

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

FOURTH SECTION

DECISION

Application no. 1997/11
Adam GIZA
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 5 January 2011,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Adam Giza, is a Polish national, who was born in 1988 and lives in Radom. He was represented before the Court by Mr M. Pietrzak, a lawyer practising in Warszawa.

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A. The circumstances of the case

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

3. On 12 April 2006 a seventeen-year-old Belgian teenager was murdered at the Brussels Central train station. Two individuals, who attempted to steal his MP3 player, stabbed him five times causing his death.

4. The applicant, who had been identified by surveillance cameras as one of the attackers, at that time also seventeen years old, fled Belgium and was arrested in Poland on 27 April 2006. A European arrest warrant (the EAW) was issued against the applicant by the Belgian authorities.

5. On 31 May 2006 the Warsaw Regional Court (*Sąd Okręgowy*) decided to agree to the applicant's surrender to Belgium on the basis of the EAW provided that after the trial he would be returned to Poland in order to serve his sentence. The decision was upheld on 25 July 2006 by the Warsaw Court of Appeal.

6. The applicant was transferred to Belgium on 2 August 2006.

7. On 5 June 2008 the applicant was convicted by the first-instance court in Brussels of armed robbery resulting in death and sentenced to twenty years' imprisonment.

8. On 23 September 2008 the judgment was upheld by the Brussels Assize Court.

9. The Belgian authorities informed the Polish authorities that the applicant's sentence would come to an end on 28 January 2027 and that he could apply for conditional release as of 2 October 2013.

10. On 21 April 2010 the applicant was transferred to Poland for the purpose of continuing his imprisonment.

11. On 6 May 2010 the Warsaw 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 offences of which the applicant had been convicted in Belgium fulfilled the description of offences prohibited by Articles 280 § 2 and 156 § 3 of the Polish Criminal Code. The court further considered that it was bound by the sentence imposed abroad, although twenty years' imprisonment did not appear in the range of penalties possible under Polish law. Finally, 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 apply to the case.

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

13. On 6 July 2010 the Warsaw Court of Appeal upheld the judgment. The court considered that matters of conditional release related to

enforcement of the sentence and thus should not be dealt with at the instant stage. The Court of Appeal reiterated that the sentencing judgment did not contain a provision regulating the date on which the applicant was eligible to apply for conditional release. Moreover, according to both Belgian and Polish law, conditional release was facultative and depended on a positive criminological prognosis of the prisoner and his behaviour during the serving of the sentence. Conditional release should not be considered as a right automatically acquired if the conditions provided by law were fulfilled. The judgment is final.

B. Relevant domestic and international law

14. Relevant articles of the Polish Code of Criminal Procedure (the CCP) read at the material time:

15. Article 607s § 4of the CCP:

> "...In its decision the court indicates the qualification of the offence according to Polish law. The court is bound by the sentence given..."

16. Article 607t of the CCP:

> "1. If the European arrest warrant was issued with the purpose of conducting a criminal prosecution of a person who is a Polish national or benefits from asylum in the Republic of Poland, the surrender may be subject to the condition that the person is returned to Poland after final termination of the proceedings in the issuing Member State.
>
> 2. If in the situation described above the person is sentenced to a penalty of deprivation of liberty ... the provisions of Article 607s §3-5 shall apply."

17. Article 5 § 4 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (the Framework Decision), dealing with guarantees to be given by the issuing Member State in particular cases, states as follows:

> "where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State."

COMPLAINTS

18. The applicant complained under Articles 5, 7 and 6 in connection with Article 14 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 the Belgian law he would have been authorised to

apply for conditional release after having served one-third of his sentence, whereas in Poland that term is longer and amounts to half of his sentence. 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 considered that he had been discriminated against: had the sentencing court decided to amend the term on the completion of which he would be eligible for conditional release and include it in the sentence, the Polish court would have been bound by it.

THE LAW

A. Article 5 of the Convention

19. 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;"

20. The applicant was convicted and sentenced to twenty years' 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 one-third 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. The Belgian authorities confirmed to the Polish authorities that the applicant was eligible for parole as of 2 October 2013, that is after having served six years and eight months. In Poland the general rules on enforcement of sentences provided that a convicted person could apply for conditional release after having served one half of his sentence: ten years in the present case.

21. 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 W*eeks v. the United Kingdom*, judgment of 2 March 1987, Series A no. 114, p. 23, § 42).

22. 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).

23. 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). 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).

24. In the case under consideration the term on the completion of which the applicant would be eligible to apply for conditional release in Poland is ten years. Even if his attempts to obtain release after that period fail, his total period of detention could not in any case exceed the term of twenty years to which he had been convicted in Belgium. Moreover, 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). The Court also notes that the applicant's surrender to Belgium for the purpose of his trial had been subject to the condition that he would be returned to Poland to serve his sentence. The applicant therefore knew or should have known that the enforcement of his sentence would take place in Poland. Nor does the Convention confer a right to conditional release.

25. Finally, the Court notes that even assuming that the applicant could be considered as having a genuine expectation of release after 2 October 2013, this term has not yet been reached. Thus, even if he had continued serving his sentence in Belgium he would not yet have been eligible for parole.

26. 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.

27. 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

28. 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.

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

30. The Court has already held, where the defendant 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). Although the aforementioned cases concerned transfer of prisoners under the 1983 Council of Europe Convention on the Transfer of Sentenced Persons, the Court considers that the principles established by them are applicable to the case under consideration where the applicant's transfer was based on the rules governing the EAW.

31. 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).

32. 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 twenty years' imprisonment imposed on the applicant in Belgium remains the same.

33. 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.

34. 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. Remaining complaints

35. Finally, the applicant complained that the facts of the case disclosed a breach of Article 6 and Article 14 in connection with Articles 5 and 7 of the Convention.

36. The Court firstly 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.

37. Moreover, the Court notes that the complaint under Article 14 is based on the same facts and is linked to the complaints examined above under Articles 5 and 7 of the Convention and which have been declared manifestly ill-founded or incompatible *ratione materiae* with the provisions of the Convention. Regard being had to those findings, the Court considers that the matter does not require a separate examination under Article 14 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early Registrar	Päivi Hirvelä President