



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

FOURTH SECTION

CASE OF POPLAWSKI v. POLAND

(Application no. 28633/02)

JUDGMENT

STRASBOURG

29 January 2008

FINAL

29/04/2008

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 Popławski v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 28633/02) 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 Zbigniew Popławski (“the applicant”), on 9 July 2002.

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

3. The applicant alleged, in particular, that his detention on remand exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention and that the length of the second set of criminal proceedings against him had been unreasonable.

4. On 30 November 2006 the President of the Fourth Section of the Court decided to communicate 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 1957 and lives in Zielona Góra.

A. The first set of criminal proceedings against the applicant

6. In 1994 the applicant was charged with assault and battery. On 21 December 1999 the Zielona Góra Regional Court (*Sąd Okręgowy*) convicted the applicant as charged. The conviction was upheld by the Poznań Court of Appeal (*Sąd Apelacyjny*) on 30 January 2001. On 12 February 2002 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant's further cassation appeal.

B. The second set of criminal proceedings against the applicant

7. On 1 September 1998 the applicant was arrested on suspicion of homicide. On 3 September 1998 the Zielona Góra District Court (*Sąd Rejonowy*) ordered the applicant's detention on remand on a charge of murder.

8. During the investigation, the applicant's detention was prolonged on two occasions.

9. On 20 May 1999 the applicant was indicted before the Zielona Góra Regional Court. The Regional Court extended his detention on remand on several occasions. The court referred to the reasonable suspicion that the applicant had committed the offence with which he had been charged. It further stressed that holding the applicant in detention was necessary to secure the proper conduct of the proceedings. These decisions were upheld on appeal. The applicant made several unsuccessful applications for release.

10. On 20 March 2001 the Poznań Court of Appeal prolonged the applicant's detention. The court relied on the existence of a reasonable suspicion against the applicant and on the likelihood that a heavy sentence of imprisonment might be imposed on him. The Court of Appeal also examined the course of the proceedings and established that they had been lengthy. It instructed the trial court to concentrate on scheduling more hearings and on taking other procedural measures to terminate the trial promptly. The court, nevertheless, stated that the applicant had been solely responsible for the duration of the trial as the Regional Court had to examine his allegation that he had acted in self-defence.

11. Between 12 April 2001 and 12 February 2004 the applicant was serving a prison sentence following his conviction in another set of criminal proceedings.

12. On 27 April 2001 the Zielona Góra Regional Court convicted the applicant as charged and sentenced him to 25 years' imprisonment.

13. On 27 August 2001, 23 November 2001 and 22 February 2002 the Zielona Góra Regional Court prolonged the applicant's detention. All of these decisions were upheld on appeal.

14. On 20 December 2001 the prosecutor filed an appeal against the first-instance conviction.

15. On 16 May 2002 the Poznań Court of Appeal quashed the first-instance conviction and remitted the case to the Regional Court.

16. On 19 August 2002, 20 May 2003 and 7 September 2004 the Regional Court prolonged the applicant's detention. In its identically reasoned decisions the court referred to the likelihood that the applicant would receive a lengthy sentence. It also pointed out that there were no particular circumstances militating in favour of his release, as defined in Article 259 § 1 of the Code of Criminal Procedure.

17. Between 23 November 2004 and 17 December 2004 the applicant was serving a prison sentence as a result of his conviction in another set of criminal proceedings against him.

18. On 10 December 2004 the Regional Court prolonged the applicant's detention. It considered that the need to ensure the proper course of the proceedings and the likelihood that the applicant would receive a lengthy sentence justified the prolongation of his detention. The court further stressed that the trial would end soon since most of the witnesses had already been heard.

19. On 27 October 2004 the applicant filed a complaint alleging that the proceedings against him had exceeded a reasonable time and requesting compensation for the prolongation of the proceedings. He relied on 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"). On 3 March 2005 the Poznań Court of Appeal gave a decision and confirmed that the proceedings before the Regional Court had been lengthy. However, it refused to award any compensation to the applicant.

20. On 14 October 2005 the Zielona Góra Regional Court convicted the applicant of murder and sentenced him to 25 years' imprisonment.

