



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF GOLISZEWSKI v. POLAND

(Application no. 14148/05)

JUDGMENT

STRASBOURG

8 December 2009

FINAL

08/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Goliszewski 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 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 14148/05) 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 Łukasz Goliszewski (“the applicant”), on 24 February 2005.

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

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

4. On 10 January 2008 the President of the Fourth Section 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 1982 and lives in Legionowo.

6. On 4 October 2002 the applicant was arrested on suspicion of assault. On 5 October 2002 the Warsaw District Court ordered his pre-trial detention on suspicion of aggravated assault committed with two other suspects. It noted that he had been charged with an offence which attracted a statutory sentence of up to ten years' imprisonment. The court also observed that each

of the three suspects had given a different account of the events at issue and that, consequently, there was a risk that they would collude or exert pressure on witnesses.

7. The applicant's detention was subsequently extended on 30 December 2002 and 1 April 2003. The courts relied on the high likelihood that the applicant had committed the crime in question and the risk that he might tamper with evidence.

8. On 18 June 2003 the prosecution filed a bill of indictment with the Warsaw District Court. The applicant was charged with aggravated assault occasioning death (Article 158 § 3 of the Criminal Code). The bill of indictment concerned two other co-accused.

9. On 30 June 2003 the Warsaw Regional Court remanded the applicant in custody until 3 December 2003. It relied on the severity of the anticipated penalty. Having regard to Article 258 § 2 of the Code of Criminal Procedure, it noted that the applicant had been charged with an offence which attracted a statutory maximum sentence exceeding eight years' imprisonment.

10. On 1 December 2003 the Warsaw Regional Court extended the applicant's detention until 3 June 2004. It invoked the severity of the anticipated penalty and the need to secure the proper conduct of the proceedings.

11. On 22 December 2003 the first hearing was held. The court heard the applicant, two co-accused and eleven witnesses.

12. At a hearing held on 5 April 2004, the applicant's lawyer asked the court to apply police supervision instead of the pre-trial detention. However, the court refused.

13. At a hearing held on 19 May 2004 the applicant's lawyer again asked the court to replace the detention with police supervision. However, the court refused and extended the applicant's detention, referring to the grounds given previously.

14. On 26 July 2004 the Regional Court extended the applicant's detention until 3 October 2004, relying on the same grounds as previously.

15. On 23 September 2004 during a hearing, the applicant's lawyer again asked for detention to be replaced with police supervision but the court again refused.

16. Since, on 4 October 2004, the applicant's detention would have reached the statutory two-year time-limit laid down in Article 263 § 3 of the Code of Criminal Procedure, any further extension of his detention had to be ordered by the Warsaw Court of Appeal.

17. On 1 October 2004 the Warsaw Court of Appeal remanded the applicant in custody until 30 November 2004. It invoked the severity of the likely sentence, noting that he had been charged with an offence which attracted a statutory sentence of up to ten years' imprisonment. It also observed that the trial had been at an advanced stage. However, it could not

have been terminated earlier, as planned, since one of the witnesses had repeatedly failed to appear. That circumstance, which had been beyond the trial court's control, justified the prolongation of the applicant's detention.

18. On 30 November 2004 the Warsaw Regional Court convicted the applicant of aggravated assault occasioning death and sentenced him to four years' imprisonment. The applicant lodged an appeal against this judgment.

19. On 3 December 2004 the applicant's lawyer appealed against the decision to extend the pre-trial detention. He argued that, in view of the sentence imposed on him, the applicant could already apply for conditional release. On 22 December 2004 the Warsaw Court of Appeal upheld the decision of 30 November 2004.

20. On 20 June 2005 the Warsaw Regional Court again extended the applicant's detention. On 5 July 2005 the applicant's lawyer appealed, maintaining that there was no need to continue the applicant's detention. However, on 22 July 2005 the Warsaw Court of Appeal upheld the decision of 20 June 2005. The court considered that the severity of the penalty imposed by the first-instance court justified the continuation of pre-trial detention.

21. On 27 September 2005 the Warsaw Court of Appeal gave judgment. It altered the legal classification of the applicant's offence from aggravated assault occasioning death to assault (Article 158 § 1 of the Criminal Code). That offence carried a maximum statutory penalty of three years. The Court of Appeal consequently amended the Regional Court's judgment. The applicant was convicted of assault and sentenced to three years' imprisonment.

22. The applicant was released on 4 October 2005.

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 extension, release from detention and rules governing other “preventive measures” (*środki zapobiegawcze*) are set out 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. Relevant statistical data

24. 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 materials can be found in the Court's judgment in the case of *Kauczor*, including the 2007 Resolution of the Committee of Ministers (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

25. 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.”

