



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

FOURTH SECTION

CASE OF ŚCIEBURA v. POLAND

(Application no. 39412/08)

JUDGMENT

STRASBOURG

15 February 2011

FINAL

15/05/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ściebura v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi,

Vincent A. de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 39412/08) 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 Polish national, Mr Zbigniew Ściebura (“the applicant”), on 4 August 2008.

2. The applicant was represented by Mr M. Burda, a lawyer practising in Cracow. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his detention on remand in exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention, which amounted to interference with his private and family life.

4. On 12 October 2009 the President of the Fourth Section of the Court decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Cracow.

6. On 14 January 1999 criminal charges were brought against the applicant. He was suspected of armed robberies, committed in an organised criminal group. The applicant was in hiding at the material time.

7. On 29 January 1999 an arrest warrant was issued against the applicant by the Polish authorities. After having been unsuccessfully sought for many

months, he was eventually detained in Spain on 23 October 2001 and remanded in custody.

8. Subsequently, action was taken with a view to the applicant's extradition and on 21 October 2002, the Spanish authorities handed him over to Poland.

9. On 24 October 2002 the Katowice District Court ordered that the applicant remain in custody, relying on the reasonable suspicion that he had committed the offences in question. The court considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings, given the risk that he might tamper with evidence and induce witnesses to give false testimony or go underground again (he had earlier been in hiding in Spain). It further stressed the severity of the anticipated penalty and the fact that the applicant had been acting in an organised criminal group.

10. The applicant's appeal against the detention order was dismissed by the Katowice Regional Court on 23 December 2002. Likewise, his further appeals against decisions prolonging his detention and all his subsequent, numerous applications for release and appeals against refusals to release him were unsuccessful. In his applications and appeals he relied on his personal circumstances, in particular his poor health, stressing that he had been infected with an HCV virus.

11. In the course of the investigation, the applicant's detention was prolonged on several occasions, namely by the Katowice Regional Court's decisions of 16 January, 20 March and 8 September 2003, 16 January and 20 September 2004, 14 January, 6 June and 14 November 2005, 24 April and 20 October 2006 and the Katowice Court of Appeal's decisions of 8 August 2007 and 6 February 2008. In all their detention decisions the authorities repeatedly relied on the original grounds given for the applicant's detention. In addition, they stressed the existence of a strong suspicion that the applicant had committed the offences in question, which was supported by an extensive body of evidence from witnesses and experts. Further, they attached importance to the grave nature of the charges against him and the fact that a "wanted" notice had been issued for his arrest.

12. On 3 March 2003 the Regional Prosecutor filed a bill of indictment with the Częstochowa Regional Court. The applicant was charged with *inter alia* numerous counts of armed robberies committed in an organised criminal group.

13. On 27 March 2003 the Częstochowa Regional Court requested the Supreme Court that the case be transferred to the Katowice Regional Court. The court stressed the special nature of the case, which implied that exceptional security measures be taken and special facilities provided. On 14 May 2003 the Supreme Court granted the request.

14. Between 18 November 2002 and 16 September 2005 the applicant served a prison sentence imposed in another set of criminal proceedings (on the strength of the Cracow District Court's judgment of 23 February 1998).

15. On 14 April 2008 the Katowice Regional Court granted the applicant's request to be released on bail. On 16 April 2008 the applicant was released as he had paid bail of 350,000 Polish zlotys (PLN).

16. It appears that the criminal proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called “preventive measures” (*środki zapobiegawcze*) are stated in the Court's judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

18. The applicant complained that the length of his detention on remand had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

19. The Government contested that argument.

A. Admissibility

20. 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

1. Period to be taken into consideration

21. The applicant's detention in Poland started on 24 October 2002 on the strength of a court's order. It continued until 16 April 2008 when he was eventually released on bail.

22. However, between 18 November 2002 and 16 September 2005 the applicant served a prison sentence which had been imposed on him in another set of criminal proceedings. This term, as being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's detention for the purposes of Article 5 § 3.

Accordingly, the period to be taken into consideration amounts to some two years and eight months.

