



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF JAMROŻY v. POLAND

(Application no. 6093/04)

JUDGMENT

STRASBOURG

15 September 2009

FINAL

15/12/2009

This judgment may be subject to editorial revision.

In the case of Jamroży 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,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 25 August 2009,

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

PROCEDURE

1. The case originated in an application (no. 6093/04) 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 Władysław Jamroży (“the applicant”), on 3 February 2004.

2. The applicant was represented by Mr W. Kabański, 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. The applicant alleged, in particular, that his pre-trial detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 14 November 2007 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). In addition, third-party comments were received from the Polish Helsinki Foundation for Human Rights, Warsaw, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Polanica Zdrój.

A. Criminal proceedings against the applicant and his pre-trial detention

6. On 27 May 2002 the applicant was arrested by the Central Bureau of Investigation (*Centralne Biuro Śledcze*) on suspicion of having committed fraud.

7. On 30 May 2002 the Warsaw District Court (*Sąd Rejonowy*) remanded the applicant in custody in view of the reasonable suspicion that he had committed the offences in question. It further considered that there was a risk that he would induce the co-accused to give false testimony or obstruct the proper conduct of the proceedings by destroying the documentary evidence relevant to the investigation; at the time of his arrest the applicant was found to be destroying documents which might be important for the further conduct of the proceedings. The court also stressed the likelihood that a heavy penalty would be imposed on him.

8. On 6 June 2002 the applicant appealed unsuccessfully against the detention order. In his further applications for release and appeals he maintained that, given his poor health, detention was putting a severe strain on him.

9. On 13 June 2002 the applicant lodged a motion with the State Prosecutor (*Prokurator Krajowy*) for the case to be referred to another prosecutor because the prosecutor dealing with his case was not in his view impartial. In his motion the applicant alleged that he had been denied access to his lawyer in breach of his right to defence. On 4 September 2002 the motion was dismissed by the State Prosecutor.

10. On 3 October 2002 the applicant lodged an application with the Warsaw Prosecutor of Appeal (*Prokurator Apelacyjny*) for the detention to be either lifted or replaced by another preventive measure. On 7 December 2002 the application was dismissed.

11. On 21 August 2002 the Warsaw District Court extended the applicant's detention until 31 October 2002. It repeated the grounds originally given for his detention.

12. On 24 October 2002 the Warsaw Regional Court (*Sąd Okręgowy*), on appeal by the applicant, upheld the decision of 21 August 2002. It repeated the grounds previously given for the applicant's detention and referred to the likelihood of a severe sentence of imprisonment being imposed on him.

13. Subsequently, further decisions extending the applicant's detention were taken by the Warsaw District Court. The relevant decisions were taken on the following dates: 28 October 2002 (extending his detention until 31 December 2002), 30 December 2002 (extending his detention until 28 February 2003), 26 February 2003 (extending his detention until 30 April 2003) and 25 April 2003 (extending his detention until 26 May 2003).

14. On 23 May 2003 the Warsaw Court of Appeal extended the applicant's detention until 21 June 2003. The court again relied on the reasonable suspicion that the applicant had committed the offence in question and on the severity of the expected penalty. It also mentioned that the continued detention was justified by reasons referred to in Article 263 § 4 of the Code of Criminal Procedure, without however specifying them.

15. The Warsaw District Court further extended the applicant's detention on the following dates: 16 June 2003 (extending his detention until 20 September 2003), 19 September 2003 (extending his detention until 31 March 2004) and 27 February 2004 (extending his detention until 26 May 2004).

16. In the meantime, on 4 November 2002, the applicant had appealed against the decision of 28 October 2002 extending his pre-trial detention. No ruling was given on the appeal. On 27 February 2003 the Warsaw District Court gave a decision stating that a ruling on that appeal would be purposeless, as the impugned decision had expired on 31 December 2002.

17. On 16 December 2002 the applicant lodged an application with the Prosecutor of Appeal for his detention to be lifted and replaced by bail. The applicant referred to his health problems. On 2 January 2003, the Prosecutor of Appeal dismissed the application, emphasising that the documents submitted in support of the applicant's request did not constitute sufficient evidence of the alleged negative effect of detention on his health. On 29 January 2003 the State Prosecutor dismissed an appeal by the applicant against the decision of 2 January 2003. On 19 April 2004 the applicant was subjected to a medical examination at his own request. The results of the medical examination did not reveal grounds for release.

18. On 9 June 2003 the applicant was served with a bill of indictment.

19. On 17 August 2004 the Warsaw District Court lifted the applicant's detention and released him on bail. The court prohibited the applicant from leaving the country and confiscated his passport.

20. On 27 October 2005 the applicant asked for the prohibition on leaving the country to be lifted. On 28 October 2005 the Warsaw District Court dismissed his application.

