



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF FIGAS v. POLAND

(Application no. 7883/07)

JUDGMENT

STRASBOURG

23 June 2009

FINAL

23/09/2009

This judgment may be subject to editorial revision.

In the case of Figas 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 7883/07) 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 Bartłomiej Figas (“the applicant”), on 29 January 2007.

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

3. The applicant alleged that his detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 29 April 2008 the President of the Fourth Section of the Court decided to give notice of the application to the Government. 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 was born in 1980 and lives in Wojkowice. He is currently detained in the Zabrze Remand Centre.

6. On 17 November 2003 the applicant was arrested on suspicion of attempted murder and uttering threats.

7. On 19 November 2003 the Zabrze District Court remanded him in custody, relying on the reasonable suspicion that he had committed the

offences in question, supported by evidence from witnesses and the applicant's confession of having beaten the victim. It also considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings. The court stressed the severity of the anticipated sentence, given the character of the offence and the magnitude of the injuries suffered by the victim. It found no special grounds that would justify lifting the detention and imposing a less severe measure.

8. In the course of the proceedings, the applicant's detention was extended by the Gliwice Regional Court on 9 February, 10 May and 11 October 2004 and 20 January 2005.

In all their detention decisions the authorities repeatedly relied on a strong suspicion that the applicant had committed the offences in question, which was supported by evidence from witnesses. They attached importance to the serious nature of those offences and the likelihood of a severe sentence of imprisonment being imposed on the applicant. They further considered that the need to secure the proper conduct of the proceedings justified holding him in custody and that the applicant, if released, could disrupt the trial.

9. On 6 April 2005 the Gliwice Regional Court convicted the applicant of rape, aggravated assault and uttering threats and sentenced him to nine years' imprisonment. The applicant's detention was extended.

10. On 7 July 2005 the Katowice Court of Appeal quashed the first-instance judgment and remitted the case to the Gliwice Regional Court.

11. Further decisions extending the applicant's detention were taken on 8 August and 10 November 2005, and 24 January and 12 April 2006. On 5 May 2006 the Katowice Court of Appeal dismissed an interlocutory appeal by the applicant against the latter decision.

12. Subsequent decisions prolonging the detention were given by the Gliwice Regional Court on 8 June and 13 October 2006.

13. In the retrial proceedings the applicant made two applications for release, which were refused by the Gliwice Regional Court on 16 January and 10 July 2006. In his applications he relied on his personal circumstances. In particular, the need to ensure that his sick mother and his brother (a minor) were cared for.

14. On 27 October 2006 the Gliwice Regional Court convicted the applicant of rape, aggravated assault and uttering threats and sentenced him to seven years' imprisonment.

15. On 8 January 2007 the Gliwice Regional Court prolonged the applicant's detention. It held that in the light of the first-instance court's judgment, the reasons for the applicant's continued detention were still valid. A further interlocutory appeal was dismissed by the Katowice Court of Appeal on 31 January 2007.

16. On 15 March 2007 the Katowice Court of Appeal upheld the first-instance judgment.

17. On 27 April 2007 the applicant lodged a request to have a legal-aid lawyer appointed to his case with a view to lodging a complaint questioning the constitutionality of Article 263 of the Polish Code of Criminal Procedure. On 28 August 2007, the applicant's legal-aid counsel informed the Gliwice District Court, and the applicant, that he had found no grounds for lodging a constitutional complaint.

18. On 27 October 2007 the Supreme Court dismissed a cassation appeal by the applicant against the judgment of 15 March 2007.

19. On 14 December 2007 the applicant lodged a claim for compensation and just satisfaction for unjustified detention. On 6 February 2008 the Gliwice Regional Court dismissed the claim. The applicant's legal-aid counsel found no grounds for lodging an appeal against the judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

20. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines pre-trial detention (*aresztowanie tymczasowe*) as one of the so-called "preventive measures" (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a registered organisation (*poręczenie społeczne*), a temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and a prohibition on leaving the country (*zakaz opuszczania kraju*). A detailed description of the relevant domestic law and judicial practice concerning the imposition of pre-trial detention, the grounds for its extension, release from detention and rules governing other "preventive measures" is given in the Court's judgments in the cases of *Gołek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

B. Measures designed to reduce the length of pre-trial detention

21. The relevant statistical data, recent amendments to the Code of Criminal Procedure designed to streamline criminal proceedings and references to the relevant Council of Europe Documents can be found in the Court's judgment in the case of *Kauczor* (see *Kauczor v. Poland*, no. 45219/06, §§ 27-28 and 30-35, 3 February 2009).

