

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

FOURTH SECTION

DECISION

Application no. 22857/07
Wojciech ŁAWNICZAK
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 19 May 2007,

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 Wojciech Ławniczak, is a Polish national who was born in 1956 and lives in Warszawa. He was represented before the Court by Ms J. Metelska, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry for Foreign Affairs.

A. The circumstances of the case

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

3. On 27 September 2005 the Warsaw Regional Prosecutor instituted an investigation into fraud and the bribery of Warsaw Municipality employees.

4. On 25 August 2006 in the course of the investigation the applicant's premises were searched. Various documents were seized including 10,000 Polish zlotys (PLN) and 3,100 US dollars (USD).

5. On the same date the applicant was arrested by the police. On 26 August 2006 he was remanded in custody by the Warsaw District Court on suspicion of having facilitated the taking of a bribe by P.B. and B.T., members of the Warsaw municipal council, from an Austrian company planning to construct a hotel in Warsaw. The offence was allegedly committed on an unspecified date between 1996 and 1999. The court relied on the probability that the applicant had committed the crime in question, the risk that he might tamper with evidence and the likelihood of a severe prison sentence being imposed on him.

6. On 27 August 2006 the applicant's lawyer lodged an appeal against this decision. He submitted that the grounds for his arrest had not been determined properly because the exact date of the alleged offence had not been specified; also, the applicant's role in the alleged bribery was not clear.

7. On 5 September 2006 the Warsaw Regional Prosecutor ordered the applicant's assets to be attached by way of an interim measure. In particular he decided to seize 3,100 United States dollars (USD), 10,000 Polish zlotys (PLN) and a Rolex Cellini watch.

8. On 3 October 2006 the Warsaw Regional Court rejected the applicant's lawyer's appeal. It held that there existed a strong probability that the applicant had committed the offence. The court agreed that the exact date of the offence should be specified. However, it also held that the fact that the applicant had facilitated an offence of bribery was sufficiently demonstrated and the applicant's detention was necessary to secure the proper administration of justice.

9. On 15 November 2006 the applicant's lawyer asked the court to change the preventive measure to a more lenient one. He submitted that the applicant's son was ill and needed constant help. The Warsaw Regional Prosecutor refused this request on 23 November 2006. He stressed that there was a strong likelihood that the applicant had committed the offence. In reference to the applicant's argument, the prosecutor noted that the applicant was not the only person able to care for his son as there were other members of the family capable of doing so. In addition, the applicant's son was under permanent medical care.

10. At a session held on 20 November 2006 the Warsaw District Court extended the applicant's detention. During the session the applicant's two lawyers argued that the offence with which he had been charged had not been defined clearly enough. While the court decided to extend the applicant's detention, it nevertheless confirmed that "the offence had been defined rather clumsily".

11. On 24 and 27 November 2006 the applicant's lawyers appealed against the decision to extend his detention. They submitted in particular that the court had again failed to specify the date of the alleged offence, only stating that it had been committed "between 1996 and 1999 in Milan".

12. On 11 December 2006 the Warsaw Regional Prosecutor decided to seize 200 shares in the applicant's company, Ekonova, worth PLN 10,000.

13. On 29 December 2006 the Warsaw Regional Court dismissed the lawyers' appeals and upheld the decision of 20 November 2006. The court agreed with the lawyers' arguments that the offence had not been described clearly enough because the date and the place where it had allegedly been committed had not been clearly specified. It also confirmed that it was crucial to first establish the date of the alleged offence in order to determine whether the Criminal Code of 1969 or 1997 should apply. At the same time, the court emphasised that the charge had not been formulated in general terms since it referred to facts.

14. On 11 January 2007 the applicant's lawyer unsuccessfully asked the prosecutor to impose a more lenient preventive measure on the applicant.

15. During a confrontation held on 26 January 2007 the date on which the alleged offence was committed was finally established.

16. On 2 February 2007, during a search of the applicant's house, the police found twenty-four cartridges for a hunting rifle. On 7 February 2007 the applicant was charged with unlawful possession of firearms. He pleaded guilty to this charge.

17. On 15 February 2007 the Warsaw District Court again extended the applicant's detention. The court referred to the high probability that the applicant had committed the offence and the severe sentence that might be imposed on him.

