



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

FOURTH SECTION

CASE OF HAGEN v. POLAND

(Application no. 7478/03)

JUDGMENT

STRASBOURG

14 October 2008

FINAL

14/01/2009

This judgment may be subject to editorial revision.

In the case of Hagen 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 23 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 7478/03) 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 Jacek Kamiński (“the applicant”), on 29 January 2003. Subsequently, he changed his name to Dawid Hagen.

2. The applicant, who had been granted legal aid, was represented by Mr P. Wierzbicki, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the length of the applicant’s detention, the length of the criminal proceedings and the effectiveness of a remedy against the undue length of the proceedings. Under the provisions of Article 29 § 3 of the Convention, it 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 1964 and lives in Lublin.

A. The criminal proceedings against the applicant

5. The applicant was arrested on 31 January 2001 on suspicion of fraud. On 2 February 2001 the Warsaw District Court ordered his detention on remand in view of the reasonable suspicion that he had committed aggravated fraud. It relied on the severity of the anticipated penalty and the fact that the applicant had been previously convicted. In addition, the District Court found that there was the risk that the applicant would abscond, given that he had no permanent abode in the country.

6. On 27 April 2001 the District Court prolonged the applicant's detention until 30 July 2001, relying on the same grounds as in the first detention order. It observed that the applicant had not registered a permanent residence anywhere in the country.

7. On 9 May 2001 the applicant was questioned by the prosecutor. On 8 June 2001 the prosecutor ordered that evidence be obtained from psychiatrists to establish whether the applicant had acted in a state of diminished responsibility. The relevant reports were submitted on 18 June and 5 September 2001.

8. On 20 July 2001 the District Court extended the applicant's detention. In addition to the grounds previously invoked, it ruled that the prolongation of his detention was justified by the need to obtain further evidence. In its decision of 18 September 2001 prolonging the applicant's detention until 30 November 2001, the District Court invoked for the first time the risk that the applicant might interfere with the proceedings and attempt to influence witnesses.

9. On 10 November 2001 the prosecution filed with the Warsaw District Court a bill of indictment against the applicant and one other suspect. The applicant was charged with four counts of fraud. The prosecution requested the court to hear twenty-nine witnesses and two experts.

10. On 22 November 2001 the District Court ordered that the applicant be held in detention until 30 April 2002. It considered that no other preventive measure could secure the proper conduct of the proceedings, having regard to the severity of the penalty faced by the applicant and the fact that he had no permanent abode in Poland.

11. On 25 April 2002 the District Court extended the applicant's detention until 30 August 2002. In addition to the grounds previously invoked, it held that there was a risk that the applicant might attempt to

influence some of the witnesses who had been in close personal or business relations with him.

12. On 20 June 2002 the trial court held the first hearing and heard evidence from the applicant and his co-accused.

13. The applicant's detention was subsequently prolonged on 28 August 2002 (until 31 January 2003).

14. In the meantime the period of his detention pending trial had exceeded the two-year time-limit set out in Article 263 § 3 of the Code of Criminal Procedure. Consequently, on 28 January 2003 the Warsaw Court of Appeal ordered that the applicant be kept in custody until 31 July 2003. It found, *inter alia*, that the nature of the charge against the applicant might prompt him to influence the witnesses. In addition, it observed that the trial could not be concluded on account of the applicant's conduct, and not for reasons attributable to the trial court. It also stated that the trial court should endeavour to conclude the trial by 31 July 2003.

15. The applicant's appeal against that decision was dismissed by a different panel of the Court of Appeal on 4 March 2003. The Court of Appeal found that the applicant had attempted to influence the testimony of his wife as transpired from his letter to her which had been intercepted. Furthermore, it ruled that the applicant's detention was justified by the fact that he had not lived at the place of his registered permanent residence and that he had been changing addresses and names of his companies without notifying creditors. The Court of Appeal also found that the prolongation was justified by the complexity of the case and the volume of evidence to be heard.

16. On 7 March 2003 the Warsaw District Court dismissed the applicant's request for the trial court's judges to withdraw from examining his case.

