

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

FOURTH SECTION

DECISION

Application no. 10697/11
Bogusław KRAWCZAK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 15 January 2013 as a Committee composed of:

David Thór Björgvinsson, *President,*
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 May 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Bogusław Krawczak, is a Polish national, who was born in 1952 and lives in Lomza.

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

A. The circumstances of the case

3. The applicant was born in 1952 and lives in Lomza.

1. Main proceedings (case no. IV K 200/05)

4. On 12 January 2005 the applicant was arrested and charged with trafficking in large amounts of drugs from Venezuela. On 14 January 2005 the Gdańsk District Court (*Sąd Rejonowy*) remanded him in custody.

5. On 17 June 2005 the bill of indictment was lodged with the Gdańsk Regional Court (*Sąd Okręgowy*). The applicant, together with three other co-accused, was indicted on charges of drug smuggling and conspiracy to import drugs committed in an organised criminal group aiming at importing into Poland considerable amounts of drugs. The bill of indictment together with the rest of the file comprised 22 volumes. The prosecutor requested hearing 33 witnesses and to read at the hearing statements of 18 further witnesses.

6. On 19 October 2005 the Regional Court held the first hearing. The trial continued until 30 December 2008. Throughout that time approximately 100 hearings were scheduled. The hearings took place at least once a month but at certain periods the court held up to five hearings per month. Only some of them were cancelled due to absence of the defence counsels or witnesses.

7. On 30 December 2008 the Gdańsk Regional Court convicted the applicant as charged and sentenced him to ten years' imprisonment. The parties requested the court to have the reasoned judgment delivered to them with a view of lodging an appeal.

8. In January 2009 the presiding judge requested an extension of time for preparation of the reasoned judgment due to the particular complexity of the case. The request was granted and by 30 September 2009 the Gdańsk Regional Court prepared the reasoned judgment and served it on the applicant. The written reasons amounted to 455 pages.

9. The appellate proceedings started on 25 October 2009 when the Gdańsk Court of Appeal received the case-file. The court held a hearing on 25 February 2010.

10. On 2 March 2010 the Gdańsk Court of Appeal upheld the regional court's judgment.

11. On 14 April 2010 the applicant lodged a cassation appeal.

12. At a hearing held on 12 October 2011 the Supreme Court dismissed his cassation appeal.

2. Proceedings under the 2004 Act (case no. II S 10/07)

13. On 8 May 2007 the applicant filed a complaint 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 sądowym bez nieuzasadnionej zwłoki* – "the 2004 Act").

14. On 28 June 2007 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's complaint. It held that the length of the impugned proceedings had not been excessive and that there had been no periods of significant inactivity on the part of the trial court. The Court of Appeal observed that by the day on which the applicant had filed his complaint, forty-one hearings had been scheduled in the case and by the day on which his complaint was examined, the number of hearings had already grown to forty-seven. The court observed that only ten hearings had so far been adjourned and that, usually, this had been due to the non-appearance of the accused or of their counsel. It noted that several hearings had been held with delays due to the failure of defence counsel to appear at the hearings on time. Moreover, as the court observed, only a single hearing had been adjourned because the presiding judge had been on sick leave. Lastly, the court took note of certain difficulties resulting from the fact that one of the co-accused had also been accused in another set of criminal proceedings and remained at the disposal of another investigative authority.

15. Moreover, the Court of Appeal noted that the hearings had been held at relatively short intervals, sometimes each day for the period of several consecutive days. It concluded that the Regional Court had been conducting the proceedings in a diligent manner and that it had scheduled its hearings well ahead of time.

16. Consequently, the Court of Appeal dismissed the complaint and refused to award the applicant any compensation.

B. Relevant domestic law and practice

17. 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.

COMPLAINT

18. The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the criminal proceedings in his case.

THE LAW

19. 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 ...any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

20. The Government contested that argument. They raised a preliminary objection that the applicant had not exhausted domestic remedies available to him under Polish law, as required by Article 35 § 1 of the Convention. They maintained that it had been open to the applicant to lodge a second complaint under the 2004 Act about the delay which occurred after June 2007. However, the Court considers that it is not necessary to examine this issue as the case is anyway inadmissible for the reasons stated below.

21. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see, among many other authorities, Kudła, cited above, § 124).

22. The period to be taken into consideration began on 12 January 2005 and ended on 12 October 2011. It thus lasted six years and nine months for three levels of jurisdiction.

23. The Court considers that the case was complex. It involved charges of organised crime, which inevitably made the task of trying the accused considerably more difficult than in an ordinary criminal case (see *Horych v. Poland*, no. 13621/08, § 115, 17 April 2012). Assessing the authorities' conduct the Court considers that the investigation was conducted without delay. The trial at first instance lasted from 16 June 2005 to 30 December 2008, that is to say, for 3 years and some 6 months (see paragraphs 7 and 9 above). Given that during that time the Regional Court scheduled about 100 hearings, of which only a few were adjourned for valid reasons, the Court considers that the hearings were held at regular intervals and that there were no periods of inactivity (see paragraphs 8 and 14 above).

As regards the appellate stage, the Gdańsk Court of Appeal dealt with the case within four months since it received the case-file from the first-instance court. Although it took the regional court some nine months to prepare the written reasons for its judgment, this period was considered necessary given the complexity of the case.

24. Assessing the length of the criminal proceedings in the applicant's case as a whole, including the period it took the Supreme Court to examine the case on the merits, the Court finds that the proceedings were terminated within a "reasonable time".

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı Deputy Registrar	David Thór Björgvinsson President