

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

FOURTH SECTION

DECISION

Application no. 498/10
Piotr CIOK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 23 October 2012 as a Chamber composed of:

Päivi Hirvelä, *President,*
Lech Garlicki,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 16 December 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Piotr Ciok, is a Polish national, who was born in 1973 and lives in Barczewo. He was represented before the Court by Mr B. Hausler, a lawyer practising in Berlin.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. On 14 March 2005 a Polish national, E.D., was found dead in Antwerp, Belgium. Subsequently, the applicant was arrested in Belgium in connection with her murder.

4. On 17 November 2006 the Anvers Regional Court convicted the applicant of homicide and sentenced him to life imprisonment.

5. On 9 March 2007 the judgment was upheld by the Antwerp Assize Court.

6. It appears that the Belgian authorities requested the Polish authorities to take over the execution of the applicant's sentence. On 22 November 2007 they also decided that the applicant was to be expelled from Belgium and prohibited from returning for a period of ten years. The applicant did not give his consent to his transfer to Poland. On 16 December 2008 the Olsztyn Regional Court decided that it was possible to transfer the applicant to Poland under the Convention on the Transfer of Sentenced Persons (the Transfer Convention) and its Additional Protocol. Afterwards the Polish Ministry of Justice agreed to his transfer.

7. On 25 March 2009 the applicant was transferred to Poland.

8. On 26 May 2009 the Olsztyn Regional Court gave a ruling on the legal qualification of the offence under Polish law and on the enforcement of the sentence. It considered that the offence of which the applicant had been convicted in Belgium fulfilled the description of the offence of homicide prohibited by Article 148 § 1 of the Polish Criminal Code. The court further considered that this offence carried under Polish law a minimum sentence of eight years' imprisonment or life imprisonment. Thus the sentence imposed in Belgium did not exceed the maximum prescribed by the law of the administering State and it was not necessary to adapt the sanction.

9. In consequence the court decided that the applicant would serve the sentence of life imprisonment in Poland. The court finally decided that the additional penalty of deprivation of civic rights imposed by the Belgian court could not be imposed as it had not been foreseen for the offence prohibited by Article 148 § 1 of the Criminal Code.

10. The applicant appealed against the ruling. He complained in particular about the decision not to apply regulations pertaining to conditional release that were binding in the sentencing country, Belgium.

11. On 18 June 2009 the Bialystok Court of Appeal upheld the judgment. The court amended the legal basis of the Regional Court's judgment in that it considered that the latter court had correctly converted the applicant's sentence according to Articles 9 § 1 (b) and 11 of the Transfer Convention. Moreover, the court admitted that the rules pertaining to conditional release differed between Poland and Belgium. In Poland a

person in the applicant's situation could apply for parole after having served twenty-five years' imprisonment whereas in Belgium that term was shorter and amounted to ten years. However, the court decided not to rule on the matter of conditional release as the Belgian judgment did not include a provision on the length of the sentence the applicant would have to serve before he was eligible to apply for conditional release. Therefore, Polish rules on enforcement of sentences would be applicable to the case.

B. Relevant domestic and international law

1. The Polish Criminal Code

12. Under Article 78 § 3 of the Criminal Code a prisoner serving a life sentence is eligible for parole after serving a minimum of twenty-five years of his sentence.

2. The Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto

13. The objectives of the 1983 Transfer Convention (European Treaty Series, ETS, No. 112), including its 1997 Additional Protocol (ETS No. 167), are to develop international co-operation in the field of criminal law and to further the ends of justice and social rehabilitation of sentenced persons. According to the Preamble to the Transfer Convention, these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society.

14. Article 3 § 1 of the Transfer Convention enables the transfer of a sentenced person from "the sentencing State" to "the administering State" provided, inter alia, that the person in question is a national of the administering State; that he or she (or in some instances a legal representative) consents to the transfer; that the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and that the sentencing and administering States both agree to the transfer.

15. Article 9 of the Transfer Convention ("Effect of transfer for administering State") provides:

> "1. The competent authorities of the administering State shall:
>
> a. continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or

b. convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.

3. The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions. ...”

16. Article 11 of the Transfer Convention (“Conversion of sentence”) provides:

“1. In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:

a. shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;

b. may not convert a sanction involving deprivation of liberty to a pecuniary sanction;

c. shall deduct the full period of deprivation of liberty served by the sentenced person; and

d. shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

2. If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure.”

17. Article 3 of the Additional Protocol (“Sentenced persons subject to an expulsion or deportation order”) provides:

“1. Upon being requested by the sentencing State, the administering State may, subject to the provisions of this Article, agree to the transfer of a sentenced person without the consent of that person, where the sentence passed on the latter, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison.”

18. The Additional Protocol entered into force in respect of Poland on 1 June 2000.

COMPLAINTS

19. The applicant complained under Articles 5, 6 and 7 of the Convention about the decisions given by the Polish courts in connection with his transfer to Poland to serve his sentence. He submitted that under Belgian law he would have been authorised to apply for conditional release after having served ten years of his sentence, whereas in Poland that term was 250 % longer and amounts to a period of twenty-five years. In consequence, the penalty imposed on him in Poland was *de facto* harsher than the one that was applicable at the time the offence had been committed. The applicant further complained that his right to liberty and security had been breached. Finally, he maintained that the Polish courts violated the principle *in dubio pro reo* in breach of Article 6 of the Convention.

