



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

FOURTH SECTION

CASE OF JAROSŁAW JAKUBIAK v. POLAND

(Application no. 39595/05)

JUDGMENT

STRASBOURG

3 June 2008

FINAL

03/09/2008

This judgment may be subject to editorial revision.

In the case of Jarosław Jakubiak v. Poland,

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

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

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 39595/05) 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 Jarosław Jakubiak (“the applicant”), on 23 September 2005.

2. The applicant was represented by Mr Wiesław Bielawski, a lawyer practising in Wałbrzych. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 6 June 2007 the President of the Fourth Section of the Court decided to communicate the complaint concerning the length of pre-trial detention 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

4. The applicant was born in 1971 and lives in Jelenia Góra.

5. On 10 June 1999 the applicant was arrested by the police on suspicion of having committed homicide. On 12 June 1999 the Wrocław District Court (*Sąd Rejonowy*) remanded him in custody. It relied on the reasonable suspicion that he had committed the offence in question, the seriousness of the charges against him and the risk that he might tamper with evidence or go into hiding.

6. On 2 September 1999 the Jelenia Góra Regional Court (*Sąd Okręgowy*) extended the applicant's detention until 30 September 1999. It relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged, which was supported by evidence from witnesses and experts. The court made reference to the measures already taken in the investigation and indicated, in detail, the evidence that still had to be taken. Consequently, it decided that it was necessary to extend the applicant's detention. The court also referred to the likelihood of a lengthy prison sentence being imposed on the applicant and the complexity of the case.

7. On 28 September 1999 the Jelenia Góra Regional Court extended the applicant's detention until 10 December 1999. It repeated the grounds previously given for his detention.

8. On 7 December 1999 the Wrocław Court of Appeal (*Sąd Apelacyjny*) extended the applicant's detention until 31 December 1999. On 28 December 1999 it extended that period until 15 January 2000. It emphasised that the grounds originally given for his detention were still valid.

9. On 14 January 2000 the Jelenia Góra Regional Court extended the applicant's detention until 30 June 2000. It repeated the grounds that had been given in the previous decisions and added that further detention would not be excessively burdensome for the applicant or his family.

10. On 5 June, 19 June and 11 December 2000 and 9 April 2001 the court held hearings.

11. On 19 June, 11 December 2000 and 9 April 2001 the Jelenia Góra Regional Court extended the applicant's detention. It repeated the grounds previously given for keeping him in custody.

12. On 21 May 2001 the Jelenia Góra Regional Court applied under Article 263 § 4 of the Code of Criminal Proceedings to the Wrocław Court of Appeal for the applicant's detention to be extended beyond the statutory time-limit of two years. On 29 May 2001 the Wrocław Court of Appeal granted the request and extended the applicant's detention until 20 September 2001. It held that there was a strong suspicion that he had committed the offences with which he had been charged and that the nature of the offences justified the continuation of his detention. In addition, it stressed that the case was particularly complex.

13. On 20 September 2001 the Wrocław Court of Appeal extended the applicant's detention until 30 November 2001. It repeated the grounds given in the previous decisions.

14. On 4 October 2001 the Jelenia Góra Regional Court convicted the applicant as charged and sentenced him to twenty-five years' imprisonment. He appealed. The applicant's detention was subsequently extended on four occasions.

15. On 12 September 2002 the Wrocław Court of Appeal upheld the first-instance judgment. At the same time the Court of Appeal extended his detention.

16. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*). On 3 December 2003 the Supreme Court allowed the cassation appeal, quashed the appellate court's judgment and remitted the case to the Court of Appeal.

17. On 3 December 2003 the Supreme Court extended the applicant's detention until 3 April 2004, relying on the seriousness of the charges, the "degree of danger to society" (*stopień społecznej szkodliwości*) represented by the offence in question and the severity of the penalty imposed by the court of first instance.

18. On 5 March 2004 the Wrocław Court of Appeal quashed the first-instance judgment and remitted the case to the Jelenia Góra Regional Court. The court stated that the failure to call and hear evidence from six eyewitnesses, Belarus nationals, had been a serious shortcoming justifying a retrial. The trial court had not made efforts to secure their presence at the hearing or to make use of a rogatory letter in order to have them heard as witnesses by the Belarus authorities. Furthermore, as regards the anonymous witness, the court of first instance had failed to make efforts to secure his presence at the hearing. The court had not made sufficient inquiries about his whereabouts.

