

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

FOURTH SECTION

CASE OF BYSTROWSKI v. POLAND

(Application no. 15476/02)

JUDGMENT

STRASBOURG

13 September 2011

FINAL

08/03/2012

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



In the case of Bystrowski v. Poland**,**

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 23 August 2011,

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

PROCEDURE

1. The case originated in an application (no. 15476/02) 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 Artur Bystrowski ("the applicant"), on 26 November 2001.

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

3. The applicant mainly complained under Articles 3 and 5 § 3 of the Convention of the inadequate conditions and the unreasonable length of his pre-trial detention.

4. On 20070831 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 § 1).

THE FACTS

I. THE CIRCUMSTANCE OF THE CASE

A. The circumstances of the case

5. The applicant, Mr Artur Bystrowski, is a Polish national who was born in 1963 and lives in Strzelin.

1. The applicant's pre-trial detention and criminal proceedings against him

6. On 8 September 2000 the Wrocław District Court (*Sąd Rejonowy*) detained the applicant on remand on suspicion of having committed theft and forgery and of leadership of an organised criminal gang.

7. Subsequently, the applicant's pre-trial detention was extended on several occasions. In successive decisions, given on 29 November 2000, 15 February and 7 December 2001, 23 August and 2 October 2002, the court repeatedly relied on the strong probability that the applicant had committed the offences and that there was a real risk that he would receive a severe sentence. This – together with the fact that he had acted in a gang and that there were several co-accused in the case –gave rise to a presumption that he would obstruct the proper conduct of the proceedings.

8. In the meantime, on 9 February 2001 a bill of indictment was issued, charging the applicant with multiple theft, forgery, possession of a firearm without a licence and leadership of an organised criminal gang.

9. The first court's hearing took place on 6 April 2001. Subsequently, nine sessions were scheduled in 2001; eighteen in 2002; sixteen in 2003; and eleven in 2004. In 2001 the trial court heard testimonies of thirty-four witnesses; in 2002 - of forty-six; in 2003 – of five; and in 2004 of four. The court also examined other voluminous evidence and considered various procedural motions filed by the applicant and other co-defendants.

10. As the length of the applicant's detention had reached the statutory 2-year time-limit laid down in Article 263 § 3 of the Code of Criminal Procedure, the Wrocław Regional Court (*Sąd Okręgowy*) applied to the Wrocław Court of Appeal (*Sąd Apelacyjny*) asking for the applicant's detention to be extended beyond that period. On 20 November and 6 December 2002 and 5 March 2003 the Court of Appeal granted the applications, finding that the grounds previously given for the detention on remand were still valid and that the use of the most severe preventive measure was necessary to ensure the proper conduct of the investigation.

11. The applicant challenged his detention on remand. He lodged appeals against the Wrocław Regional Court's decisions of 15 February 2001, 4 September 2002 and 5 March 2003. His appeals were dismissed by decisions of the Wrocław Court of Appeal of 23 March 2001, 2 October 2002 and 26 March 2003, respectively.

12. He also lodged numerous requests for release from detention, which were dismissed by the Wrocław Regional Court's decisions of 7 December 2001, 28 June and 8 August 2002.

13. Further, he also requested the application of a more lenient preventive measure in place of detention on remand. The request was dismissed by the Wrocław District Prosecutor's decision of 18 October 2000.

14. By a decision of the Wrocław Regional Court of 29 April 2003 the applicant was released from detention.

15. On 21 September 2004 the Wrocław Regional Court found the applicant guilty as charged and sentenced him to seven years' imprisonment. The applicant appealed.

16. On an unspecified date, presumably in 2008 the Wrocław Court of Appeal upheld the first-instance judgment.

17. The applicant did not lodge a complaint about a breach of the right to a trial within a reasonable time with the domestic court, 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").

2. Restrictions on the applicant's right of visit during his detention

18. During the detention, the applicant's requests for visits from his wife were rejected on 23 February, 2 March and 30 April 2001. As stated in the decisions of the Wrocław Regional Court of 2 March and 30 April 2001 this was due to the fact that the wife was a witness in the applicant's case.