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 Government submitted that the applicant had not exhausted all the remedies available under Polish law in that he had failed to lodge a complaint under Article 79 § 1 of Polish Constitution questioning the constitutionality of those provisions of the Code of Criminal Procedure that had served as a basis for extending his pre-trial detention, in particular Article 263 of that Code. They further submitted that the availability of such a remedy had been confirmed by two judgments of the Constitutional Court – of 24 July 2006 (SK 53/03) and 10 June 2008 (SK 17/07), where the Constitutional Court upheld the objections raised by the complainants.

The Government observed that by the time the applicant had filed his application with the Court, the Constitutional Court had already given the first of the aforementioned judgments concerning Article 263 §§ 3 and 4 of the Code, finding these provisions partly unconstitutional. They concluded that the applicant might therefore have been required to exhaust the remedy in question.

In the Government’s opinion, if the constitutional complaint had proved successful and Article 263 of the Code of Criminal Procedure had been considered unconstitutional in some part, opportunities for the applicant to obtain redress at the domestic level would have arisen, namely (1) the unconstitutional provision would not have been applied in respect of the applicant; (2) a judgment of the Constitutional Court finding the provision in question incompatible with the Constitution would have been a basis for reopening proceedings, or for quashing the decision or other settlement in a manner and based on principles specified in the provision applicable to the given proceedings; (3) the possibility of seeking compensation and just satisfaction for the undoubtedly unjustified pre-trial detention (under Article 552 § 4 of the Code of Criminal Procedure) would have become available to the applicant and (4) the applicant could have sought compensation for

damage resulting from decisions based on an unconstitutional provision, in accordance with Article 417¹ § 2, second sentence, of the Civil Code.

25. The applicant submitted that on 28 August 2007 his legal-aid counsel had refused to lodge a constitutional complaint on his behalf, finding that it would have no prospect of success.

26. In any event, the Court reiterates that it has already dealt with the question of the effectiveness of the constitutional complaint in Poland (see *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003; and subsequently *Pachla v. Poland* (dec.), no. 8812/02, 8 November 2005; *Więcek v. Poland* (dec.), no. 19795/02, 17 January 2006; and *Tereba v. Poland* (dec.), no. 30263/04, 21 November 2006). In the *Szott-Medyńska* decision the Court considered, in particular, two important limitations of the Polish model of constitutional complaint, namely its scope and the form of redress it provides.

The Court does not find it necessary to determine whether the remedy invoked by the Government could be considered effective in the circumstances of the present case. Having regard to the applicant's lawyer's refusal to lodge a constitutional complaint and an appeal against the judgment dismissing the claim for just satisfaction, the Court is satisfied that the applicant did everything that could possibly be expected of him to exhaust the national channels of redress. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

27. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

28. The applicant's detention started on 17 November 2003, when he was arrested on suspicion of attempted murder and uttering threats. On 6 April 2005 the Gliwice Regional Court convicted the applicant and sentenced him to nine years' imprisonment.

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 (see *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

On 7 July 2005 the Katowice Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by

Article 5 § 3. It continued until 27 October 2006 when the applicant was again convicted.

Accordingly, the period to be taken into consideration amounts to two years, eight months and nine days.

2. The parties' submissions

(a) The applicant

29. The applicant submitted in general terms that his application to the Court was justified. He argued that keeping him in pre-trial detention for such a lengthy period of time had infringed his human rights and the Convention. He also contended that being detained for such a long period had deprived him of certain rights which persons serving a prison sentence enjoyed.

(b) The Government

30. The Government submitted that they wished to refrain from taking a position in respect of the merits of the applicant's complaint under Article 5 § 3 of the Convention. At the same time they underlined that the applicant's detention had been justified by the reasonable suspicion that he had committed the serious offences with which he had been charged and the fact that the charges against him attracted a heavy sentence. The Government also stressed that the authorities had displayed special diligence in the conduct of the criminal proceedings against the applicant.

3. The Court's assessment

(a) General principles

31. 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, are set out in a number of its previous judgments (see, among many other authorities, *Kudła*, cited above, § 110 et seq., 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

32. In their detention decisions, the authorities, in addition to reasonable suspicion that the applicant had committed the crimes, relied principally on three grounds, namely (1) the serious nature of the offences, (2) the severity of the penalty to which he was liable and (3) the need to secure the proper conduct of the proceedings and, particularly, the risk that he might obstruct the proceedings.

