



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

FOURTH SECTION

CASE OF ŻELAZKO v. POLAND

(Application no. 9382/05)

JUDGMENT

STRASBOURG

4 March 2008

FINAL

04/06/2008

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 *Żelazko v. Poland*,

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

Nicolas Bratza, *President*,
 Lech Garlicki,
 Stanislav Pavlovski,
 Ljiljana Mijović,
 David Thór Björgvinsson,
 Ján Šikuta,
 Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 9382/05) 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 Maciej Żelazko (“the applicant”), on 25 February 2005.

2. The applicant was represented by Ms D. Żelazko, his mother. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 7 September 2006 the Court decided to communicate the complaint concerning the length of the applicant’s pre-trial detention and on 11 September 2007 to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1975 and lives in Sztum.

1. Criminal proceedings against the applicant and his detention on remand

5. On 20 October 2000 the Otwock District Court remanded the applicant in custody, relying on a reasonable suspicion that the applicant had committed aggravated murder and robbery. The court also stressed the severity of the anticipated sentence and the fact that the applicant was a recidivist offender. Finally, the court found that there were no special grounds, as specified in Article 259 of the Code of Criminal Procedure, which would justify lifting the detention and imposing a less severe preventive measure.

6. The applicant's appeal against the detention order and his further appeals against some of the decisions extending his detention as well as his subsequent, numerous applications for release and appeals against refusals to release him, were unsuccessful.

7. In the course of the investigation, the applicant's detention was extended by the Warsaw Regional Court on 4 January, 9 April and 5 July 2001. In all their detention decisions the courts repeatedly relied on the original grounds given for the applicant's detention. It also noted that certain items of evidence and a psychiatric report on the other co-accused had not yet been obtained.

8. On 31 July 2001 the prosecution lodged a bill of indictment with the Warsaw Regional Court. The applicant was charged with robbery and murder.

9. The Warsaw Regional Court held hearings on 12 April and 20 August 2002.

10. During the court proceedings the authorities further extended the applicant's detention pending trial on 16 August 2001, 25 March 2002, 27 August 2002, 13 November 2002 and on an unknown subsequent date. The courts repeated the grounds previously given for the applicant's continued detention. The court found that his continued detention was necessary in order to secure the proper conduct of the proceedings.

11. On 27 August 2002 the Warsaw Regional Court gave judgment. The applicant was convicted as charged and sentenced to fifteen years' imprisonment. He was also deprived of his civic rights for a period of five years. The court further ordered that the period spent by the applicant in pre-trial detention from 20 October 2000 up to the date of his conviction was to be deducted from the sentence imposed.

12. The applicant appealed. He was kept in detention pending the outcome of his appeal for three months.

13. On 26 November 2002 the Warsaw Court of Appeal heard the applicant's appeal. It quashed the first-instance judgment and remitted the case for retrial. It ordered that the applicant's detention should continue.

14. In the retrial proceedings the Regional Court held hearings on 7 and 22 May, 14 and 29 July, 8 August, 25 September, 23 October and

1 December 2003, 2 February, 4 June, 19 July, 8 October, 22 October and 16 November 2004.

15. In the retrial proceedings the applicant made numerous, unsuccessful applications for release and appealed, likewise unsuccessfully, against decisions extending his detention. The relevant decisions on the extension of his detention were given by the Warsaw Regional Court on 17 February, 22 May, an unknown subsequent date, 23 October and 1 December 2003, 8 March, an unknown subsequent date and 22 July 2004. On 22 October 2004 the applicant was released and placed under police supervision.

16. On 25 October 2005 the Warsaw Regional Court acquitted the applicant of all the charges.

17. On 22 February 2006, upon the prosecution's appeal, the Warsaw Court of Appeal quashed the first-instance judgment and remitted the case to the Regional Court for reconsideration.

18. On 26 March 2007 the Warsaw Regional Court gave judgment. The applicant was convicted as charged and sentenced to 15 years' imprisonment and deprived of his civic rights for a period of 5 years. The court further ordered the applicant's detention on remand.

19. The applicant appealed against this judgment.

20. On 4 September 2007 the Warsaw Court of Appeal dismissed the applicant's appeal.

21. Between 27 June 1999 and 3 February 2004 the applicant served a prison sentence which had been imposed on him in two other sets of criminal proceedings.