26. The Government contested that argument.

A. Admissibility

27. The Government argued as a preliminary objection that the applicant had failed to exhaust the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention in that he did not appeal against the decisions extending his detention. They also submitted that the applicant should have lodged a constitutional complaint with the Constitutional Court.

28. The applicant disagreed with the Government's submissions.

29. The Court reiterates that it is well established in its case-law that an applicant must make normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Yaşa v. Turkey* judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 71).

30. In the present case the applicant lodged requests for the detention order to be lifted or for a more lenient preventive measure to be imposed. He further lodged appeals against some of the decisions extending his detention taken in the final stage of the proceedings in 2004 and 2005, when the length of the detention had reached its most critical point

(see paragraphs 19 and 20 above). The Court considers that the purpose of the remedies used by the applicant was to obtain a review of his detention pending trial. In the circumstances of the case, these remedies constituted adequate and effective remedies within the meaning of Article 35 of the Convention as their aim was to obtain his release (see *Duda v. Poland*, no. 67016/01, § 29, 19 December 2006).

31. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in a previous cases against Poland (see *Feliński v. Poland*, no. 31116/03, § 40, 7 July 2009) and that the Government have not referred to any new circumstances which would lead the Court to depart from that finding.

32. Moreover, according to the established case-law, having exhausted the available remedy, the applicant was not required to embark on another attempt to obtain redress by bringing a constitutional complaint (see, for example, *Cichla v. Poland* no. 18036/03, § 26, 10 October 2006).

33. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further notes that it 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

34. The applicant's detention started on 4 October 2002, when he was arrested on suspicion of aggravated assault. On 30 November 2004 the Warsaw 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 v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). Accordingly, the period to be taken into consideration amounts to two years, one month and twenty-six days.

2. The parties' submissions

(a) The applicant

35. The applicant submitted that he had been detained for an unjustifiably long period. He stressed that at the time of the arrest he had been in his last year of high school, had no criminal record and was a basketball player at Legia Warszawa sports club. Because of the lengthy detention he could not graduate from high school and lost an opportunity to continue a professional sports career in the USA. He further complained

that, with the passage of time, the authorities had failed to advance any new ground for prolonging the most serious preventive measure against him. He also argued that he was ultimately sentenced to a prison sentence equal to the time he had spent in detention.

(b) The Government

36. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. They submitted that his pre-trial detention was fully justified and that during the entire period the authorities had given relevant and sufficient reasons for prolonging it. In addition, there was a strong likelihood that the applicant had committed the offence for which he was being detained. The Government further submitted that the domestic courts had acted diligently and speedily.

3. The Court's assessment

(a) General principles

37. 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 were stated 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

38. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely the serious nature of the offence with which he had been charged, the severity of the penalty to which he was liable and the need to secure the proper conduct of the proceedings. As regards the latter, they did not, however, specify any concrete grounds justifying their opinion.

39. 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 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.

40. 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 – were “sufficient” and “relevant” (see, *Kudła* cited above, § 111).

41. The Court further emphasises that, when deciding whether a person is to be released or detained, the authorities are obliged under Article 5 § 3 to consider alternative means of guaranteeing his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). In the present case, the Court notes that there is no clear indication that despite the applicant's numerous requests the authorities envisaged any other guarantees designed to secure his appearance at the trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” expressly intended to secure the proper conduct of criminal proceedings.

42. As noted above, the domestic courts did not give any concrete reasons for justifying the risk relied on, other than a vague reference to the different accounts given by the applicant and his co-accused in the early stage of the proceedings (see paragraph 6 above). 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 reiterates 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 pre-trial detention (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

43. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not justify the overall length of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION

45. 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

46. The applicant did not submit any observations concerning this aspect of the case.

2. The Government

47. The Government referred to the arguments submitted previously in the case of *Figas v. Poland* (no. 7883/07, §§ 41-44, 23 June 2009).

48. The Government concluded that, bearing in mind the efforts 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 detention during judicial proceedings, Poland could not be said to have failed to comply with its obligation under Article 46 of the Convention to comply with the Court's judgments.

B. The Court's assessment

49. 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.

50. 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 38-43 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

51. 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

52. The applicant claimed 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

53. The Government contested this claim.

54. 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

55. The applicant also claimed an unspecified sum for the costs and expenses incurred before the domestic courts.

56. The Government contested that claim.

57. 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 rejects the claim for costs and expenses in the domestic proceedings. It awards him EUR 100 for the Convention proceedings.

C. Default interest

58. 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 of 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 together with EUR 100 (one hundred euros) for costs and expenses, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable on 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 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President