



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

FOURTH SECTION

CASE OF WIERZBA v. POLAND

(Application no. 20315/04)

JUDGMENT

STRASBOURG

13 November 2008

FINAL

13/02/2009

This judgment may be subject to editorial revision.

In the case of Wierzba 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 21 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 20315/04) 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 Sławomir Wierzba (“the applicant”), on 17 May 2004.

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

3. On 4 May 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the excessive length of the applicant’s detention and the length of criminal proceedings to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1980 and lives in Gdańsk.

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

5. On 16 April 2002 the applicant was arrested on suspicion of having committed robbery.

6. On 17 April 2002 the Gdańsk District Court (*Sąd Rejonowy*) remanded him in custody until 16 July 2002 on reasonable suspicion that he had committed robbery and had attempted to escape. The court also considered that keeping the applicant in detention was justified by the existence of strong and substantial evidence, in particular testimonies of a victim and witnesses. It also gave as a ground for detention the severity of the likely sentence. Further, the court considered that, given the risk that the applicant might tamper with evidence, in particular collude with other co-accused, keeping him in detention was necessary to secure the proper conduct of the investigation.

7. In the course of the investigation, the applicant's detention was extended on four occasions. The relevant decisions were given by the Gdańsk District Court on 15 July and 15 October 2002, and later on 15 January and 10 April 2003.

8. In all their detention decisions the authorities relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged and on the risk that he might go into hiding. As regards the latter, the court stressed that the applicant had already attempted to escape.

9. On 25 March 2003 the applicant was indicted before the Gdańsk District Court. The bill of indictment concerned five defendants and, in all, twelve charges were brought against them. The prosecution asked the court to hear evidence from around forty witnesses. Further, the bill of indictment included fifty items of evidence to be produced at the hearing.

10. On 5 June 2003 the trial court held the first hearing. It subsequently scheduled sixteen hearings in the case. Four of them were cancelled for various reasons.

11. In particular, it appears that no hearing took place between 14 August 2003 and 15 January 2004. Hearings scheduled for 9 October and 11 December 2003 were cancelled due to, among other things, the failure to bring the applicant to trial from prison, and the fact that a hearing scheduled for 6 November 2003 had to be cancelled because a trial judge was on mission.

12. In the course of the trial, the court ordered several expert opinions.

13. During the proceedings the applicant's detention was extended on several occasions. At a hearing held on 9 October 2003 the Gdańsk District Court extended the applicant's detention until 15 January 2004. On 15 January 2004 the court ordered that the term should be prolonged until 15 March 2004. On 11 March 2004 it ordered that the applicant be kept in custody until 15 April 2004. Since on 16 April 2004 the applicant's

detention had reached the statutory time-limit of two years laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), further extension of his detention was ordered by the Gdańsk Court of Appeal (*Sąd Apelacyjny*). On 23 March 2004 it extended his detention until 30 June 2004. The next decision was given by the Gdańsk Court of Appeal on 29 June 2004, when it extended his detention until 15 August 2004.

14. In all those decisions the courts stated that the grounds originally given for the applicant's detention were still valid.

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

16. On 28 July 2004 the Gdańsk District Court convicted the applicant as charged and sentenced him to four years' imprisonment. The applicant appealed. His detention was subsequently extended on several occasions.

17. The appellate hearings scheduled for 12 October and 12 December 2005 and 2 February 2006 were cancelled for various reasons, such as illness or absence of defence lawyers, and the need to obtain evidence.

18. The first-instance judgment was upheld by the Gdańsk Regional Court (*Sąd Okręgowy*) on 11 July 2007.

19. In the meantime, between 3 October 2002 and 5 January 2005 the applicant served prison sentences which had been imposed on him in other criminal proceedings.

B. Proceedings under the 2004 Act

20. On 15 December 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").

He sought a ruling declaring that the length of the proceedings before the Gdańsk District Court had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN).

21. On 11 February 2005 the Gdańsk Regional Court dismissed the applicant's complaint. Since the first-instance judgment in the case had been given before the 2004 Act came into force, the Gdańsk Regional Court examined only the conduct of the appellate proceedings and found no delays for which the relevant court could be held responsible.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Detention on remand

22. 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.

B. Remedies against unreasonable length of proceedings

23. 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; *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

24. The applicant complained that the length of his detention on remand had been unreasonable. He relied on Article 5 § 3 of the Convention, which 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.”

25. The Government contested that argument. The Government considered that the length of the applicant’s pre-trial detention satisfied the requirements of Article 5 § 3. The Government submitted that his pre-trial detention was duly justified and that during the entire period the authorities had given relevant and sufficient reasons for prolonging it. Moreover, they maintained that the applicant had been serving at the relevant time several prison sentences resulting from his previous convictions.

26. The Court first notes that the applicant had been detained on remand on 16 April 2002 and that the first-instance judgment was given on 28 July 2004.

However, according to the documents submitted by the Government, between 3 October 2002 and 5 January 2005 the applicant was serving three sentences of imprisonment resulting from his previous convictions by the Kościerzyna District Court (cases no. II K 155/01; II K 80/02; II K 12/04). This period should be deducted from the overall period of the applicant's detention (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, pp. 23-24, § 9 and *Czarnecki v. Poland*, no. 75112/01, § 33, 28 July 2005). The period of his detention for the purposes of Article 5 § 3 thus lasted 5 months and 18 days.

27. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI)

28. The Court observes that in the present case the authorities relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged and on the severity of the sentence that might be imposed. The judicial authorities further considered that the applicant's detention was necessary to secure the proper conduct of the proceedings. Finally, the courts periodically reviewed the need to prolong the applicant's detention.

Accordingly, the Court considers that in the particular circumstances of the case and in view of its above findings as to the total length of the applicant's detention, the applicant's detention was in conformity with the "reasonable time" requirement of Article 5 § 3 of the Convention.

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

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

29. The applicant complained that the length of the criminal 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 fair ... hearing ... by [a] ... tribunal..."

30. The Government contested that argument.

31. The period to be taken into consideration began on 16 April 2002 and ended on 11 July 2007. It thus lasted five years, two months and twenty-six days for two instances.

A. Admissibility

32. 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

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

34. 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. Furthermore, the Court considers that, in dismissing the applicant's complaint that the proceedings in his case had exceeded a reasonable time, the Gdańsk Regional Court failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005). In particular, the domestic court did not take into consideration the period before the entry into force of the 2004 Act on 17 September 2004.

35. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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.”

37. The applicant did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 13 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President