2. Proceedings under the 2004 Act

22. On 6 October 2004 the applicant lodged a complaint under section 5 of 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").

23. On 23 November 2004 the Warsaw Court of Appeal dismissed the applicant's complaint. The court observed that the length of the proceedings could not be considered unreasonable. It examined the course of the impugned proceedings and held that there were no delays for which the Regional Court or Court of Appeal could be held responsible. The hearings had been held on a regular basis and evidence from numerous witnesses had been obtained.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Pre-trial detention

24. The relevant domestic law and practice concerning the imposition of pre-trial detention (*tymczasowe aresztowanie*), the grounds for its extension, release from detention and rules governing other, “preventive measures” (*środki zapobiegawcze*) at the material time are stated in the Court’s judgments in the cases of *Kudła v. Poland* [GC], n° 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, n° 37444/97, §§ 42-45, 11 October 2005; and *Celejewski v. Poland*, n° 17584/04, §§ 22-23, 4 August 2006.

B. Remedies against unreasonable length of the proceedings

25. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are stated in the Court’s decisions in the cases of *Charzyński v. Poland* n° 15212/03 (dec.), §§ 12-23, ECHR 2005-V; *Ratajczyk v. Poland* n° 11215/02 (dec.), ECHR 2005-VIII; and the judgment in the case of *Krasuski v. Poland*, n° 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

26. The applicant complained that the length of his pre-trial detention 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.”

27. The Government contested that argument.

A. Admissibility

28. 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

29. The applicant's detention started on 19 October 2000, when he was arrested on suspicion of robbery and murder. On 27 August 2002 the Warsaw Regional Court convicted him as charged.

30. As from that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and, consequently, that period of his detention falls outside the scope of Article 5 § 3 (see, *Kudła v. Poland*, cited above, § 104).

31. On 26 November 2002 the Warsaw Court of Appeal quashed the applicant's conviction and remitted the case to the Regional Court for reconsideration. Following that date his detention was again covered by Article 5 § 3. It continued until 22 October 2004 when the applicant was released.

32. On 26 March 2007 the Warsaw Regional Court convicted the applicant as charged and ordered the applicant's detention on remand.

33. As from that date the applicant was again detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and, consequently, that period of his detention falls outside the scope of Article 5 § 3 (see, *Kudła v. Poland*, cited above, § 104).

34. Between 27 June 1999 and 3 February 2004 the applicant served a prison sentence which had been imposed on him in two other sets of criminal proceedings. This term, being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's pre-trial detention for the purposes of Article 5 § 3.

35. Accordingly, the period to be taken into consideration amounts to eight months and nineteen days.

2. The parties' submissions

(a) The applicant

36. The applicant maintained that the length of his detention on remand had been unreasonable.

(b) The Government

37. The Government were of the opinion that the whole period of the applicant's detention had been justified. They stressed that the domestic courts dealing with the applicant's case had found his detention to be compatible with the provisions of Article 258 of the Code of Criminal Procedure and that no grounds warranting the applicant's release from detention as provided for by Article 259 of the Code had been established.

38. The domestic courts had given on each occasion relevant and sufficient reasons justifying the applicant's detention.

39. The applicant's detention had been justified by the reasonable suspicion that he had committed the offences with which he had been charged and the fact that the charges against him attracted a heavy sentence. The domestic courts also underlined that the applicant was a recidivist offender.

40. The Government further justified the length of the applicant's detention with reference to the particular complexity of the case, which was confirmed by the number of witnesses heard and the fact that various expert opinions had to be ordered.

41. Lastly, they maintained that the authorities had displayed adequate diligence in dealing with the applicant's case.

3. The Court's assessment

(a) General principles

42. 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 v. Poland*, cited above, § 110 *et seq* and *McKay v. the United Kingdom* [GC], n°. 543/03, §§ 41-44, ECHR 2006-..., with further references).

(b) Application of the above principles in the present case

43. The Court observes that the judicial authorities relied, in addition to the reasonable suspicion against the applicant, on three principal grounds, namely: (1) the serious nature of the offences with which he had been charged; (2) the severity of the penalty to which the applicant was liable and the fact that the applicant was a recidivist offender and (3) the need to collect all necessary evidence and to obtain relevant expert opinions.

44. The Court accepts that the reasonable suspicion that the applicant had committed the offences with which he had been charged may have warranted his detention at the early stage of the proceedings. However, with the passage of time that ground inevitably became less and less relevant. It must then establish whether the other grounds advanced by the judicial authorities were "relevant" and "sufficient" to continue to justify the deprivation of liberty.

