



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

FOURTH SECTION

**CASE OF ZIĘBA v. POLAND**

*(Application no. 4959/04)*

JUDGMENT

STRASBOURG

3 June 2008

**FINAL**

*03/09/2008*

*This judgment may be subject to editorial revision.*



**In the case of Zięba v. Poland,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *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. 4959/04) 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 Slawomir Zięba (“the applicant”), on 6 January 2004.

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

3. On 21 May 2007 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**

4. The applicant was born in 1968 and lives in Bielsko-Biala.

**A. Criminal proceedings against the applicant and his detention on remand**

5. On 18 December 2001 the applicant was arrested by the police on suspicion of having committed, *inter alia*, several counts of fraud, receiving

stolen goods, bribery, forgery, deception, drug trafficking and inciting to theft while acting in an organised criminal group. On 20 December 2001 the Katowice District Court (*Sąd Rejonowy*) ordered his detention. It relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and on the risk that, as a former police officer, he might tamper with evidence. It referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant.

6. On 13 February 2002 the charges against the applicant were severed from the main proceedings instituted against several suspects. The case was referred to the Bielsko-Biala District Court.

7. On 15 March 2002 the Bielsko-Biała District Court extended the applicant's detention until 18 June 2002. It relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, the need to secure the proper conduct of the investigation and the complexity of the case. It also stressed that his detention was justified by the need to obtain further evidence, in particular to obtain expert reports, to take evidence from witnesses and suspects and to confront witnesses and suspects.

8. The detention order was subsequently extended by the Bielsko-Biała District Court on 14 June, 25 June and 27 September 2002. The court repeated the grounds given in the previous decisions.

9. On 11 December 2002 the Katowice Court of Appeal (*Sąd Apelacyjny*) extended the applicant's detention until 31 May 2003. It relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, which was supported by evidence from witnesses and co-accused. Moreover, the court found that there was a reasonable risk that the applicant would obstruct the proper conduct of the proceedings, having regard to the fact that he had formerly been a police officer. It also referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant and to the complexity of the case.

10. On 4 October 2002 the applicant requested access to the case file.

11. On 17 December 2002 the Katowice Regional Prosecutor (*Prokurator Okręgowy*) refused the applicant access to the case file. He relied on the risk that the applicant might attempt to tamper with evidence. Furthermore, the prosecutor stated that the applicant would be granted access to the case file later in the proceedings, at the close of the investigation.

12. On 6 March 2003 the Katowice Prosecutor of Appeal upheld the impugned order, finding that the applicant's defence rights had been limited only temporarily and that the refusal of access to the case file was necessary for the proper conduct of the investigation.

13. On 20 May 2003 a bill of indictment was lodged. However, the court decided to return the case to the prosecution authorities for additional investigation.

14. On 30 May 2003 the Bielsko-Biala District Court extended the applicant's detention until 31 August 2003. The court repeated the grounds given in the previous decisions.

15. On 18 June 2003 a new bill of indictment was lodged. It listed 21 charges laid against members of an organised criminal group.

16. On 29 August 2003 the Bielsko-Biała District Court extended the applicant's detention until 18 December 2003. On 17 December 2003 the Katowice Court of Appeal extended that period to 18 June 2004. The applicant's detention was subsequently extended on 9 June, 15 September and 17 November 2004. The courts relied on the grounds stated in the previous decisions.

17. In the course of the investigation and the court proceedings the applicant made numerous unsuccessful applications for release and appealed, likewise unsuccessfully, against refusals to release him and against decisions extending his detention.

18. Between 28 October 2003 and 18 November 2004 the court held 32 hearings.

19. On 18 November 2004 Court convicted the applicant as charged and sentenced him to 12 years' imprisonment. He appealed. The applicant's detention was subsequently extended on three occasions.

20. On 30 January 2006 the Katowice Regional Court (*Sąd Okręgowy*) quashed the first-instance judgment. At the same time it extended the applicant's detention until 18 April 2006. The court considered that the reasons for keeping him in detention were still valid.

