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

FOURTH SECTION

CASE OF A. E. v. POLAND

(Application no. 14480/04)

JUDGMENT

STRASBOURG

31 March 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A. E. v. Poland,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Giovanni Bonello,
Ljiljana Mijović,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi, *judges,*

and Lawrence Early, *Section Registrar,*

Having deliberated in private on 10 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 14480/04) 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 Libyan national, Mr A. E. ("the applicant"), on 5 April 2004. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

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

3. The applicant alleged in particular that there had been violations of Articles 6, 8 and Article 2 of Protocol. No. 4 to the Convention in respect of the length of the proceedings and the prohibition on his leaving Poland.

4. On 24 January 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Warsaw.

A. Criminal proceedings against the applicant

6. On 15 December 1999 the applicant was arrested by the police on suspicion of fraud. The District Court of Suwałki (*Sąd Rejonowy*) remanded him in custody.

7. On 27 March 2000 the applicant was served with a bill of indictment, which comprised charges of attempted fraud and forgery committed with two accomplices.

8. On 10 April 2000 the applicant's detention was extended by the Suwałki District Court until 31 May 2000. The applicant appealed. On 17 May 2000 the Piotrków Trybunalski Regional Court *(Sąd Okręgowy)* dismissed the applicant's appeal. It relied on the reasonable suspicion that the applicant had committed the offences in question. It further considered that as the applicant did not have a permanent address in Poland there was a risk of his absconding or going into hiding. The court also stressed that there was the likelihood that a heavy penalty would be imposed on him.

9. In the meantime, on 8 May 2000 the Suwałki Regional Court transmitted the case to the Tomaszów District Court. On 7 June 2000 the Piotrków Trybunalski Regional Court transmitted the case to the Jaworzno District Court, in the vicinity of which two of the accused resided.

10. On 19 September 2000 the Jaworzno District Court decided to remit the case to the Suwałki District Prosecutor *(Prokuratura Rejonowa)*, finding that there was a need to complete the investigation.

11. On 29 December 2000 the Suwałki District Prosecutor released the applicant on bail. The prosecutor prohibited the applicant from leaving the country, referring to the need to secure the proper conduct of the investigation and to the reasonable suspicion that the applicant had committed the offences in question.

12. On 16 May 2001 the Suwałki District Prosecutor submitted a fresh bill of indictment.

13. The Jaworzno District Court lodged an application with the Katowice Regional Court for the case to be transmitted to the Łódź District Court. On 19 September 2001 the Katowice Regional Court rejected the court's application. It referred to the fact that the case had been transmitted to different courts several times and that this factor had prolonged the proceedings.

14. On 26 February 2002 the Jaworzno District Court stayed the proceedings because one of the co-defendants suffered from mental health problems. They were resumed on 24 January 2003.

15. On 13 October 2005 the Jaworzno District Court sentenced the applicant to one year and six months' imprisonment. The applicant and the prosecutor appealed. However the applicant was not placed in detention.

16. On 13 March 2007 the Katowice Regional Court quashed the judgment and remitted the case to the Jaworzno District Court.

17. In the meantime, on 20 July 2006 the applicant had asked the Jaworzno District Court to waive the prohibition on his leaving the territory of Poland. He submitted that his sister had died and that he wanted to visit his ailing mother.

18. On 23 August 2006 the Katowice Regional Court dismissed his application. The court held that if the prohibition was lifted, there were serious grounds to believe that the applicant would go into hiding, especially since he had informed them that he wished to go to Libya.

19. According to the information available to the Court on the date of the adoption of the present judgment, the proceedings are still pending before the District Court.

B. The applicant's complaints under the 2004 Act

20. On 3 June 2005 the applicant lodged, 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"), a complaint that his right to a fair trial within a reasonable time had been breached. On 29 June 2005 the Katowice Regional Court dismissed the applicant's complaint.

21. On 17 January 2007 the applicant lodged a second complaint under the 2004 Act. The applicant claimed compensation in the amount of 60,000 Polish zlotys (PLN) (approximately EUR 15,000) and the return of security provided for bail.

