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

FIRST SECTION

DECISION

Application no. 77103/13
Włodzimierz Jan BASZCZYŃSKI
against Poland

The European Court of Human Rights (First Section), sitting on 12 December 2017 as a Committee composed of:

Aleš Pejchal, *President,*
Krzysztof Wojtyczek,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 27 November 2013,

Having regard to the declaration submitted by the respondent Government on 10 May 2016 requesting the Court to strike a part of the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Włodzimierz Baszczyński, is a Polish national who was born in 1956 and is detained in Warsaw.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

A. The criminal proceedings against the applicant and his detention on remand

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The prosecution service began investigating a criminal gang trading in drugs in August 2009.

5. The applicant was arrested on 21 December 2010. On 23 December 2010 the Łódź District Court decided to detain him on remand in view of the reasonable suspicion that he had been trading in drugs together with accomplices. The detention on remand was extended on 18 March and 28 June 2011.

6. On 14 September 2011 a bill of indictment against the applicant was lodged with the Łódź Regional Court (*Sygn akt* XVIII K 169/11). The bill of indictment was directed against sixty-one persons charged with having committed 118 offences. The case file consisted of seventy-eight volumes.

7. The trial court appointed defence lawyers for ten accused. It also severed charges against fourteen of them to another set of proceedings. The first hearing, scheduled for 17 July 2012, did not take place because some of the accused were ill. The court decided to issue an arrest warrant against another accused. Further groups of accused were to be heard in a separate trial. In consequence, the number of co-accused was reduced to thirty persons, including the applicant.

8. During the proceedings the applicant's detention was extended on multiple occasions by the Łódź Regional Court and the Łódź Court of Appeal. Appeals by the applicant against the decisions extending his detention and his numerous requests for release were dismissed.

9. In the period between 10 August 2012 and 29 April 2013 the trial court scheduled fifty-five hearings. Another 103 hearings were held later. Four to seven hearings were held every month, each lasting several hours.

10. On 30 March 2015 the Łódź Regional Court delivered its judgment in the case concerning thirty co-accused. The applicant was convicted of multiple offences and sentenced to fourteen years' imprisonment. The applicant requested that a written copy of the judgment be served on him with the intention to appeal against it. He received a copy of the reasoned judgment on 14 December 2015.

11. On 24 December 2015 the applicant's lawyers lodged an appeal on his behalf with the Łódź Court of Appeal.

12. On 4 November 2016 the Łódź Court of Appeal quashed the impugned judgment and remitted the case. The proceedings are pending. On an unspecified date the applicant was released from detention.

B. Proceedings under the 2004 Act

13. On 24 May 2012 the applicant lodged a complaint with the Łódź Court of Appeal under 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 przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki* – "the 2004 Act").

14. On 11 July 2012 the Łódź Court of Appeal dismissed the applicant's complaint. The court examined the course of the proceedings and considered that there had been no delays on the part of the courts. It noted that the trial court had taken many procedural decisions regarding severing charges against some of the accused in separate proceedings. It had also dealt with requests by the applicant to transfer the case to a different court. Furthermore, the trial court had taken decisions regarding detention on remand of the applicant and other co-accused; some of them had been released on bail and arrest warrants had been issued in respect of others. Finally, the trial court had dealt with requests made by the applicant and other accused to release them from detention.

15. On 26 July 2016 the applicant lodged another complaint under the 2004 Act. On 7 September 2016 the Łódź Court of Appeal dismissed it. The court examined all the stages of the proceedings in question and considered that taking into account the complexity of the case and other factors there had been no delays for which the courts should be held responsible. During the trial over one hundred hearings were held and the trial court had been active and efficient. The Court of Appeal took account of the large number of defendants and witnesses and the court's systematic and intensive efforts to deal with what was a complex case. Finally, the behaviour of the accused had been particularly challenging as they had clearly aimed at disrupting the proper course of the proceedings. The accused had acted in an extreme manner attempting to interrupt hearings by shouting, leaving the courtroom, loudly stamping the floor and otherwise disrespecting dignity of the court.

