



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF WIŚNIEWSKI v. POLAND

(Application no. 43610/06)

JUDGMENT

STRASBOURG

29 September 2009

FINAL

29/12/2009

This judgment may be subject to editorial revision.

In the case of Wiśniewski 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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 43610/06) 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 Janusz Wiśniewski (“the applicant”), on 29 September 2006.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz 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 19 May 2008 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It 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 1969 and is currently detained in Wrocław Prison.

A. The first set of criminal proceedings against the applicant (no. II K 255/03) and his pre-trial detention

6. On 26 March 2002 the applicant was arrested on suspicion of a series of thefts and armed robberies committed as a part of an organised criminal group.

7. On 28 March 2002 the Zielona Góra District Court (*Sąd Rejonowy*) remanded him in custody, relying on the reasonable suspicion that he had committed the offences in question. It also considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings, given the risk that he might tamper with evidence. The court also stressed the likelihood of a lengthy prison sentence being imposed on the applicant and the complexity of the case.

8. Subsequently, several other members of the same criminal group were detained and charged in connection with the same investigation, which was conducted by the Organised Crime Department of the Zielona Góra Regional Prosecutor's Office.

9. The applicant's appeals against the detention order and the decisions extending his detention, and his numerous applications for release and appeals against refusals to release him, were all unsuccessful.

10. In the course of the investigation, the applicant's detention was extended on 21 June 2002 (to 26 September 2002), 23 September 2002 (to 24 December 2002), 20 December 2002 (to 25 March 2003), 20 March 2003 (to 26 July 2003) and 22 July 2003 (to 30 November 2003). The courts repeated the grounds previously given for his continued detention, emphasising the complexity of the case and the large number of co-accused.

11. On 19 November 2003 the Zielona Góra Regional Prosecutor lodged a bill of indictment with the Zielona Góra Regional Court (*Sąd Okręgowy*). The applicant was charged with several counts of theft and armed robbery committed as part of an organised criminal group.

12. During the court proceedings the courts further extended the applicant's detention pending trial on several occasions, namely on 26 November 2003, 25 February 2004, 11 March 2004, 23 June 2004, 21 September 2004, 16 December 2004, 10 March 2005, 17 June 2005, 18 August 2005 and 25 October 2005. They repeated the grounds that had previously been given for the applicant's continued detention.

13. On 23 February 2006 the Zielona Góra Regional Court gave judgment. It convicted the applicant as charged and sentenced him to ten years' imprisonment and a fine.

14. The applicant appealed.

15. On 5 December 2006 the Poznań Court of Appeal (*Sąd Apelacyjny*) upheld that judgment.

16. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*) which was dismissed on an unspecified subsequent date.

B. The second set of criminal proceedings against the applicant (no. II K 194/05) and his pre-trial detention

17. On 8 October 2004 the Zielona Góra District Court remanded the applicant in custody.

18. On 6 January 2005 it extended his pre-trial detention on the grounds of the likelihood that the applicant might tamper with evidence and the complexity of the case.

19. Subsequently, further decisions to extend his detention were taken by the Zielona Góra Regional Court and the Poznań Court of Appeal on the following dates: 31 March 2005, 1 July 2005, 6 October 2005, 29 December 2006, 23 March 2007, 31 July 2007 and 27 September 2007. The courts repeated the grounds originally given for his detention.

20. On an unspecified date the applicant was served with a bill of indictment charging him with armed robbery.

21. On 21 November 2007 the Zielona Góra Regional Court decided not to extend the applicant's detention.

22. It appears that the criminal proceedings are still pending before that court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

23. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its prolongation, and release from detention, and the rules governing other "preventive measures" (*środki zapobiegawcze*) are described 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 May 2006.