18. On 27 February 2007 the applicant's lawyer asked for the preventive measure imposed on the applicant to be changed. His request was again dismissed by the Regional Prosecutor on 13 March 2007.

19. On 5 April 2007 the Warsaw Regional Court upheld the decision of 15 February. The court agreed that the District Court had failed to provide full reasoning; however its decision was justified in the circumstances of the case.

20. On 11 May 2007 the Warsaw Prosecutor released the applicant on bail of PLN 100,000. The applicant was also prohibited from leaving Poland.

21. On 25 April 2008 the Warsaw Regional Prosecutor discontinued the proceedings against the applicant in respect of the alleged bribery. The prosecutor held that while it had been established that the applicant had given a significant sum to B.T., it could not be said that he had acted on behalf of the Austrian company.

22. On 5 May 2008 the Warsaw District Prosecutor closed the investigation as regards the illegal possession of firearms.

23. On 19 May 2008 the bill of indictment was filed with the Szczytno District Court.

24. On 6 February 2009 the District Court discontinued the proceedings against the applicant.

25. On 25 May 2009 the Warsaw Regional Court quashed this judgment.

26. On 10 March 2010 the District Court again discontinued the proceedings given that the impugned act represented no danger to society.

27. It appears that the prosecutor appealed against this decision and the proceedings are pending.

B. Relevant domestic law and practice

1. Provisions governing detention pending trial

28. The relevant domestic law and practice concerning the imposition of detention during judicial proceedings (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "preventive measures" (*środki zapobiegawcze*) are set out 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. Provisions on State liability for unlawful detention

29. Chapter 58 of the Code of Criminal Procedure, entitled "Compensation for unjustified conviction, detention during judicial proceedings or arrest", stipulates that the State is liable for wrongful convictions or for unjustifiably depriving an individual of his or her liberty in the course of criminal proceedings against him or her.

Article 552 of the Code of Criminal Procedure provides:

> "1. An accused who, as a result of the reopening of proceedings or an appeal on points of law, has been acquitted or re-sentenced under a more lenient provision, shall be entitled to receive from the State Treasury compensation for the pecuniary and non-pecuniary damage which he has suffered as a result of having served all or part of the sentence unjustifiably imposed on him.

2. The provisions of paragraph 1 shall also be applicable if, after the sentencing judgment has been reversed or declared null and void, the proceedings have been discontinued by reason of material circumstances not duly considered in prior proceedings.

3. A right to compensation for pecuniary and non-pecuniary damage shall also arise if a preventive measure has been applied under the conditions specified in paragraphs 1 and 2.

4. A right to compensation for pecuniary and non-pecuniary damage shall also arise in the event of undoubtedly unjustified (*niewątpliwie niesłuszne*) pre-trial detention or arrest."

COMPLAINTS

30. The applicant alleged that he had been detained in an overcrowded cell, in breach of Article 3 of the Convention.

31. The applicant complained under Article 5 § 1 that his detention pending trial had been unlawful and arbitrary.

32. The applicant alleged under Article 5 § 2 and Article 6 § 3 (a) and (b) that the charges against him had not been clearly specified.

33. He also complained under Article 5 § 3 that the length of his detention during judicial proceedings had been excessive.

34. He further complained under Article 5 § 4 that there had been no effective judicial control of the decisions relating to the extension of his detention.

35. The applicant maintained under Article 5 § 5 that he could not claim compensation for unjustified detention, as the proceedings were still pending.

36. He further submitted under Article 6 § 2 that the principle of the presumption of innocence had been breached in his case.

37. Lastly, the applicant maintained under Article 9 in conjunction with Article 14 of the Convention that the prison authorities had repeatedly refused him the right to participate in Catholic services held in prison.

THE LAW

A. The Government's preliminary objection

38. The Government submitted a preliminary objection that the applicant had failed to exhaust the available domestic remedies. In particular, he had failed to claim compensation for unjustified detention under Article 552 § 4 of the Code of Criminal Procedure. They noted that the criminal proceedings against the applicant concerning the bribery charge had been discontinued on 25 April 2008. Since his detention on remand had been linked to the charge of bribery, the applicant had been entitled to seek compensation for unjustified pre-trial detention as of that date.

