay in implementing a decision to release a detainee is understandable and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep it to a minimum (*Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 17, § 42; *Giulia Manzoni v. Italy*, judgment of 1 July 1997, Reports 1997-IV, p. 1191, § 25 *in fine*; *K.-F. v. Germany*, judgment of 27 November 1997, Reports 1997-VII, p. 2675, § 71; and *Mancini v. Italy*, no. 44955/98, § 24, ECHR 2001-IX). The Court reiterates that administrative formalities connected with release cannot justify a delay of more than several hours (*Labita*, cited above, and *Nikolov v. Bulgaria*, no. 38884/97, § 82, 30 January 2003).

35. The Court notes that the Ordinance of the Minister of Justice of 27 August 1998 invoked by the Government sets out in paragraph 3 a general principle that all administrative formalities had 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). It further observes that the Court of Appeal dispatched a certified copy of its decision on 12 April 2000. That copy was received by the Tarnów Regional Court on 13 April 2000. On the same day the Regional Court transmitted the decision to the prison and directed the applicant's release. Those documents were received by the prison administration on 14 April 2000. The Court observes that the Government have not explained what means were used for the dispatch of the relevant decision and whether the dispatch was effected without delay. Moreover, the Government did not present a detailed account of the relevant events, from the time of the delivery of the decision by the Court of Appeal until the precise moment of the applicant's release. In this connection, the Court reiterates that it must scrutinise complaints of delays in the release of detainees with particular vigilance (*Nikolov*, cited above, § 80). According to the applicant, the Court of Appeal's decision was given on 12 April 2000 at 9 a.m. and he was released only on 14 April 2000 at 4 p.m. Consequently, the delay between the delivery of the Court of Appeal's decision and the applicant's release exceeded 48 hours. In the Court's view the administrative formalities related to the applicant's release could and should 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.

36. As regards the Government's submission related to the possibility of bringing an action in tort against the State Treasury, the Court first observes that the Government did not raise that argument in their preliminary objections. Neither did they provide any relevant examples from the practice of the domestic courts. In any event, the Court observes that the relevant provisions of the Civil Code (Articles 417 et seq.), as applicable before 1 September 2004, provided for a restrictive regime as regards the State's tortious liability. That regime was significantly altered only from 1 September 2004, following the entry into force of the Law of 17 June 2004 on amendments to the Civil Code and other statutes. The relevant amendments were aimed in essence at enlarging the scope of the State's liability in tort. Having regard to the foregoing, the Court does not accept the Government's assertion.

37. 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. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicant further complained that the delay in his release from prison had given rise to a violation of his right to respect for his private and family life in breach of Article 8 of the Convention.

39. However, the Court notes that the principal issue in the present case concerns the complaint under Article 5 § 1 of the Convention and that no substantiated separate issue arises in respect of Article 8.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 10,000 Polish zlotys in respect of non-pecuniary damage caused by the delay in releasing him from prison.

42. The Government contested the amount claimed as exorbitant. They proposed that if the Court were to find a violation of Article 5 § 1, it should award the applicant EUR 1,000.

43. The Court notes that it has found a violation of Article 5 § 1 on account of the delay in the applicant's release following the final decision on his conditional release. It considers that this delay must have caused the applicant frustration and anxiety. Having regard to the foregoing and deciding on an equitable basis, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant submitted no claim in respect of costs and expenses.

C. Default interest

45. 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 delay in releasing the applicant admissible and the remainder of the application inadmissible;
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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 6 March 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President