21. The applicant appealed. On 30 November 2005 the Warsaw District Court dismissed the appeal.

22. The applicant's further numerous requests for the prohibition on leaving the country to be lifted were unsuccessful. On 22 June 2007 the

Warsaw District Court again refused the applicant's request. The applicant's lawyer appealed.

23. On 10 October 2007 the Warsaw District Court granted the appeal and lifted the preventive measure in question. The court found that the applicant had not obstructed the proceedings, had not tried to escape and had been always at the disposal of the domestic authorities.

24. The case is pending before the first-instance court.

B. Complaint concerning the length of proceedings

25. On 18 January 2006 the applicant lodged, under 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"), a complaint concerning the length of the examination of his appeal against the decision of 28 October 2002 prolonging his pre-trial detention. He stressed that he had appealed on 4 November 2002. He claimed compensation in the amount of 10,000 Polish zlotys (PLN) (approx. EUR 2,500). The Warsaw District Court refused to entertain the appeal on 27 February 2003.

26. On 28 February 2006 the Warsaw Court of Appeal declined to consider the complaint. It referred to the fact that the complaint concerned proceedings prior to the entry into force of the 2004 Act and that the 2004 Act produced legal effects as from the date of its entry into force.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) is set out 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 statistical data, recent amendments to the Code of Criminal Procedure designed to streamline criminal proceedings and references to relevant Council of Europe materials including the 2007 Resolution of the Committee of Ministers 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

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 27 May 2002, when he was arrested on suspicion of having committed fraud. On 17 August 2004 the applicant was released on bail.

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

2. The parties' submissions

(a) The Government

33. The Government submitted that the applicant's detention had been duly justified over the entire period. They emphasised that, apart from the reasonable suspicion that he had committed the offences with which he had been charged, the applicant's detention had been justified by the fear that he would obstruct the proceedings.

(b) The applicant

34. The applicant's lawyer submitted that the length of the applicant's detention had been clearly unreasonable and that the basis relied on by the

authorities which had extended the detention had never been clearly explained. He further submitted that the applicant had not contributed to the overall length of the proceedings; on the contrary, he had always been at the disposal of the domestic courts.

3. *The Court's assessment*

(a) **General principles**

35. 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 have been 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 general principles in the present case**

36. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds, namely (1) the severity of the penalty to which the applicant was liable, (2) the risk that the applicant might induce the co-accused to give false testimony or obstruct the proper conduct of proceedings by destroying documentary evidence relevant to the investigation. As regards the latter, they relied on the fact that the applicant had been found in the act of destroying some documents at the time of his arrest.

37. The Court accepts that the reasonable suspicion against the applicant of having committed a serious offence could initially warrant his detention. Also, the need to obtain voluminous evidence and 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.

38. 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 and the risk that the applicant would tamper with evidence – 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 *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

39. As regards the risk that the applicant might induce the co-accused to give false testimony or obstruct the proper conduct of proceedings by destroying the documentary evidence relevant to the investigation the Court considers that this ground could be relevant in the early stages of the investigation. After that the proper conduct of the proceedings could be assured by securing the necessary documents rather than by keeping the applicant in detention for two years and nearly three months.

40. The Court further notes that the applicant was not a habitual offender, he was charged with financial offences and not with crimes having a violent element and that the case did not involve an organised criminal group. No consideration was given to any alternative way of ensuring attendance in the trial.

41. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. The applicant also complained under Article 5 § 1 (c) of the Convention that the decision ordering his pre-trial detention had been arbitrary and unnecessary.

43. The Court notes that the applicant appealed against the detention order of 30 May 2002. On 4 September 2002 the appeal was dismissed. It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

44. The applicant further complained under Article 5 § 4 of the Convention that during his pre-trial detention he had been denied prompt access to a court to determine the lawfulness of his detention.

The Court notes that this complaint is manifestly ill-founded. The applicant was represented by a lawyer and according to Polish law he could regularly lodge appeals against the extension of pre-trial detention or applications for release.

45. The applicant also alleged a violation of Article 6 § 1 of the Convention on account of the unreasonable length of the proceedings concerning the examination of his appeal against the decision of 28 October 2002 extending his detention.

The Court considers that this complaint should be examined under Article 5 § 4 of the Convention. However, it is inadmissible as it was introduced outside the six-month time limit and must be rejected in accordance with Article 35 § 1 of the Convention; the six months' period began to run on 27 February 2003, the date on which the Warsaw District

Court issued a decision stating that a ruling on the appeal would be devoid of any purpose.