19. On 1 April and 23 September 2004 and 24 March 2005 the Wrocław Court of Appeal extended the applicant's detention. It relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged, which was supported by evidence from witnesses and experts. It referred to the likelihood of a lengthy prison

sentence being imposed on the applicant and found that holding him in custody was necessary to secure the proper conduct of the proceedings.

20. During the proceedings the applicant made repeated unsuccessful applications for release. He also appealed, likewise unsuccessfully, against refusals to release him and decisions extending his detention.

21. At a hearing held on 1 March 2005 the Regional Court decided to send a rogatory letter to the relevant Belarusian court, asking it to take evidence from six eyewitnesses. The applicant's lawyer prepared questions in writing to be put to them on the applicant's behalf. The court in Belarus heard evidence from three witnesses, because, despite the efforts of the authorities, it was impossible for them to establish the current addresses of the remaining witnesses. The records of evidence taken from those witnesses during the investigation were read out by the trial court.

22. On 8 March 2006 the Jelenia Góra Regional Court convicted the applicant as charged and sentenced him to fifteen years' imprisonment. The court established the facts of the case on the basis of evidence taken from seventeen witnesses.

23. The applicant appealed. The applicant's detention was subsequently extended on several occasions.

24. On 28 September 2006 the Wrocław Court of Appeal dismissed the applicant's appeal. It considered that the facts of the case had been duly established and the rules of criminal procedure, as well as guarantees of a fair trial, had been respected. As regards evidence from the anonymous witness, despite the authorities' efforts, the court could not secure his presence at the hearing. Consequently, it was necessary to take into account evidence given by him in the investigation.

25. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*). On 19 December 2007 the Supreme Court dismissed the applicant's appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "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.

THE LAW

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

27. 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.”

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 Court notes that the applicant was remanded in custody on 10 June 1999. On 4 October 2001 the Jelenia Góra Regional Court convicted him of homicide. From that date he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (see *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). On 5 March 2004 the Wrocław Court of Appeal quashed the applicant’s conviction. Following that date his detention was covered by Article 5 § 3. It continued until 8 March 2006, when the trial court again convicted the applicant. Consequently, the period to be taken into consideration lasted four years and four months.

2. *The parties’ submissions*

(a) The Government

30. The Government argued that the length of the applicant’s detention had not been excessive. They submitted that the courts had given relevant and sufficient reasons for holding the applicant in custody for the entire period in question and had diligently scrutinised the need to keep him in

custody. The Government maintained that the applicant's detention had been justified by the existence of a serious suspicion that he had committed the offences in question and the severity of the crimes committed by him. Furthermore, the pre-trial detention was justified in the light of the likelihood of a lengthy prison sentence being imposed on the applicant and the risk of his going into hiding or absconding.

31. The Government further considered that the proceedings against the applicant could be regarded as complex on account of the volume of evidence obtained in the investigation and subsequently heard at the trial. The Government pointed out that disciplinary measure had been imposed on witnesses who had failed to appear. They further mentioned that the courts encountered difficulties in hearing anonymous witnesses.

32. The Government further argued that the applicant had made unsubstantiated requests in order to have some of the hearings adjourned.

(b) The applicant

33. The applicant submitted that the length of his detention had been unreasonable. He argued that in their decisions to extend his pre-trial detention the courts were automatically quoting the same legal basis to justify his detention. He considered that during the entire period of his detention the courts' arguments had not changed.

34. The applicant further pointed out that the application of other preventive measures had never been considered by the courts when they had extended his pre-trial detention.

35. He also referred to the unreasonable length of the proceedings as the principal cause of an excessively lengthy detention.

3. The Court's assessment

(a) General principles

36. The Court reiterates 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* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

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

37. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he was liable, (3) the need to secure the proper conduct of the proceedings, particularly the risk that he might tamper with evidence and (4) the risk that the applicant might go into hiding. As regards the last factor, they did not, however, give any specific justifications for their opinions (see paragraph 5 above).

38. The Court accepts that the serious nature of the offences could initially warrant the applicant's detention. However, with the passage of time, that ground became less and less relevant and cannot justify the entire period of four years and four months during which the most serious preventive measure against the applicant was imposed (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006).