17. From 23 April to 14 May 2003 the applicant underwent medical treatment in the Łódź Detention Centre. Hearings scheduled for 7 and 13 May 2003 were cancelled due to the applicant's treatment.

18. On 25 July 2003 the Court of Appeal extended the applicant's detention until 31 October 2003, invoking the same grounds as previously.

19. On 24 October 2003 the Court of Appeal prolonged the applicant's detention until 30 November 2003. It found that a judgment could not be delivered before 31 October 2003 because of the illness of a lay member of the trial court and a problem with securing the presence of an important witness.

20. The trial court held about 23 hearings. Four hearings (25 April and 23 May 2002; 10 March, 15 April 2003) were adjourned because the applicant had not been brought by the police to court from a detention centre. It appears that seven hearings were adjourned due to the absence of the applicant's counsel (25 April, 28 August, 2 October, 22 November and 17 December 2002; 20 and 26 March 2003). Three further hearings were

adjourned on account of the illness of a lay judge (18 July and 20 November 2002; 25 September 2003). One hearing was adjourned at the applicant's request (15 January 2003). On 23 April 2003 the trial court adjourned the hearing due to the absence of witnesses.

21. During the investigation and the trial the applicant filed a number of unsuccessful applications for release and appealed, likewise unsuccessfully, against decisions prolonging his detention.

22. On 27 October 2003 the Warsaw District Court delivered its judgment. It convicted the applicant of three counts of fraud and sentenced him to six years and six months' imprisonment and a fine.

23. The applicant appealed. On 3 August 2004 the Warsaw Regional Court upheld the first-instance judgment.

24. On 12 January 2006 the Supreme Court dismissed the applicant's cassation appeal as manifestly ill-founded.

B. The applicant's complaint against the unreasonable length of proceedings

25. On 29 November 2004 the applicant filed with the President of the Warsaw Regional Court a complaint about a breach of the right to a trial within a reasonable time and asked for compensation. He relied specifically on section 18 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act") which entered into force on 17 September 2004.

26. However, on 13 January 2005 the Warsaw Regional Court decided not to take cognisance of the applicant's complaint, pursuant to section 5 of the 2004 Act. It held that the complaint about the unreasonable length of the proceedings had to be lodged during the course of the impugned proceedings. However, in the applicant's case the complaint could not be examined since the impugned proceedings were terminated by the judgment of the Warsaw Regional Court of 3 August 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. The relevant domestic law and practice regarding the imposition of detention on remand (*tymczasowe aresztowanie*), the grounds for its prolongation, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) at the material time 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.

28. 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, 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

29. 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.”

30. The Government contested that argument.

A. Admissibility

31. 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

32. The applicant's detention started on 31 January 2001, when he was arrested on suspicion of fraud. On 27 October 2003 the Warsaw District Court convicted him of three counts of fraud. 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. Accordingly, the period to be taken into consideration amounts to 2 years, 8 months and 25 days.

2. The parties' submissions

(a) The applicant

33. The applicant maintained that the proceedings had been conducted very slowly. He had been arrested on 31 January 2001 but questioned by the

prosecutor for the first time on 9 May 2001. Similarly, he had been heard for the first time by the trial court only on 20 June 2002, although the bill of indictment had been filed in November 2001.

34. The applicant contested the grounds invoked by the courts to justify his detention, in particular the risk that he would abscond since he had not had a permanent abode in Poland. He submitted that he had lived and run his business in Poland for many years. That ground together with the severity of the anticipated penalty had been repeatedly invoked by the authorities throughout the proceedings. Furthermore, the applicant argued that the risk that he would obstruct the proceedings had not been justified by any concrete facts.

(b) The Government

35. The Government argued that the length of the applicant's detention had not been excessive. There had been valid reasons for holding him in detention for the entire period in question, namely the nature of the charges and the risk that the applicant might obstruct the proceedings and tamper with evidence. The domestic courts had given on each occasion relevant and sufficient reasons justifying the applicant's detention and had regularly supervised it. The Government submitted that the case had been complex. The authorities had displayed adequate diligence in the conduct of the proceedings. Hearings had been held frequently and at regular intervals.