45. The Court notes that the judicial authorities relied on the likelihood that a heavy sentence would be imposed on the applicant given the serious nature of the offences at issue and the fact that he had been a recidivist offender. According to them, the applicant's continued detention was necessary in order to secure the proper conduct of the proceedings (see paragraph 10 above). In this connection, the Court recalls that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. It acknowledges that in view of the seriousness of the accusations against the applicant the authorities could justifiably

consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, n°. 33977/96, §§ 80-81, 26 July 2001).

46. In addition, the authorities relied on the need to collect all necessary evidence and to obtain all relevant expert opinions. Given the relative complexity of the case and the need to obtain a considerable amount of evidence, the Court accepts that there existed relevant and sufficient grounds for the applicant's detention during the time necessary to terminate the investigation, to draw up the bill of indictment and to hear evidence from witnesses.

47. Taking into account the particular circumstances of the instant case, the Court considers that the severity of the anticipated penalty taken in conjunction with the other grounds relied on by the authorities were "sufficient" and "relevant" to justify holding the applicant in detention for the entire relevant period, that is 8 months and 19 days.

48. It therefore remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings. The Court notes in this connection that between the date of the applicant's arrest on 20 October 2000 and his conviction by the Warsaw Regional Court on 27 August 2002 the domestic authorities handled the applicant's case with relative expedition, bearing in mind the complexity of the investigation and extensive evidentiary proceedings. As to the conduct of the proceedings after 20 October 2000, the Court considers that it is more appropriate in the circumstances of this case to address this matter under Article 6 of the Convention from the standpoint of the overall length of the proceedings.

49. Having regard to the foregoing, the Court finds that there has been no 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 PROCEEDINGS

50. The applicant complained that the length of the proceedings 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

51. The Government refrained from addressing this complaint.

52. The period to be taken into consideration began on 20 October 2000 and ended on 4 September 2007. It thus lasted 6 years and 11 months for two levels of jurisdiction; during that period the case was remitted on two occasions to the first-instance court for re-examination.

A. Admissibility

53. 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

54. 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], n° 30979/96, § 43, ECHR 2000-VII).

55. 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). 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.

56. It observes in this connection that in dismissing the applicant's complaint that the proceedings in his case had exceeded a reasonable time, the Warsaw Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, n° 52690/99, § 36, 11 October 2005).

57. The Court further observes that the first-instance judgments in the present case were quashed on two occasions by the Court of Appeal. That court indicated on each occasion that the decisions of the lower authorities were in breach of the applicable laws (see paragraphs 13 and 17 above).

58. The Court considers that since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower authorities, the repetition of such orders within one set of proceedings discloses a serious deficiency in the operation of the legal system (*mutatis mutandis*, *Wierciszewska v. Poland*, n° 41431/98, § 46, 25 November 2003).

59. Finally, the Court notes that there were delays in the proceedings which were attributable to the authorities. Firstly, there was a delay of about eight and a half months between the date on which the bill of indictment had been filed and the date of the first hearing (see paragraphs 8 and 9 above). This delay when seen against the period taken for the investigation and the trial (22 months) is rather significant. Secondly, it took the Warsaw Regional Court almost three years to re-examine the applicant's case (see paragraphs 13 and 16 above). Taking into account the above, the Court considers that the authorities failed to display special diligence in the conduct of the proceedings.

60. Having regard to its case-law on the subject, the Court finds that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

III APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed an unspecified amount in respect of non-pecuniary damage related to distress and frustration resulting from the excessive length of his pre-trial detention and on account of the protracted length of the criminal proceedings against him.

64. The Government invited the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

65. The Court has found no violation in respect of the applicant’s complaint under Article 5 § 3 of the Convention and therefore no award in this respect can be made. On the other hand, the applicant has succeeded in respect of his second complaint, namely that his case was not heard within a reasonable time. However, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Nevertheless, it considers that the applicant certainly suffered non-pecuniary damage, such as distress and frustration, on account of the protracted length of the proceedings, which cannot be sufficiently compensated by the above finding of a violation. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant did not make any claim for costs and expenses.

C. Default interest

67. 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 no 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 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on 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;

Done in English, and notified in writing on 4 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President