39. Moreover, the authorities relied on the likelihood that a heavy sentence would be imposed on the applicant given the serious nature of the offence at issue. In this respect, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending (see paragraph 6 above). However, the Court has repeatedly held that the seriousness of the charges alone cannot serve to justify long periods of detention (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

40. As regards the risk that the applicant would tamper with evidence, the Court is not persuaded that it constituted a valid ground for the entire period in question. Firstly, it notes that the Wrocław District Court, when originally remanding the applicant in custody, referred only in general to the risk that the applicant would tamper with evidence or intimidate witnesses. Secondly, the Court notes that in the other relevant decisions of the judicial authorities no specific substantiation of the risk that the applicant would tamper with evidence or intimidate witnesses emerged. In the absence of any other factor capable of showing that the risk relied on actually existed, the Court cannot accept that argument.

41. Moreover, as regards the authorities' reliance on the risk of the applicant's absconding or going into hiding, the Court reiterates that in the relevant decisions of the judicial authorities no specific substantiation of the risk was given. Therefore, in the absence of factors capable of showing the risk of the applicant's going into hiding, the Court cannot accept that argument.

42. Furthermore, the Court notes that the reasons relied upon by the domestic courts in their decisions to remand the applicant in custody and to extend his detention were limited to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case. Accordingly, the Court does not consider that the instant case can be distinguished from *Castravet v. Moldova*, (no. 23393/05, § 34, 13 March 2007) as far as the relevance and sufficiency of the reasons for detention are concerned.

43. The Court agrees with the Government that the criminal case against the applicant can be considered complex, regard being had to the nature of the charges and the scope of the evidence to be taken. The Court's attention has been drawn in particular to the significant number of witnesses and the necessity to question them abroad (see paragraphs 18 and 21 above). However, it appears that the authorities referred to the complexity of the case in a very general manner and failed to indicate how the nature of the case required the applicant's continued detention.

44. The Court agrees with the applicant that during the entire period in question the authorities failed to envisage the possibility of imposing other preventive measures on the applicant, such as bail or police supervision.

In this context the Court would emphasise that "other preventive measures" are expressly foreseen by Polish law to secure the proper conduct of the criminal proceedings and that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures to ensure his appearance at the 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 *Jabłoński v. Poland*, no. 33492/6, § 83, 21 December 2000).

45. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not "relevant" or "sufficient" to justify the applicant's being kept in detention for four years and four months. In these circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

47. The applicant further complained that the proceedings against him had been unfair. In particular, he alleged errors of fact and law committed by the courts. He also contended that he had not been allowed to examine an anonymous witness against him. Lastly he alleged a breach of his defence rights and stressed that he had been deprived of any opportunity to challenge the statements of six witnesses and to cross-examine them.

48. 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). Assessing the criminal proceedings against the applicant as a whole, the Court 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.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF THE PROCEEDINGS

49. The applicant complained under Article 6 § 1 of the Convention that the length of the criminal proceedings had exceeded a “reasonable time” within the meaning of this provision.

50. 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...”

51. The Court observes that the applicant failed to avail himself of the following remedy provided for by Polish law. During the proceedings he could have made a complaint under section 5 of the 2004 Act. The 2004 Act introduced remedies, of both a remedial and compensatory character, concerning specifically the right to have one’s case examined within a reasonable time within the meaning of Article 6 § 1 of the Convention. It has held that these remedies are effective in respect of the excessive length of pending judicial proceedings (see *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005, and *Charzyński v. Poland* (dec.), no. 15212/03, 1 March 2005).

52. It follows that this complaint 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

53. 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

54. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and damage and EUR 30,000 in respect of non-pecuniary damage.

55. The Government considered the claim exorbitant.

56. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant also claimed EUR 4,500 for the costs and expenses incurred before the domestic courts and EUR 3,000 for those incurred before the Court.

58. The Government noted that the applicant had not presented any specific documents as regards his costs and legal representation before the Court.

59. The Court notes that according to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court observes that the applicant failed to make any specific claim for reimbursement of his costs and expenses as required under Rule 60 of the Rules of Court and did not produce any documents in support of his claim. In those circumstances, the Court makes no award under this head (see *Adamiak v. Poland*, no. 20758/03, § 49, 19 December 2006).

C. Default interest

60. 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 unreasonable length of pre-trial detention 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*
 - (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 1,000 (one thousand 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 3 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President