21. On 13 April 2006 the District Court extended the applicant's detention to 18 October 2006.

22. On 21 September 2006, upon the applicant's request, he was released from detention.

23. Between 5 May and 15 December 2006 the court held 7 hearings.

24. The proceedings are still pending.

## **B. Proceedings under the 2004 Act**

25. On 11 October 2005 the applicant lodged a complaint with the Bielsko-Biała Regional Court (*Sąd Okręgowy*), 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").

26. The applicant sought a ruling declaring that the length of the proceedings from 18 November 2004, that is, the date of delivery of the first-instance judgment, to 21 September 2005 (the referral of the case to the court of second instance) had been excessive.

27. On 29 November 2005 the Regional Court dismissed his complaint. The court held that there were no delays for which the District Court could be held responsible. It referred to the complexity of the case, the time needed for the preparation of written grounds for the judgment, which comprised 118 pages, and problems with serving one of the defendants with a notice concerning his appeal.

28. On 21 June 2006 the applicant lodged a new complaint about a breach of the right to have his case heard within a reasonable time. He sought a ruling declaring that the length of the proceedings after April 2006 had been excessive.

29. On 18 September 2006 the Bielsko-Biala Regional Court rejected his complaint, relying on section 14 of the 2004 Act (under this provision a fresh length complaint in the same proceedings cannot be lodged earlier than 12 months from the date on which a court has given a decision concerning the first length complaint).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### *1. Preventive measures, including detention on remand*

30. The relevant domestic law and practice concerning the imposition of detention on remand (*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.

### *2. Remedies against unreasonable length of the proceedings*

31. 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* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V, and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII.

As regards the above-mentioned section 14 of the 2004 Act (paragraph 29), it reads, in so far as relevant, as follows:

“The applicant may lodge a new length complaint in the same proceedings not earlier than after 12 months ... from the date on which a court gave a decision referred to in section 12.”

## THE LAW

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

32. The applicant complained that the length of his detention on remand 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.”

33. The Government contested that argument.

#### A. Admissibility

34. 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 ground. It must therefore be declared admissible.

#### B. Merits

##### *1. Period to be taken into consideration*

35. The applicant's detention started on 18 December 2001, when he was arrested on suspicion of having committed numerous offences while acting in an organised criminal group (see paragraph 5 above). On 18 November 2004 the Bielsko-Biala District Court convicted him as charged.

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 (cf. *Kudła*, cited above, § 104).

On 30 January 2006 the Katowice Regional Court quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 21 September 2006 when the applicant was released.

36. Accordingly, the period to be taken into consideration amounts to 3 years, 6 months and 21 days.

*2. The parties' submissions*

**(a) The applicant**

37. The applicant submitted that the length of his detention had been unreasonable. He stressed that the decisions extending his pre-trial detention had been taken routinely and the courts had simply repeated the grounds given in the previous decisions. He further emphasised that he had not contributed to the length of the proceedings, he had lodged numerous applications for the acceleration of the proceedings and he had made normal use of his procedural rights in order to obtain a review of his detention. Finally, he submitted that the authorities had failed to exercise all due diligence when dealing with his case.

**(b) The Government**

38. The Government argued that the length of the applicant's detention had been reasonable and duly justified throughout the entire period. They relied firstly on the existence of a serious suspicion that the applicant had committed the offences in question. Furthermore, the Government referred to the gravity of the charges against the applicant and the severity of the anticipated penalty.

39. They further argued that the applicant's detention had been justified in order to secure the proper conduct of the proceedings, as there had been a risk that he would tamper with evidence. This risk was increased by the fact that the charges against the applicant concerned numerous offences committed by an organised and armed criminal group and the fact that he had formerly been a police officer. Lastly, they maintained that the authorities had displayed adequate diligence when dealing with his case and the applicant had contributed to the length of the proceedings by lodging numerous applications for release, requests for witnesses to be examined, and requests for access to the case file and for the minutes of hearings to be rectified.



### 3. *The Court's assessment*

#### (a) General principles

40. The Court notes 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

41. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the complexity of the case, (2) the severity of the penalty to which he was liable and (3) the risk that he might tamper with evidence (see paragraphs 5, 7, 8, 9, 14 and 16 above).

