



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

FOURTH SECTION

CASE OF JANICKI v. POLAND

(Application no. 35831/06)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

02/03/2009

This judgment may be subject to editorial revision.

In the case of Janicki 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 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 35831/06) 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 Damian Janicki (“the applicant”), on 18 August 2006.

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

3. The applicant alleged, in particular, that his pre-trial detention exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 28 August 2007 the President of the Fourth Section of the Court decided to communicate the complaint under Article 5 § 3 of the Convention concerning the allegedly unreasonable length of the applicant’s pre-trial detention. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

5. The applicant, Mr Damian Janicki, is a Polish national who was born in 1976 and is currently detained in Gdańsk Remand Centre.

Criminal proceedings against the applicant and his pre-trial detention

6. On 20 February 2003 the applicant was arrested by the police on suspicion of homicide and arson. On 21 February 2003 the Gdańsk District Court (*Sąd Rejonowy*) ordered that he be remanded in custody. That decision was justified by the existence of strong evidence against the applicant.

7. Subsequently, the applicant's detention was extended several times by the Gdańsk Regional Court in its decisions of 8 May, 15 July, 16 September and 16 December 2003. The court referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant, the risk that he might obstruct the proceedings and the need to obtain further evidence, such as reports by experts in forensic medicine and in psychiatry.

8. On 30 January 2004 the applicant was indicted before the Gdańsk Regional Court (*Sąd Okręgowy*). The bill of indictment comprised charges of homicide and arson against the applicant and his alleged accomplice. The prosecutor requested that thirty-four witnesses and eight experts be heard by the trial court.

The first hearing was scheduled for 10 May 2004.

9. In the course of the judicial proceedings, the applicant's detention was extended several times by decisions of the Gdańsk Regional Court of 10 February, 19 June, 27 October and 29 December 2004 and a decision of the Gdańsk Court of Appeal of 16 February 2005.

The courts referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant and, furthermore, they reiterated the original grounds for the applicant's pre-trial detention.

10. Between May and December 2004 the trial court held eight hearings. It appears that in the course of the proceedings the applicant made numerous unsuccessful applications for his detention to be lifted or replaced by another preventive measure and that he appealed, likewise unsuccessfully, against decisions extending his detention. In his applications and appeals he relied on personal circumstances, in particular the fact of being the only guardian of two minor daughters.

11. On 23 March 2005 the Gdańsk Regional Court convicted the applicant as charged and sentenced him to fifteen years' imprisonment. The applicant appealed.

12. On 5 January 2006 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) quashed the judgment and remitted the case to the Gdańsk Regional Court.

13. On 16 March 2006 the Gdańsk Regional Court extended the applicant's detention until 31 August 2006. It relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and on the likelihood that a severe sentence of imprisonment would be imposed on him.

14. During the retrial the applicant's detention was extended on several occasions by the decisions of the Gdańsk Court of Appeal of 29 August and 14 December 2006. The court referred to the grounds for detention given in previous decisions.

Between June and December 2006 the trial court held four hearings.

15. On 22 August 2006, during one of the hearings, the applicant lodged an application for release. It was dismissed. The Regional Court relied on the reasonable suspicion that the applicant had committed the offences. It referred to the need to ensure that the process of obtaining evidence would be successfully completed.

16. On 12 December 2006 the court decided to disqualify one of the judges from dealing with the case. On 14 December 2006 the applicant lodged a complaint against that decision. It was dismissed by the Regional Court on 18 December 2006 and by the Court of Appeal on 19 December 2006.

17. Subsequently, the applicant's detention was extended by the decisions of the Gdańsk Court of Appeal of 13 March, 4 June and 23 October 2007 and a number of decisions issued in 2008.

18. On 24 April 2008 the Gdańsk Regional Court convicted the applicant as charged. The case is currently pending appeal.

19. The applicant did not lodge a complaint about a breach of the right to a trial within a reasonable time with the domestic court, under section 5 of the Law of 17 June 2004 (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act").

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

20. 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, so-called "preventive measures" (*środki zapobiegawcze*) are summarised in several judgments concerning similar cases (see, among others, *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006; *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006).

B. Remedies for unreasonable length of proceedings

21. The relevant domestic law and practice concerning remedies for excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, 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 its 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

22. 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.”

23. The Government contested that argument.

A. Admissibility

24. 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

25. The applicant's detention started on 20 February 2003, when he was arrested on suspicion of murder and arson. On 23 March 2005 the Gdańsk Regional 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 5 January 2006 the Gdańsk Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3.

It continued until 24 April 2008 when the Gdańsk Regional Court convicted the applicant after remittal. The case is currently pending appeal

and the applicant is 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, § 04).

26. Accordingly, the period to be taken into consideration amounted to four years, four months and twenty days.

2. The parties' submissions

(a) The applicant

27. The applicant submitted that the length of his pre-trial detention had been excessive and that the measure had not been sufficiently justified by the authorities. He maintained that there was no risk that he would obstruct the proceedings. In that connection, the applicant noted that he had voluntarily gone to the police station on the day of his arrest and that from the beginning he had cooperated with the authorities by admitting to his presence at the scene of the crime and describing his role in the events which had given rise to the charges.

The applicant also argued that the prosecution services had not acted with due diligence. There had been significant delays and many errors had been committed, i.e. the post-mortem examination had been performed several months after the victim's death, after the exhumation of the body.

(b) The Government

28. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by “relevant” and “sufficient” grounds, in particular the existence of a reasonable suspicion throughout the entire period of the applicant's pre-trial detention that he had committed the offences he had been charged with. Moreover, the Government considered that the applicant's protracted detention pending trial was justified by the complexity of the case, a genuine public interest requirement, namely the fact that the applicant had been charged with serious offences and was facing a lengthy prison sentence. Finally, the Government noted that the applicant's pre-trial detention was justified by the risk that he would obstruct the proceedings and tamper with evidence.

3. The Court's assessment

(a) General principles

29. 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

30. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three 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 risk that the applicant might obstruct the proceedings.

31. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the applicant's initial detention.

32. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts – namely, the severity of the anticipated sentence risk the risk that the applicant would obstruct the proceedings – were “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

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 on remand (see *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

33. Having regard to the foregoing, 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.

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

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

34. Furthermore, the applicant complained of the allegedly unreasonable length of the proceedings. This complaint is to be examined under Article 6 § 1 of the Convention which, in its relevant part, provides:

“In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] tribunal ...”

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 ...”

35. In this connection, the Court observes that the applicant did not lodge a complaint about the unreasonable length of the proceedings with the relevant domestic court under the 2004 Act, thus failing to avail himself of the available domestic remedy.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, the Court considered that the remedy was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

36. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 200,000 Polish zlotys (PLN) in respect of pecuniary damage. He also claimed non-pecuniary damage; however, he left the assessment of the amount to be awarded to the Court’s discretion.

39. The Government argued that there was no causal link between the alleged violation and the pecuniary damage claimed by the applicant. They did not make any comment on the applicant’s claim for non-pecuniary damage.

40. 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 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

41. The applicant did not make a claim for any costs and expenses incurred.

C. Default interest

42. 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 under Article 5 § 3 of the Convention concerning the length of the applicant's 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 2,000 (two thousand euros) in respect of non-pecuniary damage together with any tax that may be chargeable, to be converted into Polish zlotys 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 2 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President