24. On 24 July 2006 the Constitutional Court, in a case in which it examined jointly two constitutional complaints (*skarga konstytucyjna*) lodged by former detainees, declared Article 263 § 4 of the Code of Criminal Procedure unconstitutional in so far as it related to the

investigation stage of criminal proceedings (no. SK 58/03). The provision in question provided that the detention measure could be extended beyond two years if the pre-trial proceedings could not be completed because of “important obstacles” which could not have been overcome. The provision in question did not set any statutory time-limit for extending the detention measure. The Constitutional Court considered that the impugned provision, by its imprecise and broad wording, could lead to arbitrary decisions of the courts on pre-trial detention and thus infringe the very essence of constitutional rights and freedoms. Referring to other grounds for extraordinary extensions of pre-trial detention under Article 263 § 4, namely suspension of criminal proceedings, prolonged psychiatric observation of the accused, the prolonged preparation of an expert opinion, evidence gathering in a particularly complex case or a foreign country, and the intentional protraction of the proceedings by the accused, the Constitutional Court stated that although those criteria were to some extent vague as well, their constitutionality could be secured through their precise definition formulated through practice and by reference, *inter alia*, to the settled case-law of the European Court as regards violations of Article 5 § 3 of the Convention.

The Constitutional Court ruled that the unconstitutional provision was to be repealed within six months from the date of the publication of the judgment in the Journal of Laws (*Dziennik Ustaw*).

B. Measures taken by the State to reduce the length of pre-trial detention and relevant Council of Europe documents

25. 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

26. The applicant complained that the length of his pre-trial detention in the first set of criminal proceedings 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.”

27. The Government contested that argument.

A. Admissibility

28. The Government submitted that the applicant had not exhausted all the remedies afforded by Polish law in that he had failed to lodge a constitutional complaint under Article 79 § 1 of the Constitution questioning the constitutionality of the provisions of the Code of Criminal Proceedings that had served as a basis to extend his pre-trial detention, in particular Article 263. In that respect they raised the same arguments, as those submitted in the case of *Figas (Figas v. Poland)*, no. 7883/07, § 31, 23 June 2009, not final).

29. The applicant did not submit any comments on this point.

30. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged.

31. The Court notes that in its judgment of 24 July 2006 the Constitutional Court found Article 263 § 4 of the Code of Criminal Procedure unconstitutional in so far as it provided for the detention measure to be extended beyond two years if the pre-trial proceedings could not be completed because of “important obstacles” (see paragraph 24 above).

The Court observes, however, that in the present case the domestic courts did not base their decisions extending the applicant’s pre-trial detention on the part of Article 263 § 4 that was declared unconstitutional. They relied only on the necessity of gathering evidence in a particularly complex case, that is to say, a prerequisite that the Constitutional Court considered compatible with the Constitution (see paragraph 24 above).

The Court is therefore of the opinion that it is doubtful that the applicant could have successfully lodged a constitutional complaint in respect of provisions whose constitutionality has been vetted by the Constitutional Court and found to be compatible with the Polish Constitution in its judgment of 24 July 2006.

32. Furthermore, the Court observes that the facts giving rise to the alleged violation of Article 5 § 3 concern the period from 26 March 2002 to 23 February 2006 and that at that time the Constitutional Court’s practice in respect of the admissibility of constitutional complaints against ancillary decisions issued in criminal proceedings was not clearly established (see *Łaszkiewicz v. Poland*, no. 28481/03, §§ 69-70). In addition, the Court is not persuaded that at the relevant time a constitutional complaint was capable of satisfying the second part of the test established in the

Szott-Medyńska decision (*Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003). Thus, the Court considers that in the present case the constitutional remedy lacked the requisite effectiveness.

33. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

34. The Government further submitted that the applicant's complaint was manifestly ill-founded as throughout the period complained of he was detained "after conviction by a competent court", namely the Zielona Góra Regional Court in case no. II K 255/03.

35. The Court observes that the Government's submission concerns the second set of criminal proceedings against the applicant (no. II K 194/05) and is not relevant to the determination of the admissibility of the applicant's complaint about the length of his pre-trial detention in the first set of criminal proceedings.

36. The Court 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

37. The applicant's detention started on 26 March 2002, when he was arrested on suspicion of having committed several thefts and armed robberies as a member of an organised criminal group. On 23 February 2006 the Zielona Góra Regional Court convicted the applicant and sentenced him to ten years' imprisonment.

38. With effect from the latter date he was detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) and, consequently, his detention thereafter falls outside the scope of Article 5 § 3 (cf. *Kudła*, cited above, § 104).

Accordingly, the period to be taken into consideration amounts to 3 years and 11 months.

2. The parties' submissions

(a) The applicant

39. The applicant argued that the length of his detention had been unreasonable.

(b) The Government

40. The Government submitted that the applicant's detention had satisfied all the criteria laid down in the Court's case-law.