22. On 21 March 2007 the Katowice Regional Court dismissed the application. The court examined the length of proceedings after 3 June 2005, the date on which he had lodged his first complaint. The court found that during the relevant part of the proceedings there had been no inactivity or undue delay on the part of the domestic courts. In that connection the court held that there had been no breach of the right to a trial within a reasonable time in the period after 3 June 2005.

C. Proceedings concerning the applicant's visa

23. On 3 July 2003 the applicant lodged an application for a visa with the President of the Office for Repatriation and Aliens (*Prezes Urzędu do Spraw Repatriacji i Cudzoziemców*).

24. On 12 November 2003 the President dismissed the application. He relied on the fact that the applicant had been accused of fraud and on the need to secure the proceedings before the national courts. The President submitted that in accordance with section 110 of the Aliens Act of 25 June 1997 (*Ustawa o cudzoziemcach*), while a prohibition on leaving the country was in force the status of a foreigner was legal and there was no need to grant him or her a visa. The applicant appealed.

25. On 27 January 2004 the President of the Office for Repatriation and Aliens dismissed the appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The length of proceedings

26. The relevant domestic law and practice concerning remedies for the excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the 2004 Act, are set out in the Court's decisions in the 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 in its judgment in the case of *Krasuski v. Poland*, (no. 61444/00, §§ 34-46, ECHR 2005-V).

B. Code of Criminal Procedure

27. The 1997 Code defines prohibition on leaving the country (*zakaz opuszczania kraju*) as one of its "preventive measures" (*środki zapobiegawcze*). Those measures are, in addition to prohibition on leaving the country, pre-trial detention (*tymczasowe aresztowanie*), bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), and temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*).

28. Article 277 § 1 of the Code provides, in so far as relevant, as follows:

> "A prohibition on leaving the country may be imposed if there is a reasonable risk that an accused will abscond or go into hiding; this prohibition may be combined with withholding the accused's passport or other travel document or with a prohibition on issuing such a document ..."

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT PART OF THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

29. On 16 July 2008 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* (preliminary objection)

[GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were prepared to accept that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention as a result of the unreasonable length of the criminal proceedings against the applicant. In respect of non-pecuniary damage, the Government proposed to award the applicant PLN 10,000. The Government invited the Court to strike out the application in accordance with Article 37 of the Convention.

30. The applicant did not agree with the Government's proposal and requested the Court to examine the case.

31. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application or part thereof under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75, and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

32. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar cases, bearing in mind the principles which it has developed for determining victim status and for assessing the amount of non-pecuniary compensation to be awarded (*see Cocchiarella v. Italy* [GC], no. 64886/01, §§ 85-107, ECHR 2006-...; *Scordino v. Italy (no.1)* [GC], no. 36813/97, §§ 193-215, ECHR-2006-...; and *Dubjakova v. Slovakia* (dec.), no. 67299/01, 10 October 2004; *Arvanitaki-Roboti and Others v. Greece* [GC], no. 27278/03, §§ 27-32, ECHR 2008-...).

33. On the facts and for the reasons set out above, in particular the low amount of compensation proposed which is substantially less than the Court would award in a similar case, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the length of proceedings complaint (see, *a contrario, Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

34. This being so, the Court rejects the Government's request to strike part of the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case as a whole.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

36. The period to be taken into consideration began on 15 December 1999 and has not yet ended. It has thus lasted over nine years at two levels of jurisdiction.

A. Admissibility

37. 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

38. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

39. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

40. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

41. There has accordingly been a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 2 § 2 OF PROTOCOL No. 4 TO THE CONVENTION

42. The applicant complained that the prohibition on his leaving Poland for more than eight years was a disproportionate limitation on his liberty of movement. The Court notes that this complaint should be examined under Article 2 § 2 of Protocol No. 4 to the Convention, which reads as follows:

> " (...)

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of [this right] other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others...”

A. Admissibility

43. The Court notes 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. The parties' submissions

44. The Government refrained from submitting observations on the admissibility and merits of the complaint.

45. The applicant submitted that due to the travel ban he was unable to visit his ailing sister and mother in Libya. When his sister died he was unable to attend her funeral. The travel ban had been unlawful and had had the effect of imprisoning him for eight years in Poland.