21. On 9 December 2005 the Regional Court prolonged the applicant's detention.

22. On 23 March 2006 the Poznań Court of Appeal quashed the first-instance conviction and again remitted the case.

23. On 28 February 2006 the Court of Appeal refused to release the applicant on bail.

24. The applicant again asked to be released on bail.

25. On 6 April 2006 the Poznań Court of Appeal refused to release the applicant on bail and further prolonged his detention until 30 June 2006. It considered that there was a risk that the applicant, if released, would interfere with the proper course of the proceedings. It also held that between 1989 and 1998 the applicant had been convicted five times and that the charges against him had included unlawful possession of a firearm. This decision was upheld on appeal on 18 May 2006.

26. On 1 June 2006 the Court of Appeal dismissed the applicant's complaint under the 2004 Act about the alleged inactivity of the Regional Court. The court examined only the period after 18 February 2005 as the period before that date had already been examined. The court concluded that there had been no delays in the proceedings after that date.

27. On 28 June 2006 the Regional Court again prolonged the applicant's detention. The court stressed that there were no particular circumstances militating in favour of his release, as defined in Article 259 § 1 of the Code of Criminal Procedure. This decision was upheld by the Poznań Court of Appeal on 6 July 2006.

28. On 2 October 2006 the applicant was released from pre-trial detention. It appears from the parties' submissions that the criminal proceedings before the Zielona Góra Regional Court are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called “preventive measures” (*środki zapobiegawcze*) are stated in the Court's judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

30. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

31. The applicant complained that the length of his detention on remand in the second set of proceedings had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

32. The Government refrained from expressing an opinion on whether the applicant's pre-trial detention had satisfied the requirements of Article 5 § 3.

A. Admissibility

33. 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. Period to be taken into consideration

34. The applicant was detained on remand on 1 September 1998 and on 2 October 2006 he was released. However, the Court notes that on two occasions the applicant served a prison sentence ordered by a court in another set of criminal proceedings. On those occasions he was therefore detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a) and, consequently, those two periods of detention fall outside the scope of Article 5 § 3 (see *Kudła v. Poland* [GC], no. 30210/96, § 104 *et seq.*, ECHR 2000-XI).

Accordingly, the periods of the applicant's detention that fall within the ambit of Article 5 § 1 (c), and can be considered under Article 5 § 3, were as follows: between 1 September 1998 and 12 April 2001, between 12 February 2004 and 22 November 2004, between 18 December 2004 and 14 October 2005 and between 23 March 2006 and 2 October 2006.

35. Accordingly, the period to be taken into consideration amounts to four years and nine months.

2. *General principles*

36. The Court recalls that the general principles regarding the right “to trial within a reasonable time or to release pending trial”, as guaranteed by Article 5 § 3 of the Convention were stated in a number of its previous judgments (see, among many other authorities, *Kudła*, cited above, § 110; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

3. *Application of the above principles in the present case*

37. The Court observes that in the present case the authorities relied almost exclusively on the reasonable suspicion that the applicant had committed the offences with which he had been charged and the risk that a lengthy sentence would be imposed. On a few occasions the courts considered that the detention was justified by the need to secure the proper conduct of the proceedings. They failed to advance any other grounds for prolongation of the applicant's detention.

38. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offence of homicide could initially warrant his detention. However, with the passage of time, such ground became less and less relevant. Moreover, even though the applicant was detained on charges of homicide, there is no indication that he was a member of an organised criminal gang. It does not appear that his case presented particular difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the applicant as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, cited above, § 37, and *Malik v. Poland*, no. 57477/00, § 49, 4 April 2006).

39. The Court reiterates that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see, for instance, *Ilykov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). Therefore, the Court does not consider that those grounds, which were repeated in all of the decisions of the domestic authorities, can suffice to justify the extraordinarily long period in issue.

40. The Court further notes that there is no specific indication that during the period of the applicant's pre-trial detention between September 1999 and April 2006 the authorities envisaged the possibility of imposing on him other preventive measures – such as bail or police supervision – expressly foreseen by the Polish law to secure the proper conduct of the criminal proceedings.

In this context the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at

trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

41. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” and “sufficient” to justify the very considerable period of the applicant's detention.

It is thus not necessary to examine whether the proceedings were conducted with special diligence.

There has accordingly been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE SECOND SET OF CRIMINAL PROCEEDINGS

42. The applicant complained that the length of the second set of criminal proceedings against him had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

““In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal...”

43. The Government contested that argument.

44. The period to be taken into consideration began on 1 September 1998 and, according to the parties' submissions, has not yet ended. It has thus lasted over nine years for two levels of jurisdiction.