33. The Court accepts that the reasonable suspicion that the applicant had 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.

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

35. It is true that the applicant was detained on charges of a serious nature (see paragraph 6 above), but he was believed to have acted without accomplices. Therefore, it appears that neither the investigating authorities nor the court were faced with particular difficulties when determining the facts and mounting the case.

36. According to the judicial authorities, the likelihood of a severe sentence being imposed on the applicant, given the serious nature of the offences in question, 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 reoffending, the severity of the charges cannot by itself justify long periods of pre-trial detention (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

37. Further, the Court notes that in all the decisions extending the applicant's detention, no specific substantiation of the risk that the applicant would tamper with evidence, intimidate witnesses or attempt to otherwise disrupt the proceedings emerged. In the absence of any other factor capable of showing that the risk relied on actually existed, this argument cannot be accepted in the context of the entire period of the applicant's detention. Furthermore, there is no indication that during any part of the period in question the authorities envisaged the possibility of imposing other preventive measures on the applicant, such as bail or police supervision.

38. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities do 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. APPLICATION OF ARTICLE 46 OF THE CONVENTION

39. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

A. The parties' submissions

1. *The applicant*

40. The applicant did not submit any observations concerning this provision.

2. *The Government*

41. The Government submitted that the proceedings in the applicant's case had showed some exceptional features that distinguished them from other pre-trial detention cases and that the length of the applicant's detention had been an effect of the highly complex nature of the proceedings, and that consequently, it did not reveal the existence of a structural problem but was simply an exceptional case. They further stressed that Polish law was compatible with the standards stemming from Article 5 § 3 of the Convention.

42. Further, the Government provided some examples of the latest amendments to the relevant provisions of domestic law (which entered into force during the applicant's detention) and made reference to the Constitutional Court's judgment of 24 July 2006 (see paragraph 21 above).

43. Maintaining that the number of cases in which pre-trial detention ordered by courts lasting from twelve months to two years or longer was decreasing, the Government made reference to the statistical data for 2005-2007 which they submitted to the Court. They further stressed that the courts' awareness of the standards concerning the length of pre-trial detention was growing.

44. They also suggested that the fact that the Court had already given many judgments finding a violation of Article 5 § 3 of the Convention should not lead to the automatic application of Article 46 of the Convention in the manner in which it was applied in the case of *Scordino v. Italy*. Indeed, the Polish authorities had taken many general and individual measures based on the conclusions stemming from the Court's judgments in which an excessive length of pre-trial detention had been found. In particular, on 17 May 2007 the Council of Ministers had adopted the

“Government Plan of Action for the execution of judgments of the European Court of Human Rights in respect of Poland” (see paragraph 21 above).

45. Lastly, the Government concluded that bearing in mind the endeavours of the Polish authorities and the legislative reforms which were being and had been undertaken by them to solve the problem of the length of pre-trial detention, one could not say that Poland had failed to comply with its obligation under Article 46 of the Convention to obey the Court’s judgments delivered in respect of Poland.

B. The Court’s assessment

46. Recently, in the *Kauczor* case (see *Kauczor v. Poland*, cited above, § 58 et seq. with further references) the Court held that the 2007 Resolution of the Committee of Ministers taken together with the number of judgments already delivered and the number of pending cases raising an issue of excessive length of detention incompatible with Article 5 § 3 demonstrated that the violation of the applicant’s right under Article 5 § 3 of the Convention had originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which had affected, and might still affect in the future, an as yet unidentified, but potentially considerable, number of persons charged in criminal proceedings.

47. In the present case, as in numerous similar detention cases, the authorities did not justify the applicant’s continued detention with relevant and sufficient reasons (see paragraphs 35-38 above). Consequently, the Court sees no reason to diverge from its findings made in *Kauczor* as to the existence of a structural problem and the need for the Polish State to adopt measures to remedy the situation (see *Kauczor*, cited above, §§ 60-62).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

50. The Government considered this sum unreasonable in the light of the Court's case-law concerning similar cases brought against Poland and invited the Court to reject the applicant's claim as excessive.

51. The Court awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

52. The applicant submitted no claim for costs and expenses.

C. Default interest

53. 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 application admissible;
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 plus any tax that may be chargeable, to be converted into the 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 23 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President