42. The applicant was charged with numerous counts of fraud, receiving stolen goods, bribery, forgery, deception, drug trafficking and inciting to theft committed in an organised and armed criminal group (see paragraphs 5 and 15 above).

In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

43. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to obtain voluminous evidence and to determine the degree of the alleged responsibility of each of the defendants, who had acted in a criminal group and against whom numerous serious charges were laid, constituted valid grounds for the applicant's initial detention.

44. Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings often is, by the nature of things, high. In this respect, the Court notes that the fact that the applicant had formerly been a police officer increased the potential risk of his tampering with evidence (see paragraphs 5 and 9 above).

45. Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. However, the Court would reiterate 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 (see, for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

46. While all those factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to extend the application of this measure. In this context, the Court would observe that before the date of his original first-instance conviction the applicant had already spent 2 years and 11 months in pre-trial detention. Following the quashing of that conviction on appeal, he was kept in custody for a further 6 months and 20 days (see paragraphs 5, 19, 20 and 22 above).

47. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised criminal group, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

48. 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 UNFAIRNESS OF THE PROCEEDINGS

49. The applicant further complained that the proceedings in his case had been unfair. In particular, he complained that the prosecuting authorities had entirely disregarded all evidence which would exonerate him, that he had not been confronted with certain witnesses, that he had not been given access to the case file, that the records of the witnesses' testimonies during the investigation had been taken in a biased manner, and that the prosecution and the courts had wrongly assessed evidence and had made erroneous conclusions in this respect. The applicant relied on Article 6 § 1 of the Convention.

50. However, the Court notes that the impugned proceedings are still pending and therefore it is premature to examine the applicant's complaint. It follows that it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

51. The applicant complained that the length of the criminal proceedings had been incompatible with the “reasonable time” requirement provided in Article 6 § 1 of the Convention.

First of all, the court notes that the applicant lodged a complaint about a breach of the right to have his case heard within a reasonable time under the 2004 Act. However, he explicitly limited it to the period between 18 November 2004 and 21 September 2005. Consequently, he failed to seek a ruling declaring that the proceedings as a whole had been unreasonably lengthy.

52. As regards the proceedings after April 2006, on 18 September 2006 the Regional Court rejected the applicant’s second complaint, as it had been lodged earlier than after 12 months from the date on which a court had given a decision concerning the first length complaint. The court observes that it is still open to the applicant to contest the length of the proceedings before the domestic courts and to lodge a complaint about a breach of the right to a trial within a reasonable time in accordance with the formal requirements set out in the 2004 Act.

Accordingly, the complaint about the unreasonable length of the proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

53. Lastly, the applicant complained under Article 8 of the Convention that his extended detention had put a severe strain on him and his family. Furthermore, he submitted that his correspondence with his family had been censored and he had not been allowed to make phone calls to his relatives.

54. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a detainee’s right to respect for family life that the authorities enable him or, if need be, help him to maintain contact with his close family (see, *mutatis mutandis*, *Messina v. Italy* (no.2) no. 25498/94, § 61, 28 September 2000).

55. In the present case the applicant has not reported any limitations put on the number of family visits, supervision over those visits or subjection to a special prison regime or special visiting arrangements. Furthermore, he failed to produce any evidence to substantiate the alleged censorship of his correspondence or restriction on communication with his family by telephone.

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

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 13,200 euros (EUR) in respect of pecuniary damage and EUR 18,500 in respect of non-pecuniary damage related to the protracted length of his detention. Furthermore, he claimed EUR 10,600 in respect of non-pecuniary damage related to the alleged violation of Article 8 of the Convention.

58. The Government argued that the applicant’s claims were groundless. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction.

59. 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 considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head. The Court notes that the applicant’s complaints under Article 6 § 1 and Article 8 have been declared inadmissible. Thus, there is no basis for making any award under these heads.

### B. Costs and expenses

60. The applicant did not seek reimbursement of any costs and expenses.

### C. Default interest

61. 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 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 Polish zlotys 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