A. Admissibility

45. The Government submitted that the applicant had not exhausted remedies available under Polish law. They maintained that he had not lodged a civil claim for compensation for damage suffered due to the excessive length of the proceedings with the Polish civil courts under Article 417 of the Civil Court.

46. The applicant generally contested the Government's arguments.

47. The Court recalls that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires an applicant first to use the remedies provided by the national legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Aksoy*

v. Turkey, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275–76, §§ 51–52).

48. The Court also reiterates that, although Article 35 § 1 requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that, in cases where the national law provides for several parallel remedies in various branches of law, the person concerned, after an attempt to obtain redress through one such remedy, must necessarily try all other means (see, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001, *Kaniewski v. Poland*, no. 38049/02, §§ 32–39, 8 November 2005).

49. The Court notes that the applicant lodged two complaints about the length of the proceedings under the 2004 Act. On 3 March 2005 the Poznań Court of Appeal admitted that the proceedings had been lengthy but refused to award any compensation to the applicant. Afterwards, and given the fact that the proceedings had not been terminated, the applicant lodged a second complaint which was dismissed on 1 June 2006 by the Poznań Regional Court. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland (see *Michalak v. Poland* (dec.) no. 24549/03, §§ 37–43).

50. The Court considers therefore that, having exhausted the available remedy provided by the 2004 Act, the applicant was not required to embark on another attempt to obtain redress by bringing a civil action for compensation (see *Cichla v. Poland*, no. 18036/03, § 26, 10 October 2006). Accordingly, the Court concludes that, for the purposes of Article 35 § 1 of the Convention, the applicant has exhausted domestic remedies. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

52. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

53. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

54. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant raised several complaints invoking numerous Articles of the Convention. In particular, he complained about unfairness and the length of the first set of criminal proceedings against him. He further complained about unfairness of the second set of the criminal proceedings. These complaints fall to be examined under Article 6 § 1 of the Convention.

56. With regard to the applicant's complaint relating to the unfairness of the first set of proceedings, the Court reiterates, that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

57. The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing. Assessing the criminal proceedings against the applicant as a whole, it finds no indication that they were unfairly conducted.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

58. The applicant also complained about the unreasonable length of the first set of proceedings that lasted between 1994 and 12 February 2002. He also raised several complaints relating to unfairness of the second set of criminal proceeding which are pending before the first-instance court.

However, pursuant to Article 35 § 1 of the Convention:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...”

59. With regard to the complaint about the length of the first set of proceedings, the Court notes that they came to an end on 12 February 2002, i.e. less than three years before 17 September 2004, the date on which the 2004 Act had come into force.

60. It further observes that, pursuant to section 16 of the 2004 Act, it was open to persons such as the applicant to seek compensation in tort from the State Treasury, relying on Article 417 of the Civil Code for damage caused by the allegedly excessive length of proceedings in which a judicial

decision on the merits of the case had already been given (see *Turzyński v. Poland* (dec.), no. 10453/03, 22 November 2005).

61. The Court has already examined whether a civil action for damages brought under section 16 of the 2004 Act read together with Article 417 of the Civil Code was an effective remedy in respect of the length of judicial proceedings. It held, having regard to the characteristics of these remedies and notwithstanding the absence of established judicial practice in respect of such claims, that these remedies were effective in respect of persons who on 17 September 2004, when the 2004 Law entered into force, could still lodge such an action with the competent domestic court (see *Krasuski v. Poland*, judgment of 14 June 2005, §§ 69-72).

However, the applicant has chosen not to avail himself of this remedy.

62. As regards the complaints relating to unfairness of the second set of criminal proceedings, the Court observes that according to the parties' submissions, they are pending before the Zielona Gora Regional Court. It is thus open to the applicant to appeal against the judgment and, subsequently, to lodge a cassation appeal with the Supreme Court. Accordingly, the applicant still can, and should, put the substance of the complaint before the domestic authorities and ask for appropriate relief.

63. It follows that both complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government asked the Court to rule that a finding of a violation would constitute in itself just satisfaction.

67. The Court awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant did not submit any claim for reimbursement of costs and expenses.

C. Default interest

69. 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 complaints concerning the length of the applicant's pre-trial detention and the length of the second set of criminal proceedings against the applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 6,000 (six thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President