



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

FOURTH SECTION

CASE OF GEŚŁA v. POLAND

(Application no. 15915/07)

JUDGMENT

STRASBOURG

12 January 2010

FINAL

12/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Geśła 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,

David Thór Björgvinsson,

Ledi Bianku,ç

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 15915/07) 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 Jacek Geśła (“the applicant”), on 23 March 2007.

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

3. On 17 November 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

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

4. The applicant was born in 1970 and lives in Chełm.

A. Criminal proceedings against the applicant

5. On 9 March 2004 the applicant was arrested on suspicion of drug dealing and uttering threats while acting in an organised criminal gang. On 11 March 2004 the Lublin District Court decided to place the applicant in

pre-trial detention. The court held that there was a strong likelihood that the applicant committed the offences with which he was charged.

6. On 1 June 2004 the Chełm District Court extended the applicant's detention. In addition to the grounds originally given, the court relied on the likelihood that a severe sentence would be imposed on the applicant and the probability that he would interfere with the course of the proceedings. On 1 September 2004 the Chełm District Court again extended the applicant's detention, relying on the complexity of the investigation.

7. Between 3 and 17 February 2005 the applicant served a prison sentence which had been imposed on him in another set of criminal proceedings.

8. On 28 February 2005 a bill of indictment was filed with the Chełm District Court. The applicant was charged with drug dealing and uttering threats while acting in an organised criminal gang.

9. The first hearing was held on 6 June 2005. Subsequent hearings were held at regular intervals of one month. On many occasions the trial court imposed fines on witnesses for failure to appear at hearings. In addition, some of the witnesses were brought to the court under police escort.

10. The applicant's detention was subsequently extended on several occasions, in particular on 7 March, 7 June, 5 September and 5 December 2005.

11. Between 21 March 2005 and 21 May 2006 the applicant served two different prison sentences which had been imposed on him in another set of criminal proceedings. On 21 May 2006 the applicant began serving a prison sentence of nine years and six months.

12. On 5 June 2006 the Chełm District Court again extended the applicant's detention.

13. On 24 July 2006 the Chełm District Regional Court convicted the applicant as charged and sentenced him to ten years' imprisonment and a fine. The applicant appealed.

14. On 13 February 2007 the Lublin Regional Court gave judgment, partly quashing and remitting the District Court's judgment (in respect of one of the charges).

15. On 7 May 2007 the Chełm District Court again extended the applicant's detention.

16. On 7 August 2007 the Chełm District Court gave a decision and discontinued the applicant's pre-trial detention.

17. According to the information available to the Court at the date of adoption of the present judgment, the criminal proceedings concerning one of the charges against the applicant are still pending before the Chełm District Court.

B. Proceedings under the 2004 Act

18. On 25 July 2005 the applicant lodged a complaint under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”).

19. It was dismissed by the Lublin Regional Court on 25 July 2007. The court stressed that the proceedings had been very complex, that they had concerned ten co-accused and that evidence had to be obtained from twenty three witnesses.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court’s decisions in cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

21. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

22. The Government contested that argument.

23. The period to be taken into consideration began on 9 March 2004 and has not yet ended. It has thus already lasted five years and six months for two levels of jurisdiction.

A. Admissibility

24. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant

25. The applicant submitted that the proceedings in his case had been excessively lengthy.

2. The Government

26. The Government submitted that the case had been extremely complex. It concerned an organised criminal gang. The applicant was charged with fourteen offences and all of his ten co-accused were detained pending trial. In addition, the prosecution asked the court to hear evidence from twenty-three witnesses. They maintained that while indeed there had been a delay of a few months between the date when the bill of indictment had been submitted to the court and the date of the first hearing, it had been caused by a voluminous case file with which the court had to acquaint itself. In addition, during that period the District Court had dealt with numerous procedural motions. Successive hearings had been scheduled without any delay, at regular intervals of one month.

3. The Court's assessment

27. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

28. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

29. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

30. There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant's first complaint related to the length of his detention. He alleged that it had been excessive, relying on Article 5 § 3 of the Convention, which provides 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.”

32. The applicant's detention started on 11 March 2004, when he was arrested on suspicion of drug dealing and uttering threats while acting in an organised criminal group. On 24 July 2006 the Chełm District Court partly convicted him as charged. However, it appears from documents submitted at a later stage that between 3 and 17 February 2005 and after 21 March 2005 the applicant was serving prison sentences which had been imposed on him in other sets of criminal proceedings. This period, covered by Article 5 § 1 (a) of the Convention, must therefore be subtracted from the period of the applicant's pre-trial detention for the purposes of Article 5 § 3 of the Convention. Accordingly, the period to be taken into consideration amounts to eleven months and fifteen days.

33. The Government raised a preliminary objection regarding non-exhaustion of domestic remedies by the applicant. They maintained that the applicant could have lodged a constitutional complaint with the Constitutional Court alleging that Article 263 of the Code of Criminal Procedure, which allowed the extension of pre-trial detention without any time-limits, was contrary to the Constitution. They further submitted that the domestic authorities had shown special diligence and could not be held responsible for the length of the detention. Lastly, they were of the opinion that the length of the applicant's detention was closely connected with the proper conduct of the proceedings and the circumstances of the case.

34. The applicant failed to address the issue of a constitutional complaint. He maintained that his detention had been excessively long.

35. The Court does not find it necessary to examine the objection as to the exhaustion of domestic remedies raised by the Government, as this complaint is in any event inadmissible for the following reasons.

36. The Court firstly 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, have been set out 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 *Bak v. Poland*, no. 7870/04, §§ 56-65, 16 January 2007).

37. Turning to the circumstances of the instant case, the Court notes that the grounds given by the judicial authorities to justify the applicant's continuous detention satisfied the requirement of being “relevant” and “sufficient”. It further notes that his detention was reviewed by the courts at

regular intervals and that the case was complex. In this connection the Court observes that the courts stressed the need to verify evidence from eleven suspects and twenty three witnesses, and that there was an extensive body of evidence to be considered, including opinions from several experts. The Court also accepts that the reasonable suspicion that the applicant had committed serious offences, together with the likelihood of a severe sentence being imposed on him, warranted his initial detention.

38. Lastly, the Court observes that the applicant was charged with drug dealing and uttering threats while acting in an organised criminal gang. As to the latter charge, the Court reiterates that this constitutes a factor to be considered when assessing compliance with Article 5 § 3 (see *Bqk*, cited above, §§ 57 and 60). For these reasons, the Court also finds that the domestic authorities cannot be criticised for failure to observe “special diligence” in the handling of the applicant’s case.

39. In view of the above considerations and in the light of the criteria established in its case-law in similar cases, the Court considers that the applicant’s detention does not disclose any appearance of a breach of the “reasonable time” requirement of Article 5 § 3 of the Convention. This complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 20,000 Polish Zlotys (PLN) in respect of non-pecuniary damage.

42. The Government contested the claim.

43. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him 2,700 euros (EUR) under that head.

B. Costs and expenses

44. The applicant did not make any claim for costs and expenses involved in the proceedings.

C. Default interest

45. 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,700 (two thousand seven hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to be converted into Polish Zlotys at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President