41. They pointed out, firstly, that the evidence obtained in the proceedings indicated that there was a strong likelihood that the applicant had committed the crimes in question. Secondly, the charges brought against him concerned numerous offences committed as part of an organised criminal group, for which the applicant faced a heavy sentence. Thus, bearing in mind the seriousness of the charges and the sentence he faced, the applicant's detention had been justified.

42. The Government further argued that the aforementioned circumstances had remained valid for the whole term of the applicant's detention. They requested the Court to assess the length of his detention in the light of the fact that he had been charged with crimes committed as part of an organised criminal group.

3. The Court's assessment

(a) General principles

43. The Court notes 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 above principles in the present case

44. In addition to the reasonable suspicion against the applicant, the authorities principally relied in their detention decisions 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 need to secure the proper conduct of the proceedings and the risk that the applicant might tamper with evidence. As regards the latter, they relied on the fact that he had been a member of an organised criminal group.

45. The applicant was charged with numerous counts of theft and armed robbery committed as part of an organised and armed criminal group (see paragraph 11 above).

In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

46. The Court accepts that the reasonable suspicion against the applicant could initially have warranted his detention. Also, the need to obtain voluminous evidence and to determine the degree of alleged responsibility of each of the defendants, who were all members of a criminal group and

faced serious charges, constituted valid grounds for the applicant's initial detention.

47. Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings is often, by the nature of things, high.

Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that he 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).

48. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to prolong this measure.

49. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised criminal group, 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. The applicant further complained under Article 5 § 3 of the Convention about the length of his pre-trial detention in the second set of criminal proceedings (II K 194/05).

52. The Court notes that the applicant's detention started on 8 October 2004, when he was remanded in custody, and ended on 21 November 2007, when the Zielona Góra Regional Court decided not to extend his detention.

Between 23 February 2006 and 21 November 2007 the applicant served a prison sentence which had been imposed on him in the first set of criminal proceedings. This term, being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's pre-trial detention for the purposes of Article 5 § 3. Accordingly, the period to be taken into consideration amounts to one year and four months.

53. The applicant was charged with armed robbery (see paragraph 20 above). According to the well established case-law of the Court (see, among other authorities, *Wiensztal v. Poland*, no. 43748/98, 30 August 2006; *Kusyk v. Poland*, no. 7347/02, 24 October 2006; and *Buta v. Poland*, no. 18368/02, 28 November 2006) and in view of the seriousness

of the accusations, it cannot be said that the length of the applicant's detention was excessive.

54. Consequently, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

55. Finally, the applicant complained under Article 6 about the outcome and procedural shortcomings in the first set of criminal proceedings against him. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

56. 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.”

1. The parties' submissions

(a) The applicant

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

(b) The Government

58. The Government referred to the arguments submitted previously in the case of *Figas v. Poland* (see *Figas*, cited above, §§ 48-51).

2. The Court's assessment

59. 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, taken together with the number of judgments already delivered and the number of pending cases raising an issue of inordinate periods 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 may still affect in the future, an as yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

60. It is true that the present case concerns a person involved in an organised criminal group. However, as stated above, while this element is to

be taken into account in assessing compliance with Article 5 § 3 and may justify a longer period of detention than in a case concerning an individual offender, a member of an organised criminal group is also entitled to the protection against unreasonably lengthy detention afforded by this provision (see paragraphs 46-47 above). As in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraph 49 above). Moreover, as demonstrated by the ever increasing number of judgments in which the Court has found Poland to be in breach of Article 5 § 3 in respect of applicants involved in organised crime, the present case is by no means an isolated example of the imposition of unjustifiably lengthy detention but a confirmation of a practice found to be contrary to the Convention (see, among many other examples, *Celejewski v. Poland*, cited above; *Kąkol v. Poland*, no. 3994/03, 6 September 2007; *Malikowski v. Poland*, no. 15154/03, 16 October 2007; and also *Hilgartner v. Poland*, no. 37976/06, §§ 46-48, 3 March 2009). Consequently, the Court sees no reason to diverge from its findings 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

61. 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

62. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

63. The Government considered the claim exorbitant and asked the Court to rule that a finding of a violation would constitute in itself just satisfaction.

64. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 under this head.

B. Costs and expenses

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

C. Default interest

66. 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 pre-trial detention in the first set of criminal proceedings 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, 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 29 September 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President