C. Contacts with son

16. The applicant has a son, A., born on 13 December 2010. His common-law wife, Ms K.P., has a second son O., born in 2006, from a previous relationship. While detained during the investigation the applicant received regular visits from his family. He could sit with them at the same table and have direct contact with them.

17. On 16 October 2012 the Łódz Regional Court allowed K.P. to visit the applicant with O. and A., who was 22 months old at the time. The decision, however, stipulated that the visit could only take place "in a manner excluding direct contact between the visitors and the detainee". On 16 May 2014 the court allowed the applicant to receive another visit from his common-law wife and children in identical conditions. It appears that between July 2012 and June 2015 only one visit took place in the manner described above, on 17 June 2013.

18. From 28 June 2015 the applicant has had monthly visits from his wife and sons, which have taken place in a unrestricted manner, allowing him direct contact with the visitors.

COMPLAINT

19. The applicant complained under Articles 5 § 3 and 6 of the Convention of the unreasonable length of his detention on remand and the criminal proceedings against him. He complained that he had been deprived of an effective domestic remedy, in breach of Article 13 of the Convention, in respect of his complaint about the length of the proceedings. The applicant further complained that the family visits between him and his young child had been held in a manner that had not been suitable for a child that age, in breach of Article 8 of the Convention.

THE LAW

A. Article 5 § 3 of the Convention

20. The applicant complained under Article 5 § 3 of the Convention about the length of his detention on remand.

21. After unsuccessful friendly-settlement negotiations, the Government informed the Court by a letter of 10 May 2016 that they proposed to make a unilateral declaration with a view to resolving the issue raised by this complaint. They further requested the Court to strike out this part of the application in accordance with Article 37 of the Convention.

22. The declaration provided as follows:

> "The Government hereby wish to express – by way of the unilateral declaration - their acknowledgement of violation of Article 5 § 3 of the Convention on account of excessive length of the applicant's detention on remand. Simultaneously, the Government declare that they are ready to pay the applicant the sum of PLN 20,000 which they consider reasonable in the light of the Court's case-law in similar cases
>
> ....
>
> The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention of Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> The Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention..."

23. By a letter of 13 July 2016, the applicant indicated that he was not satisfied with the terms of the unilateral declaration.

24. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

25. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

26. To that end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007, and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

27. The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints under Article 5 § 3 of the Convention about the length of pre-trial detention (see *Kauczor v. Poland*, no. 45219/06, §§ 42-47, 3 February 2009, with further references).

28. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

29. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

30. Finally, the Court emphasises that if the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list, in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

31. In view of the above, it is appropriate to strike the case out of the list of cases in so far as it relates to the complaint under Article 5 § 3 of the Convention.

B. Article 6 § 1 of the Convention

32. The applicant complained that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

33. The Government contested the applicant's allegations, underlining the particular complexity of the case against him. They submitted that the applicant had played a major role in contributing to the overall length of the proceedings. For instance, he had repeatedly made submissions challenging the impartiality of the judges; in total, twenty-three such submissions had been dismissed as manifestly ill-founded. The other co-accused had also acted with the aim to prolong and obstruct the conduct of the proceedings, clearly cooperating with each other and repeating the same submissions. The Government also argued that there had been no periods of inactivity for which the domestic courts could be held responsible.

34. The applicant argued that the proceedings had been lengthy and that he had had the right to use his procedural rights to contest the lack of impartially of the judges.

35. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Kuśmierek v. Poland*, no. 10675/02, § 62, 21 September 2004).

36. The Court firstly notes that the period to be taken into consideration began on 21 December 2010, when the applicant was arrested (see paragraph 5 above). The proceedings are pending (see paragraph 12 above). They have thus lasted so far six years and seven months at two levels of jurisdiction.

37. Considering the nature of the case, the Court accepts the Government's arguments that it was complex and that the domestic courts dealt with a vast amount of evidence (see paragraph 33 above). The allegations against the accused were very serious and included charges of acting within an organised criminal gang (see paragraph 6 above). The proceedings were initially directed against sixty-one defendants; even if that number was reduced by half by the trial court at the initial stage of the proceedings, the trial still involved a significant number of defendants, whose circumstances had to be assessed individually (see paragraph 7 above).