THE LAW

A. Article 5 of the Convention

20. The applicant complained under Article 5 of the Convention that after his transfer to Poland the *de facto* length of his detention was longer than the one he could have expected to serve in the sentencing State. The Court considers that the applicant's complaint falls to be assessed under Article 5 § 1 (a) of the Convention. That Article, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;"

21. The applicant was convicted and sentenced to life imprisonment by courts in Belgium. Thus, there is no dispute that his subsequent deprivation of liberty in Belgium was compatible with Article 5 § 1 (a). The applicant argued that in Belgium he would be eligible to apply for conditional release after having served ten years of the total term of imprisonment. Such was the general requirement under the domestic law as in his case the sentencing courts had not specified in their judgments another term on completion of which he would be eligible for conditional release. In Poland the general rules on enforcement of sentences provided that a person sentenced to life imprisonment could apply for conditional release after having served twenty-five years of his sentence.

22. The question is thus whether the applicant's transfer to Poland with the risk of a *de facto* longer sentence violated Article 5 of the Convention. As established in the case-law of the Court detention must result from, follow and depend upon or occur by virtue of the "conviction". In short, there must be a sufficient causal connection between the conviction and the deprivation of liberty in issue (see *Weeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 23, § 42).

23. As the serving of the applicant's sentence in Poland was based on his conviction in Belgium, the necessary causal connection between that conviction and his deprivation of liberty in Poland still existed (see *Veermae v. Finland* (dec.), no. 38704/03, 15 March 2005).

24. Moreover, the Court must satisfy itself that there is no arbitrariness. In this connection the Court underlines that the applicant directed his complaints against Poland. However, the European Convention on Human Rights does not require the Contracting Parties to impose their standards on third States or territories. To lay down a strict requirement that the sentence served in the administering country should not exceed the sentence that would have to be served in the sentencing country would also thwart the current trend towards strengthening international cooperation in the administration of justice, a trend which is in principle in the interests of the persons concerned (see *Drozd and Janousek v. France and Spain*, 26 June 1992, § 110, Series A no. 240). Moreover, the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI). In the present case the Court must, in particular, take into account the Transfer Convention and its Additional Protocol.

25. In view of this, the possibility of a longer period of imprisonment in the administering State does not in itself render the deprivation of liberty arbitrary as long as the sentence to be served does not exceed the sentence imposed in the criminal proceedings (see *Veermae*, cited above, and *Csoszánszki v. Sweden* (dec.), no. 22318/02, 27 June 2006).

26. In the case under consideration the term of imprisonment to which the applicant was sentenced in Belgium, a life sentence, remained the same after his transfer to Poland. The Court reiterates that matters relating to early release policies including the manner of their implementation fall within the power Contracting States have in the sphere of criminal justice and penal policy (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 104).

27. Nor does the Convention confer a right to conditional release.

28. 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.

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

B. Article 7 of the Convention

30. The applicant further complained that his situation was aggravated due to his return to Poland to continue his sentence. He relied on Article 7 of the Convention.

31. However, the Court considers that that Article does not apply to the decisions of Polish courts.

32. The Court has already held, where the respondent was the sentencing State, that Article 7 of the Convention did not apply to transfer decisions in the sentencing State (see, for example, *Csoszánszki*, cited above, no. 22318/02, 27 June 2006 and *Szabó v. Sweden* (dec.), no. 28578/03, 27 June 2006). Similarly, where the applicant directed his complaints against the administering State, the Court has held that the transfer decisions taken by the authorities of the State to which the applicant has been transferred to serve his sentence did not amount to a "penalty" within the meaning of Article 7 (see *Muller v. Czech Republic* (dec.), no. 48058/09, 6 September 2011).

33. The Court reiterates its established case-law on the distinction drawn between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of a "penalty". Article 7 applies only to the former, while a change in the conditions of release relates to the execution of a sentence and thus excludes application of that Article (see *Kafkaris*, cited above, § 142, and *Grava v. Italy*, no. 43522/98, § 51, 10 July 2003).

34. In the present case the issue raised by the applicant lies solely in the alleged differences in the conditions of early release. The penalty of life imprisonment imposed on the applicant in Belgium remains the same.

35. In the light of its case-law, the Court thus concludes that the matter of conditional release concerns the execution of the sentence and Article 7 of the Convention is not applicable.

36. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

C. Article 6 of the Convention

37. Finally, the applicant complained that the facts of the case disclosed a breach of Article 6 of the Convention.

38. The Court notes that the Polish courts did not determine a criminal charge against the applicant when converting his Belgian sentence into a Polish one, which, as established above, was clearly a matter of execution (see *Csoszánszki*, cited above). Article 6 is therefore also not applicable to

those proceedings and this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Päivi Hirvelä
President