46. The applicant complained further under Article 6 § 1 about the unreasonable length of the criminal proceedings against him. However, the applicant has not exhausted domestic remedies available to him under Polish law, i.e. the 2004 Act, giving him the possibility of lodging a complaint about a breach of the right to a trial within a reasonable time with a domestic court. He made a complaint under the 2004 Act only in respect of the prolonged non-examination of his appeal against the decision of 28 October 2002 extending his pre-trial detention but not in respect of the overall length of the trial. For that reason the complaint about the unreasonable length of the proceedings must be declared inadmissible for non-exhaustion of domestic remedies.

47. The applicant relied further on Article 6 § 3 (c) claiming that during his pre-trial detention he had been denied access to one of his lawyers, which had infringed his right to defence. The Court considers this complaint to be manifestly ill-founded. The applicant was represented by two lawyers of his own choice and he was able to see one of the lawyers during the first days of detention (see *Salduz v. Turkey* [GC], no. 36391/02, §§ 57-63, 27 November 2008).

48. Lastly, the applicant complained under Article 13 that Polish criminal procedure allowed, in cases where pre-trial detention exceeded twelve months, the examination of an appeal by the same Court of Appeal which had previously decided on the extension of pre-trial detention.

The Court notes that in such situations the decisions by the Court of Appeal examining the appeal against extension of pre-trial detention are given by a different panel of judges. It follows that this complaint must be declared inadmissible as manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

49. 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

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

2. The Government

51. The Government submitted that there had been no grounds to apply Article 46 of the Convention and that the proceedings in the applicant's case had exceptional features that distinguished it from other cases of detention on remand. Consequently, the length of the applicant's pre-trial detention did not reveal the existence of a structural problem.

52. Maintaining that the number of cases in which the domestic courts had ordered pre-trial detention 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.

53. The Government concluded that, bearing in mind the efforts of the Polish authorities and the legislative reforms which had been and were being introduced by them to solve the problem of the length of detention on remand, Poland could not be said to have failed to comply with its obligations under Article 46 of the Convention to obey the Court's judgments.

B. The third party's submissions

54. The comments submitted by the Helsinki Foundation for Human Rights ("the Foundation") were limited only to the question of the existence in Poland of the structural problem relating to the application of pre-trial detention. They did not refer to the particular circumstances of the present case.

55. The Foundation first submitted some 2001-2007 statistics, according to which approximately 90% of all prosecutor's requests for pre-trial detention were allowed by the courts. Each year this preventive measure was applied in approximately forty thousand cases.

56. According to the Foundation the institution of pre-trial detention in Poland was abused, with serious social and financial consequences for remand prisoners and serious financial consequences for the State Treasury.

57. Secondly, the Foundation, examining the particular grounds for pre-trial detention usually relied on by domestic authorities ordering or extending pre-trial detention, went on to say that these grounds were not always exhaustively examined and justified; in most cases the authorities simply limited themselves to repeating the wording of the Code of Criminal

Procedure's relevant provisions. By way of example, the domestic courts often relied on the risk that the defendant might abscond. In their view, this risk was usually justified by the severity of the expected sentence. The Foundation stressed that the risk of absconding must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify pre-trial detention.

58. The Foundation also pointed to the rarity of cases in which consideration had been given to other, less severe, preventive measures such as bail, personal guarantees or police supervision.

59. It further referred to a number of provisions of Polish law influencing irregularities in the application of pre-trial detention such as insufficient independence of prosecutors vis-à-vis their supervisors, the fact that decisions extending detention were taken by assistant judges, the fact that court hearings at which pre-trial detention was ordered or extended were practically closed to the public, the limited access to relevant documents allowed to remand prisoners and their representatives and the limited possibility of having pre-trial detention cases examined by the Supreme Court.

60. The Foundation concluded that in their opinion the abuse of pre-trial detention in Poland amounted to a structural problem.

C. The Court's assessment

61. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, 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 of the pending cases raising an issue of excessive 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 may still affect in the future, an as yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

62. In the present case, as in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 36-41 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).

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 5,642,159 euros (EUR) in respect of pecuniary damage and EUR 140,000 in respect of non-pecuniary damage.

65. The Government considered the applicant’s claim in respect of pecuniary damage “highly speculative” and his claim in respect of non-pecuniary damage far too excessive, and requested that they be rejected.

66. 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 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant, who was represented by a lawyer, also claimed 61,244 Polish zlotys (PLN) for the costs of legal representation before the Court. He produced a copy of his lawyer’s authority to represent him before the Court for the remuneration of PLN 35,000 plus 22% tax, and copies of two invoices for legal representation for PLN 18,300 and PLN 24,400.

68. The Government considered these claims exorbitant and requested that they be rejected.

69. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 800 for the proceedings before the Court.

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 Article 5 § 3 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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 800 in respect of costs and expenses, 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 amounts 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 15 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President