38. As to the conduct of the authorities, the Court first observes that the bill of indictment was submitted to the Regional Court on 14 September 2011 and that the first hearing on the merits was held on 10 August 2012 (see paragraph 9 above). However, there was a large amount of procedural activity throughout that period, caused, for instance, by applications for release lodged by the co-accused and decisions regarding prolongation of defendants' detention on remand. Moreover, during that period the trial court took other procedural decisions on granting legal aid to ten of the accused, severing charges against thirty of them to different sets of proceedings and issuing an arrest warrant (see paragraph 7 above). The hearing scheduled for 17 July 2012 could not take place as some of the accused were ill. The Court further observes that once the trial started the domestic court held an important number of hearings (over 150 in the period up to 30 March 2015). Hearings were held on average twice a week and there were no noticeable periods of inactivity on the part of the trial court.

39. As regards the conduct of the applicant, the Court notes that the Government submitted convincing arguments that he had contributed to the prolongation of the proceedings. For instance, the Government submitted that the applicant had made twenty-three submissions challenging the impartiality of judges, which were all dismissed as unfounded. Other co-accused acted in a similar manner. Moreover, when examining the applicant's complaints under the 2004 Act the Łódź Court of Appeal pointed to particularly disruptive behaviour by the accused during the hearings (see paragraph 15 above).

40. Having regard to the foregoing, the Court concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Article 8 of the Convention

41. The applicant further complained that there had been a violation of his right to respect for his family life, contrary to Article 8 of the Convention, on account of restrictions imposed on his contacts with his son, who was very young at the relevant time. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

42. The Government submitted that almost all the visits received by the applicant had been conducted without any restrictions. The visits had taken

place regularly, often twice a month. The Government agreed that one visit had taken place in a manner excluding direct contact between the applicant and his visitors. However, it was not clear what the exact wording of Ms K.P.'s request had been when she had applied for that visit with her sons.

43. The Court firstly notes that the applicant's lawyer failed to submit her observations on the admissibility and merits of this complaint. It therefore considers that this part of the applicant has not been substantiated.

44. The Court further observes that it appears from the documents in the file that during one visit of 17 June 2013 the applicant had been separated from his child and common-law wife by a Perspex partition (see paragraph 17 above). It also appears that no new request for a visit was made between October 2012 and May 2014 and subsequently until June 2015. The applicant admitted that family visits after 26 June 2015 had not been restricted and had taken place on a monthly basis (see paragraph 18 above).

45. Regard being had to the above considerations, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

D. Article 13 of the Convention

47. The Court raised of its own motion an issue under Article 13 of the Convention, in that the applicant had no effective domestic remedy in respect of the protracted length of proceedings in his case. Article 13 reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

48. The Government contested a breach of this provision of the Convention.

49. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. However, the "effectiveness" of a "remedy" within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudła v. Poland* [GC], no. 30210/96, §§ 154 et seq., ECHR 2000-XI).

50. While the subsidiarity principle underlying the Convention system requires the Contracting States to introduce a mechanism addressing complaints about the excessive length of proceedings within the national legal system, they are afforded – subject to compliance with the requirements of the Convention – some discretion as to the manner in which they provide individuals with the relief required by Article 13 and thus conform to their Convention obligations under that provision.

51. The Court further reiterates that the word "remedy" within the meaning of Article 13 does not mean a remedy which is bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see, for example, *Šidlová v. Slovakia*, no. 50224/99, § 77, 26 September 2006, and *Figiel v. Poland (no. 2)*, no. 38206/05, § 33, 16 September 2008).

52. Having regard to its finding in respect of Article 6 § 1 of the Convention and the fact that the applicant had, and made use of, a length complaint under the 2004 Act, the Court concludes 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.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 5 § 3 of the Convention and of the arrangements for ensuring compliance with the undertakings referred to therein;

Decides to strike that part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 11 January 2018.

Renata Degener
Deputy Registrar

Aleš Pejchal
President