2. The Court's assessment

(a) The general principles

46. The Court reiterates that Article 2 of Protocol No. 4 guarantees to any person a right to liberty of movement, including the right to leave any country for another country to which he or she may be admitted. Any measure restricting that right must be lawful, pursue one of the legitimate aims referred to in the third paragraph of the above-mentioned Convention provision and strike a fair balance between the public interest and the individual's rights (see *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V, and *Riener v. Bulgaria* no. 46343/99, § 109, 23 May 2006).

(b) Application of the principles to the above case

47. The Court firstly observes that the interference was undoubtedly prescribed by law, the travel ban having been based on Article 277 § 1 of the Criminal Procedure Code. It is further satisfied that the interference with the applicant's rights under Article 2 of Protocol No. 4 pursued the

legitimate aim of securing the applicant's availability for trial, and hence the maintenance of public order.

48. As regards the proportionality of the imposed measure, the Court notes that the travel ban was imposed on the applicant on 29 December 2000 (see paragraph 11 above). On that date the applicant's passport was withdrawn and he was prohibited from leaving Poland. The court's subsequent decision of 23 August 2006 at the applicant's request merely referred to the risk of the applicant going into hiding.

49. In this respect the Court reiterates that, even where a restriction on the individual's freedom of movement was initially warranted, maintaining it automatically over a lengthy period of time may become a disproportionate measure, violating the individual's rights (see *Riener*, cited above § 121). In the Court's view, the authorities are not entitled to maintain over lengthy periods restrictions on the individual's freedom of movement without a periodic reassessment of their justification (see *Riener*, cited above, § 124). However, in the present case such a reassessment took place only once, at the applicant's request, which would indicate that the travel ban was in reality an automatic, blanket measure of indefinite duration. The Court considers that this ran counter to the authorities' duty under Article 2 of Protocol No. 4 to take appropriate care to ensure that any interference with the applicant's right to leave Poland remained justified and proportionate throughout its duration.

50. It follows that there has been a violation of the applicant's right, as guaranteed by Article 2 § 2 of Protocol No. 4.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

51. The applicant complained under Article 8 that the criminal proceedings against him had adversely affected his private life, particularly in that he had been denied the possibility to leave Poland in order to visit his ailing mother and attend the funeral of his sister. That provision reads, in so far as relevant:

> "1. Everyone has the right to respect for his private and 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."

52. The Court observes that this complaint is linked to the one under Article 2 § 2 of Protocol No. 4 to the Convention and must therefore likewise be declared admissible.

53. The Court has examined above, under Article 2 of Protocol No. 4 to the Convention, the applicant's complaint that the prohibition on leaving Poland was a disproportionate measure which affected him adversely.

54. Having regard to the finding relating to Article 2 of Protocol No. 4 (see paragraph 49 above), the Court considers that it is not necessary to examine whether there has been a violation of Article 8 in this case (see, *Riener* cited above § 134).

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

55. The applicant also complained under Article 13 that he had no effective domestic remedy in respect of the protracted length of proceedings. Article 13 reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

56. The Court had already dealt with this issue in previous cases. In particular it has held that the expression "effective remedy" used in Article 13 cannot be interpreted as a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (see *Figiel v. Poland (no. 2)*, no. 38206/05, § 33, 16 September 2008).

57. The fact that in the present case the applicant's claim for just satisfaction failed for Convention purposes does not in itself render the remedy under the 2004 Act incompatible with Article 13.

58. In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant's right to an effective remedy under Article 13 of the Convention has not been respected.

59. 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.

VI. ALLEGED VIOLATION OF ARTICLES 2, 3, 5 § 3 AND 14 OF THE CONVENTION

60. The applicant further complained under Articles 2, 3 and 14 about the conditions of his detention and that he had not had proper medical treatment during his detention pending trial. Lastly, he complained about the length of his detention pending trial under Article 5 § 3 of the Convention.

61. The Court observes that the applicant was released from detention on 29 December 2000, thus more than six months before the date on which he submitted his application to the Court.

62. It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

64. The applicant claimed 345,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

65. The Government contested these claims.

66. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant also claimed EUR 15,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

68. The Government contested this claim.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 150 for the proceedings before the Court.

C. Default interest

70. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 6 § 1, Article 8 of the Convention and Article 2 § 2 of Protocol No. 4 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 2 § 2 of Protocol No. 4 to the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 8 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 150 (one hundred and fifty euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President