3. The Court's assessment

(a) 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 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 severity of the penalty to which he was liable and the fact that the applicant was a recidivist offender; (2) the risk that the applicant might abscond given that he had not had a permanent residence in the country registered; (3) the risk that the applicant might influence witnesses; and (4) the complexity of the case and the volume of evidence.

38. The Court accepts that the reasonable suspicion against the applicant of having committed four counts of fraud could initially warrant his detention. However, with the passage of time, that ground became less and less relevant. The Court must then establish whether the other grounds adduced by the courts were “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

39. The Court notes that the judicial authorities continuously relied on the likelihood that a heavy sentence might be imposed on the applicant given the nature of the offences with which he had been charged and the fact that he had been a recidivist offender. In this respect, the Court recalls that the relative 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 charges against the applicant the authorities could justifiably consider that such a risk existed. 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, among others, *Malikowski v. Poland*, no. 15154/03, § 54, 16 October 2007).

40. The authorities also considered that there had been a risk that the applicant might influence witnesses. The Court observes that it was legitimate for the authorities to consider that factor as capable of justifying the applicant’s detention at the initial stages of the proceedings. However, the Court considers that that ground gradually lost its force and relevance as the proceedings progressed and it cannot accept it as a justification for holding the applicant in custody for the entire period. Furthermore, the Court is not persuaded that the risk of absconding based on the fact that the applicant had failed to have a permanent residence in the country registered could serve as a “relevant” ground to warrant the length of his pre-trial detention.

41. The Court further observes that the applicant was detained on charges of fraud (4 counts) committed together with one accomplice. The defendants had not been formally charged with acting in an organised criminal group. In these circumstances, the Court is not persuaded that the instant case presented particular difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the perpetrators as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, cited above, § 37 and *Kwiatek v. Poland*, no. 20204/02, § 46, 6 February 2007).

42. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of two years and nearly nine months of the applicant’s detention.

43. That finding would, as a rule, absolve the Court from determining whether the national authorities displayed “special diligence” required under Article 5 § 3 in the conduct of the proceedings (see, *Mc Kay*, cited above, § 44). However, in that context the Court cannot but note that even though the

applicant was arrested on 31 January 2001 he was questioned by the prosecutor only on 9 May 2001. Similarly, the first hearing before the trial court took place on 20 June 2002, whereas the bill of indictment had been filed in November 2001. Furthermore, the Court notes that four hearings were adjourned because the police had not brought the applicant from the detention centre. Although the trial court was not responsible for the resultant delays, the lack of a police escort to secure the applicant's presence at the trial must be attributed to the national authorities. On account of the above circumstances, the Court considers that it cannot be said that the authorities displayed "special diligence" in the conduct of the criminal proceedings against the applicant.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

45. 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 ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

1. The parties' submissions

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

47. Furthermore, the Government asserted that the case had been rather complex. As regards the conduct of the authorities, they had proceeded with due diligence. Hearings in the applicant's case had been held frequently. As far as the applicant's conduct was concerned, the Government conceded that he had not contributed to the length of the proceedings.

48. The applicant maintained that he had exhausted all remedies in respect of his complaint under Article 6 § 1.

49. As regards the merits of his complaint, he argued that the alleged complexity of the case could not justify the period of 2 years and 9 months taken by the trial court to decide his case. Fraud was a not infrequent offence, so it could be assumed that the trial court had dealt earlier with similar cases.

50. He submitted that he had not contributed to the length of the proceedings. The applicant emphasised that the authorities had not displayed due diligence in handling his case. There had been significant delays as regards the applicant's first questioning by the prosecutor and the

opening of the trial. Furthermore, four hearings had to be adjourned on account of technical problems with transporting the applicant from the detention centre. The applicant stressed that proceedings against a person who had been held in detention should be conducted particularly efficiently.

2. *The Court's assessment*

51. With regard to the Government's objection, the Court considers it unnecessary to establish whether the applicant has complied with the rule of exhaustion of domestic remedies since the complaint is in any event manifestly ill-founded.