39. The Government also submitted that the applicant had failed to appeal against his arrest on 25 August 2006. Lastly, they were of the opinion that he should have lodged a claim for compensation under Articles 23 and 24 of the Civil Code (protection of personal goods).

40. The applicant argued that he had exhausted all available domestic remedies. He had filed several motions to have his detention quashed and lodged several appeals against the detention decisions.

41. The Court reiterates that it has already held that where the applicant's complaint of a violation of Article 5 § 1 of the Convention is mainly based on the alleged unlawfulness of his or her detention under domestic law, and where this detention has come to an end, an action capable of leading to a declaration that it was unlawful and to a consequent award of compensation is an effective remedy which needs to be exhausted if its practicability has been convincingly established (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42).

42. In this respect the Court notes that Polish law provides for a possibility to claim compensation for unjustified detention under Article 552 § 4 of the Code of Criminal Procedure. However, this provision pre-supposes that the criminal proceedings giving rise to detention on remand have been terminated.

43. The Court further reiterates that the issue whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)).

44. The Court observes that the applicant lodged his application with the Court on 19 May 2007, whereas the proceedings in respect of the charges of alleged bribery were discontinued only on 25 April 2008. Consequently, at the time of lodging his application with the Court it was not open to the applicant to claim compensation under Article 552 § 4 of the Code of Criminal Procedure.

45. In so far as the Government argued that the applicant failed to lodge a claim for compensation under Articles 23 and 24 of the Civil Code the Court observes that the Government did not provide any relevant examples from the domestic case-law to substantiate the effectiveness of such an action at the relevant time.

46. Lastly, as regards the Government's allegation that the applicant failed to appeal against his arrest on 25 August 2006, the Court notes that on 27 August 2006 the applicant lodged an appeal against the decision to remand him in custody. The applicant's aim in using this remedy was to obtain a review of his detention and to obtain his release. In the circumstances of the case this remedy was adequate and effective within the meaning of Article 35 of the Convention.

47. Accordingly, the Court concludes that in the particular circumstances of the case the Government's preliminary objection must be dismissed.

B. The applicant's complaints

1. Article 3 of the Convention

48. The applicant complained under Article 3 of the Convention about being detained in an overcrowded cell.

49. The Court observes that the applicant failed to put the substance of his complaint before any domestic authority (see *Łatak v. Poland* (dec.), no. 52070/08, 12 October 2010; *Łomiński v. Poland* no. 33502/09 (dec.), 12 October 2010).

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

2. Article 5 § 1 of the Convention

51. The applicant complained under Article 5 § 1 that his detention on remand was unlawful and arbitrary.

52. The Government submitted that the applicant was deprived of his liberty in accordance with Article 5 § 1. At the time of his arrest, the investigating authorities had gathered considerable evidentiary material. The witnesses' testimonies pointed to the applicant's involvement in bribery, although it was impossible to establish the exact time and place of the incident solely on the basis of the witness statements. Therefore it took the prosecutor some time to specify the charges.

53. The applicant submitted that his arrest was arbitrary. The grounds for it had not been determined. In particular, the exact date and place of the alleged offences had not been specified.

54. The Court reiterates that having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 16, § 32). Moreover, facts which raise a suspicion need not be of the same level of certainty as those necessary to justify a conviction or even the bringing of a charge, which comes at a later stage of the process of criminal investigation (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55).

55. In the present case the prosecution authorities had conducted an investigation since September 2005. At the time of the applicant's arrest they had already gathered considerable evidentiary material including witness testimonies and documents (see paragraphs 3, 4 above). This material was consistent with the requirement of the existence of a reasonable suspicion that the applicant was involved in the bribery of municipal employees (see paragraph 8 above).

56. It follows that the complaint under Article 5 § 1 is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

3. Article 5 § 2 and Article 6 § 3 (a) and (b) of the Convention

57. The applicant complained under Articles 5 § 2 and 6 § 3 (a) and (b) of the Convention that the charges against him were not clearly specified.

58. In this respect the Court observes that on 25 August 2006 the applicant was charged with having facilitated the taking of a bribe by two members of the Warsaw municipal council. Although the exact date of the offence could not be identified at that stage, the courts agreed that the fact the applicant had facilitated bribery had been sufficiently demonstrated.