2. The parties' submissions

(a) The Government

23. The Government submitted at the outset that the overall length of the applicant's detention was justified, having regard to the special nature and complexity of the case, entailing extensive evidentiary proceedings. In this connection they stressed, in particular, that the case concerned organised crime. In cases of this kind continuous control and limitation of contacts of the accused among themselves and with other persons were essential to avoid absconding, tampering with evidence or influencing witnesses' testimonies. Accordingly, longer periods of detention were justified. Further, the Government stressed the gravity of the charges brought against the applicant and the existence of a strong likelihood that he had committed the offences he had been charged with. Lastly, they maintained that it should not be overlooked that the applicant had been in hiding and sought pursuant to an arrest warrant before being eventually detained.

(b) The applicant

24. The applicant submitted that the court examined his case without due diligence. Further, he stressed that the reasons given initially to substantiate his detention were no longer sufficient to justify the continuous application of the measure after the lapse of a certain period of time. Lastly, the applicant maintained that the period during which he had been serving a prison sentence should not be deducted from the overall period of his detention on remand. He alleged that because he was continuously detained throughout that period he was unable to enjoy the privileges he would have had as a regular prisoner, *inter alia* he could not study and had no access to

an external telephone line; nor was he allowed intimate contacts with his wife.

3. *The Court's assessment*

(a) General principles

25. The Court recalls 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 were stated 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 *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

(b) Application of the above principles in the present case

26. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the serious nature of the offences with which he had been charged; (2) the severity of the penalty to which he was liable; (3) the need to secure the proper conduct of the proceedings, given the risk that he might tamper with evidence or go into hiding. As regards the latter, the authorities stressed that the applicant prior to his detention had been sought pursuant to a “wanted notice”.

27. The applicant was charged with numerous counts of armed robbery committed in an organised criminal group (see paragraphs 6 and 12 above).

In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bąk v. Poland*, no. 7870/04, § 57, 16 January 2007).

28. The Court accepts that the reasonable suspicion against the applicant of having committed a serious offence could initially warrant his detention. Also, the need to obtain voluminous evidence and to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the applicant's initial detention.

29. Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings often is, by the nature of things, high (see, *Gładczak v. Poland*, no. 14255/02, § 55, 31 May 2007). Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption to that effect. It was therefore reasonable for the court to consider that the applicant was under considerable temptation to evade trial, especially in view of the heavy prison sentence to

which he was liable. However, the Court reiterates that the gravity of the charges or the penalty cannot by itself justify long periods of detention on remand (see *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

Hence the Court has to examine whether other valid reasons were provided by the domestic courts to justify a prolonged deprivation of the applicant's liberty.

30. As regards the risk of absconding the Court notes that the applicant was in hiding in Spain and had been sought pursuant to an arrest warrant prior to being extradited to Poland (see paragraphs 6-9 and 11 above). This constituted an aggravating circumstance supporting the courts' decisions further extending his detention on remand, as the risk of his re-absconding was exceptionally high. This, in the Court's view, could be a factor justifying a relatively long period of detention. The domestic courts cannot be reproached for harbouring grave concerns that the applicant would, if released again, go into hiding. In view of the above, the Court is persuaded that the danger of absconding constituted, in the particular circumstances of the present case, a relevant and sufficient ground for refusing the applicant's applications for release (see, *mutatis mutandis*, *Van der Tang v. Spain*, judgment quoted above, pp. 19-20, §§ 64-67).

31. Having regard to the foregoing considerations and taking into account the fact that the courts were faced with the particularly difficult task of trying the case involving an organised criminal group, the Court concludes that the grounds given by the domestic authorities could justify the entire relevant period.

32. It remains for the Court to ascertain whether the authorities, in dealing with the applicant's case, displayed the diligence required under Article 5 § 3 (see, *McKay*, cited above, § 44). In this regard, it would observe that following the already lengthy investigation pending as of 14 January 1999, the trial started as late as 3 March 2003, the applicant remaining in hiding being a significant reason for that. Furthermore, the Court notes the difficulties entailed in trying a case of an organised criminal group which were also confirmed by a number of relevant factors such as the exceptional security measures taken and the special facilities provided (see paragraph 13 above).

33. In the circumstances, the Court finds that the authorities displayed "due diligence" in handling the applicant's case.

34. 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.

35. There has accordingly been no violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. Lastly, the applicant complained in very general terms that his prolonged confinement amounted to a violation of his right to respect for his private and family life protected under Article 8 of the Convention, which, in so far as relevant, provides as follows:

“ Everyone has the right to respect for his private and family life (....)”

37. The Court considers that the applicant has failed to substantiate his complaint.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 15 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President