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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

53. The proceedings in the present case lasted from 31 January 2001, when the applicant was arrested, until 12 January 2006, when the Supreme Court dismissed his cassation appeal. They thus lasted 4 years, 11 months and 12 days for three levels of jurisdiction.

54. The Court accepts that the case could not be considered particularly complex as it involved a fairly common offence and only 2 accused. Furthermore, it appears that the applicant did not contribute to the delays in the proceedings.

55. As regards the conduct of the relevant authorities, the Court observes that there were certain delays in the proceedings before the trial court, namely between the filing of the bill of indictment and the opening of the trial, which were attributable to the authorities. The Court took those delays into account when examining the applicant's complaint under Article 5 § 3 and arriving at the conclusion that the authorities had failed to display special diligence in the conduct of the trial (see paragraph 43 above). The Court also notes that the trial court cannot be held entirely responsible for delays in the trial since seven trial hearings were adjourned due to the absence of the applicant's counsel and a further three on account of the lay judge's illness. Otherwise, the District Court held hearings at regular intervals and proceeded relatively efficiently with the trial.

56. As regards the proceedings after the delivery of the first-instance judgment against the applicant, the Court observes that there were no apparent periods of inactivity before the appellate court or the Supreme Court. In respect of the latter, the Court notes that the applicant's cassation appeal appears to have lain dormant before the Supreme Court for a period of approximately 16 months. However, some delays in the procedure before the Supreme Court could be explained by the fact that at the material time it had to deal with an increased workload (see, in respect of civil cases, *Keça*

v. Poland (dec.), no. 43978/98, 30 September 2003). Furthermore, the impugned delay could not be considered unreasonable in the light of other cases which were characterised by longer periods of delay before the Supreme Court (compare and contrast, *Piątkowski v. Poland*, no. 5650/02, § 23, 17 October 2006, and *Golik v. Poland*, no. 13893/02, § 40, 28 November 2006). In view of the foregoing, the Court concludes that the proceedings complained of do not disclose an unreasonable delay within the meaning of Article 6 § 1.

57. 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 13 OF THE CONVENTION

58. The applicant also complained about a violation of his rights in respect of the Warsaw Regional Court's decision of 13 January 2005 which rejected his complaint about the excessive length of proceedings. He did not invoke any provision of the Convention in this respect. The Court considers that the applicant raised in substance a complaint under Article 13 of the Convention that he had had no effective domestic remedy in respect of the protracted length of proceedings in his case. Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

59. The Government contested that argument and referred to their objection on the grounds of non-exhaustion submitted in respect of the complaint under Article 6 § 1.

60. The applicant did not make any submissions in this respect.

61. The Court recalls that Article 13 of the Convention requires the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). In view of its conclusions above, the Court considers that the applicant has no arguable claim of a violation of his right to a hearing within a reasonable time under Article 6 § 1 of the Convention which would have required a remedy within the meaning of Article 13.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage related to distress and frustration resulting from the excessive length of his detention and trial. He also claimed an unspecified amount in respect of pecuniary damage. That latter claim was related to the fact that following his detention the applicant had to cease his business activities.

65. In respect of the claim for non-pecuniary damage, the Government argued that a finding of violation of Articles 5 § 3 and 6 § 1 constituted in itself sufficient just satisfaction. Alternatively, should the Court find a violation of Articles 5 § 3 and 6 § 1, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances. In respect of the claim for pecuniary damage, the Government submitted that there was no causal link between the alleged violations and the applicant’s claim under this head.

66. The Court notes that it has found a violation of Article 5 § 3 and declared the remaining complaints inadmissible. 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, the Court considers that the applicant has suffered some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of Article 5 § 3 of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

67. The applicant submitted that all costs related to the proceedings before the Court should be borne by the Government. He did not claim any specific sum and did not submit any documents in support of his claim.

68. The Government noted that the applicant had not presented any specific claims as regards his legal representation before the Court.

69. The Court notes that the applicant was represented by a lawyer and was paid EUR 850 in legal aid by the Council of Europe. 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 were 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

70. 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 length of the applicant's 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 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President