59. In the Court's opinion, in the present case the applicant had a fairly precise indication of the nature of the suspicions against him and had some idea of what he was suspected (see *Dikme v. Turkey*, no. 20869/92, § 56, ECHR 2000-VIII).

60. It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

4. Article 5 § 3 of the Convention

61. The applicant alleged under Article 5 § 3 that the length of his detention on remand had been excessive.

62. The Court observes that the applicant's detention started on 25 August 2006, when he was arrested and detained on remand and ended on 11 May 2007 when he was released. Accordingly, the period of the applicant's detention amounted to eight months and sixteen days.

63. The Court reiterates 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, have been set out 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 *Bak v. Poland*, no. 7870/04, §§ 56-65, 16 January 2007).

64. Turning to the circumstances of the instant case, the Court notes that the grounds given by the judicial authorities to justify the applicant's continuous detention satisfied the requirement of being "relevant" and "sufficient". It further notes that his detention was reviewed by the courts at regular intervals. The Court accepts that the reasonable suspicion that the applicant had committed serious offences, together with the likelihood of a severe sentence being imposed on him, warranted his detention throughout the whole of the period in question.

65. Having regard to the overall period of the applicant's detention and the investigative measures taken during that time, the Court also finds that the domestic authorities cannot be criticised for any failure to observe "special diligence" in the handling of the applicant's case.

66. In view of the above considerations and in the light of the criteria established in its case-law in similar cases, the Court considers that the applicant's detention does not disclose any appearance of a breach of the "reasonable time" requirement of Article 5 § 3 of the Convention. This complaint is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

5. Article 5 § 4 of the Convention

67. The applicant further complained under Article 5 § 4 that the judicial control of decisions relating to the extension of his detention had not been effective.

68. The Government submitted that the procedure by which the applicant sought to challenge the lawfulness of his pre-trial detention was in conformity with Article 5 § 4 of the Convention. In their opinion all second instance decisions relating to the extension of the applicant's detention met the procedural standards set forth in the Criminal Procedure Code. They stressed that the applicant's concerns about the alleged defects in the charges against him were taken into account.

69. The applicant argued that there was no effective judicial control of the decisions relating to his pre-trial detention. The decisions on imposition and extension of his detention had not identified clearly the charges against him.

70. The Court firstly reiterates that whilst Article 5 § 4 of the Convention does not impose an obligation on the competent courts to address every argument contained in the detainee's submissions, when examining remand appeals they must take into account concrete facts which

are referred to by detainees and which are capable of casting doubt on the existence of those conditions essential for the "lawfulness", for Convention purposes, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

71. Turning to the circumstances of the present case, the Court observes that the lawfulness of the applicant's detention was considered by the domestic courts on a number of occasions at various stages of the proceedings. In his initial applications for release the applicant maintained that the exact date of the offence allegedly committed by him had not been specified. The domestic courts confirmed that the charges had to be specified; nevertheless, they considered that the fact that the applicant had facilitated bribery had been sufficiently demonstrated.

72. In the present case the Court does not consider that the domestic courts treated as irrelevant or disregarded any of the facts invoked by the applicant in his appeals.

73. Consequently, the Court does not find any failure on the part of the authorities to comply with the requirements of Article 5 § 4 of the Convention.

74. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

6. Article 5 § 5 of the Convention

75. The applicant maintained under Article 5 § 5 that he could not obtain compensation for his unjustified detention.

76. In this respect the Court reiterates that Article 5 § 5 is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185 -A). The right to compensation under paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions. Accordingly, the Court cannot consider the applicant's claim under this provision as no breach of Article 5 §§ 1 to 4 has been found in the circumstances of the present case. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

7. Remaining complaints

77. Lastly, the applicant complained under Article 6 § 2 of the Convention alleging a breach of the principle of the presumption of innocence and under Article 9 in conjunction with Article 14 of the

Convention maintaining that he was refused the right to participate in religious services held in prison.

78. Having carefully examined the applicant's remaining complaints in the light of all 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.

79. It follows that this part of the application should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early Registrar	Päivi Hirvelä President