3. Monitoring of the applicant's correspondence

19. The applicant further submitted that during his pre-trial detention his correspondence with the Court had been censored. To that effect the applicant supplied an envelope of a letter from the Registry of 12 March 2003 bearing a stamp "censored" (*ocenzurowano*), a date "21 March 2003" and an illegible signature.

4. The conditions of the applicant's detention

20. In his letters to the Court of 21 February and 23 June 2002 and 23 November 2005, the applicant complained about the conditions of his detention in Wrocław Remand Centre.

21. He alleged in particular that he was detained with six other persons in a room measuring 16m^2; he could only take walks in a closed area measuring 20m^2 for 25 persons; there was no warm water available and the ventilation and sanitation were insufficient.

22. The applicant complained to the detention centre's authorities about those conditions, however to no avail. He also claimed that if he were to complain to higher authorities he would run a risk of harassment by the guards, given that his correspondence had been censored.

B. Relevant domestic law and practice

1. 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 stated 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.

2. General rules concerning conditions of detention

24. The relevant law and practice pertaining to conditions of detention and to civil law action for compensation against the State Treasury are laid out in the judgment in the case of *Orchowski v. Poland, no. 17885/04,* §§ 64-75.

3. Detainees' correspondence and contact with family

25. The legal provisions concerning monitoring of detainees' correspondence applicable at the material time and questions of practice are set out in paragraphs 65-66 of the judgment delivered by the Court on 4 May 2006 in *Michta v. Poland,* no. 13425/02. The relevant domestic law and practice concerning detainees' right to receive visitors in remand centres are stated in the Court's judgment in the case of *Gradek v. Poland*, no. 39631/06, §§ 21-25, 8 June 2010.

4. Remedies for the excessive length of judicial proceedings

26. The relevant domestic law and practice concerning remedies for excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland*, no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V; *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. COMPLAINTS UNDER ARTICLES 3 AND 8 OF THE CONVENTION

27. The applicant complained about the conditions of his detention, in particular about overcrowding. He relied on Article 3 of the Convention which, in so far as relevant, provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

28. He also complained under Article 8 about monitoring of his correspondence with the Court. The relevant part of the provision invoked reads as follows:

> "1. Everyone has the right to respect for ... 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."

29. By letter dated 16 March 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the application under Article 3 concerning the conditions of the applicant's detention and Article 8 concerning the monitoring of the applicant's correspondence with the Court. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "(...) the Government hereby wish to express – by way of unilateral declaration - their acknowledgement of the fact that the applicant's conditions of detention, in particular overcrowding as indentified by the Court in the pilot judgment given in the case of *Orchowski v. Poland* (no. 17885/04) on 22 October 2009 (see paragraphs 135 and 147 et seq.), were not compatible with Article 3 of the Convention. Furthermore, the Government would like to express their acknowledgement of the fact that the censorship of the applicant's correspondence was not compatible with the requirements of Article 8 of the Convention.
>
> In these circumstances, and having particular regard to violation of Article 3 of the Convention in respect of the applicant's conditions of detention, the Court's pilot judgment in the case of *Orchowski v. Poland* (no. 17885/04) as well as domestic jurisprudence submitted to this case and violation of Article 8 on account of the

censorship of the applicant's correspondence, the Government declare that they offer to pay the applicant the amount of 8,000 PLN (eight thousand Polish zlotys), which they consider to be reasonable in the circumstances of the case.

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 on 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 periods 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.

..."

30. In a letter of 13 April 2011 the applicant submitted that he did not understand the conditions of the Government's unilateral declaration because he did not speak either of the Court's official languages.

31. The Court recalls 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".

32. It also recalls that in certain circumstances, it may strike out an application or part thereby 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.

33. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

34. The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of Article 3 on account of overcrowding and inadequate detention conditions (see, for example, the pilot judgments in the cases of *Orchowski v. Poland*, no. 17885/04, ECHR 2009-... (extracts) and *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009 and the leading follow-up decision in the case of *Łatak v. Poland* (dec.), no. 52070/08, 12 October 2010) and complaints about the monitoring of a detainee's correspondence

(see among many others *Matwiejczuk v. Poland*, no. 37641/97, §§ 65-66, 2 December 2003).

35. 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 the 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)).

36. 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 this part of the application (Article 37 § 1 *in fine*).

In view of the above, it is appropriate to strike this part of the application out of the list.

II. COMPLAINT UNDER ARTICLE 5 § 3 OF THE CONVENTION

37. The applicant also complained under Article 5 § 3 of the Convention about the unreasonable length of his detention on remand. The relevant part of this provision 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 ..."

A. Admissibility

38. 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

39. The applicant's detention started on 8 September 2000, when the Wrocław District Court detained him on remand on suspicion of having committed theft and forgery and of leadership of an organised criminal gang. It lasted until 29 April 2003 when the applicant was released. Accordingly, the period to be taken into consideration amounts to two years, seven months and twenty days.

2. The parties' submissions

(a) The applicant

40. The applicant submitted that the length of his pre-trial detention had been excessive and that the measure had not been sufficiently justified by the authorities.

(b) The Government

41. The Government submitted that the applicant's pre-trial detention had been justified by the nature of the charges, the scale of the alleged criminal activities and the severity of the anticipated penalty. They underlined that the length of the applicant's detention should be assessed with reference to the fact that he had allegedly acted in an organised criminal gang. The latter element aggravated the risk that the applicant might obstruct the proceedings or tamper with evidence.

42. Moreover, there was a genuine risk that, if released, the applicant might go into hiding since prior to his arrest he had been formally registered under several addresses and had not resided at any of them.

43. The domestic courts had considered it necessary to remand the applicant in custody during the relevant period. However, the applicant had been released when the authorities had considered that further extension of his detention would not be justified. Thus, the authorities had attempted to find a balance between the competing interests in the case.

3. The Court's assessment

(a) General principles

44. 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 were 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

45. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the strong suspicion that the applicant had committed the offences with which he was charged; (2) the serious nature of those offences (3) the severity of the penalty to which he was liable; and (4) the risk that the applicant might obstruct the proper conduct of the proceedings since he had acted in a gang and there were several co-accused in the case.

46. The applicant was charged and then indicted of multiple counts of theft, forgery, possession of a firearm without a licence and leadership of an organised criminal gang.

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

48. 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 often is, by the nature of things, high.

49. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Furthermore, 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).

50. On the other hand, the need to obtain voluminous evidence, which is inherent in a trial concerning organised crime and the need to secure the proper conduct of the proceedings, in particular the presence of the accused who did not have a fixed residence prior to his arrest, constituted valid grounds for maintaining the applicant's detention for the period of two years and nearly eight months.

51. The Court takes note of the fact that when the authorities could no longer justify the applicant's protracted detention, they released the applicant.

52. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire relevant period, that is two years, seven months and twenty days (in contrast to *Bogusław Krawczak v. Poland*, no. 24205/06, §§ 82-90, 31 May 2011).

53. It therefore remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings.

54. In this regard, the Court observes that the investigation was of considerable complexity, regard being had to the number of witnesses, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. The Court does not discern any significant periods of inactivity in the investigation or the initial phase of the trial. For these reasons, the Court considers that during the relevant period the domestic authorities handled the applicant's case with relative expedition.

55. Having regard to the foregoing, the Court finds that there has been no violation of Article 5 § 3 of the Convention

III. COMPLAINT UNDER ARTICLE 6 § 1 OF THE CONVENTION

56. Moreover, the applicant complained under Article 6 § 1 of the Convention about the unreasonable length of his criminal proceedings. This provision, in its relevant part, provides:

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

57. However, pursuant to Article 35 § 1 of the Convention:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

58. In this connection, the Court observes that the applicant did not lodge a complaint about the unreasonable length of the proceedings with the relevant domestic court under the 2004 Act, thus failing to avail himself of the available domestic remedy.

59. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, the Court considered that the remedy was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

60. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. COMPLAINT UNDER ARTICLE 8 OF THE CONVENTION

61. The applicant also complained that during his detention he had been deprived of personal contact with his wife for a significant period of time, in breach of Article 8 of the Convention which provides as relevant:

> "1. Everyone has the right to respect for his ... family life...
>
> 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."

62. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on private and family life. However, it is an essential part of a detainee's right to respect for family life

that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see, *mutatis mutandis*, *Messina v. Italy* (no. 2), no. 25498/94, § 61, 28 September 2000).

63. Such restrictions as limitations on the number of family visits, supervision of those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special arrangements for visits constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision (ibid. §§ 62-63; see also *Kucera v. Slovakia*, no. 48666/99, §§ 127-128, 17 July 2007). Nevertheless, any restriction of that kind must be "in accordance with the law", must pursue one or more legitimate aim listed in paragraph 2 and, in addition, must be justified as being "necessary in a democratic society".

64. Turning to the circumstances of the present case the Court considers that the decisions complained of amounted to "interference" with the exercise of the applicant's rights guaranteed by this provision.

65. The contested measures were applied under Article 217 of the Code of Execution of Criminal Sentences. This provision, as applicable at the material time, gave the relevant authority (prosecutor or court) the power to grant permission for family visits in prison.

66. In this respect the Court notes that on 2 July 2009 the Constitutional Court declared Article 217 § 1 of the Code of Execution of Criminal Sentences unconstitutional. The Court further observes that it has already held that Article 217 § 1 of the Code of Execution of Criminal Sentences did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the relevant authorities to restrict visiting rights (see *Wegera v. Poland*, no. 141/07, § 74-75, 19 January 2010). For these reasons the Court has recently concluded in the case of *Gradek v. Poland* cited above § 47) that an unreasoned refusal of family visits in detention was not in accordance with the law.

67. In the present case, contrary to the case of *Gradek*, where the prosecutor refused the applicant's wife's requests by making blunt handwritten notes on her applications, the Wrocław Regional Court informed the applicant about the reasons for refusal of visits from his wife. The court considered that since the applicant's wife was a witness in his case, it was important to prohibit her from contacting the applicant, at least until she or other crucial witnesses were heard.

68. In the particular circumstances of the instant case the Court concludes that the refusals of family visits during the applicant's pre-trial detention were reasoned and thus the interference was in accordance with the law (see *Jarkiewicz. Poland*, no. 23623/07, 6 July 2010).

69. The Court further observes that the limitations on the applicant's contact with his wife were imposed only during the initial stage of the trial (decisions of 2 March and 30 April 2001) until the key witnesses were heard.

70. The impugned measure can accordingly be considered as having been taken in pursuance of "the prevention of disorder and crime", which is a legitimate aim under Article 8 (see *Jarkiewicz v. Poland*, cited above).

71. Lastly, in the light of the information before it the Court considers that the authorities struck a fair balance between the need to secure the process of obtaining evidence in the applicant's case and his right to respect for his family life while in detention. It has not been shown that the measure complained of went beyond what was necessary in a democratic society "to prevent disorder and crime" in the context of family visits in prison during pre-trial detention.

72. 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.

V. COMPLAINT UNDER ARTICLE 9 OF THE CONVENTION

73. Lastly, in 2005 the applicant complained under Article 9 of the Convention that during his detention he had been deprived of the opportunity to attend mass in the prison chapel. He did not, however, provide any details or documents to support his complaint.

74. In consequence, the Court finds that the information in the file does not substantiate the above complaint or warrant its examination as giving rise to issues separate from the applicant's main Article 3 complaint.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the respondent Government's unilateral declaration as regards the complaints concerning the conditions of the applicant's detention and the censorship of his correspondence and of the modalities for ensuring compliance with its undertakings;

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

3. *Declares* admissible the complaint under Article 5 § 3 of the Convention and the remainder of the application inadmissible;

4. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 13 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Nicolas Bratza President