



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

THIRD SECTION

CASE OF PASZKOWSKI v. POLAND

(Application no. 42643/98)

JUDGMENT

STRASBOURG

28 October 2004

FINAL

28/01/2005

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 Paszkowski v. Poland,

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

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr R. TÜRMEK,

Mr B. ZUPANČIČ,

Mrs H.S. GREVE,

Mr K. TRAJA,

Mr L. GARLICKI, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 8 January and 7 October 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 42643/98) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Krzysztof Paszkowski (“the applicant”), on 11 September 1997.

2. The Polish Government (“the Government”) were represented by their Agents, Mr K. Drzewicki and Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that that his pre-trial detention had been inordinately lengthy.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

7. By a decision of 8 January 2004 the Court declared the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1966 and lives in Gdańsk, Poland.

9. On 24 August 1994 the applicant was arrested on suspicion of extorting protection money from an escort agency. Subsequently, eleven other persons were charged and remanded in custody in connection with the investigation against the applicant.

10. In the course of the investigation the applicant's detention was several times prolonged by the Gdańsk Regional Prosecutor (*Prokurator Wojewódzki*) and the Gdańsk Regional Court (*Sąd Wojewódzki*). The prosecution authorities also obtained two expert reports concerning the applicant's mental health.

11. On 27 June 1995 the Gdańsk Regional Prosecutor (*Prokurator Wojewódzki*) lodged a bill of indictment with the Gdańsk Regional Court (*Sąd Wojewódzki*). The applicant was indicted together with eleven other persons on charges of robbery and extortion. The prosecution asked the court to hear evidence from 106 witnesses.

12. On 26 July 1995 the applicant lodged an application for release. He submitted that his wife had been placed in a mental hospital and that their daughter had been left without care. On 18 August 1995 the Gdańsk Regional Court upheld the detention order. The court held that, given the number of suspects involved in the case and the serious nature of the offence in question, keeping the applicant in custody was necessary to ensure that the process of obtaining evidence followed its proper course. On 6 September 1995 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's further appeal.

13. On 30 April 1996 the applicant made an application for release. It was rejected by the Gdańsk Regional Court on 14 May 1996. The court held that keeping the applicant in custody had been necessary to ensure the proper conduct of the proceedings. On 12 June 1996, on an appeal by the applicant, the Gdańsk Court of Appeal upheld this decision. The court found that the applicant's family situation did not militate against his continuing detention and that there were no grounds on which to release the applicant, as defined in Article 218 of the Code of Criminal Procedure. Furthermore, it also underlined the gravity of charges brought against the applicant.

14. On 4 December 1996 the applicant made yet another application for release. It was rejected by the Gdańsk Regional Court on 10 December 1996 as the applicant failed to submit any new arguments which would justify his release.

15. On 30 December 1996 the Gdańsk Regional Court asked the Supreme Court (*Sąd Najwyższy*) to prolong the applicant's detention. On

16 January 1997 the Supreme Court granted the application and prolonged his and eight other co-accused' detention until 30 June 1997.

16. On 6 June 1997 the applicant made yet another unsuccessful application for release from detention.

17. On 26 June 1997 the Gdańsk Regional Court lodged a request under Article 222 § 4 of the Code of Criminal Procedure with the Supreme Court, asking it to prolong the applicant's detention for a further period of six months. On 13 August 1997 the Supreme Court extended the applicant's detention until 1 December 1997, considering that it was necessary to ensure the proper conduct of the proceedings. The court stressed that the case was particularly complex as it concerned several co-accused. Furthermore, it observed that the trial court still had to hear evidence from 50 witnesses.

18. On 26 September 1996 the composition of the trial court had to be changed due to the presiding judge's illness.

19. Between October and December 1997 the trial court on four occasions allowed the applicant's family to visit him in prison.

20. On 25 November 1997 the Gdańsk Regional Court again asked the Supreme Court to prolong the applicant's detention. On 19 December 1997 the Supreme Court decided to extend the applicant's detention until 30 April 1998. It considered that even though the proceedings had been lengthy, the trial court could not be held responsible for the delay. The composition of the trial court had to be changed due to the presiding judge's illness. Moreover, some of the accused contributed to the length of the proceedings by lodging numerous motions with the court. The Supreme Court also referred to the complexity of the case, the fact that it involved several accused and the large number of witnesses.

21. In January, February, March 1998 the applicant's family was allowed, on five occasions, to visit him in prison.

22. On 30 April 1998 the Gdańsk Regional Court released the applicant under police supervision. The court held that the detention had already been prolonged three times by the Supreme Court but to no avail, as the proceedings had still not been terminated. In the court's opinion, any prolongation of his further detention on remand would be tantamount to serving a prison sentence.

23. Before 30 April 1998 the trial court listed 31 hearings, of which 17 were cancelled or adjourned.

24. On 22 October 2002 the Regional Court gave judgment. It sentenced the applicant to four years' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. At the material time the rules governing detention on remand were contained in Chapter 24 of the Law of 19 April 1969 "Code of Criminal

Procedure” (*Kodeks postępowania karnego*) (“the Code”) entitled “Preventive measures” (*Środki zapobiegawcze*). The Code is no longer in force. It was repealed and replaced by the Law of 6 June 1997 (commonly referred to as the “New Code of Criminal Procedure”), which entered into force on 1 September 1998. The Code listed as “preventive measures”, *inter alia*, detention on remand, bail and police supervision.

26. Article 209 set out the general grounds justifying imposition of the preventive measures. That provision read:

“Preventive measures may be imposed in order to ensure the proper conduct of proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence.”

27. Article 217 § 1 defined grounds for detention on remand. The relevant part of this provision, in the version applicable until 1 January 1996, provided:

“1. Detention on remand may be imposed if:

(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when he has no fixed residence [in Poland] or his identity cannot be established; or

(2) there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means; or

(3) an accused has been charged with a serious offence or has relapsed into crime in the manner defined in the Criminal Code; or

(4) an accused has been charged with an offence which creates a serious danger to society....”

28. On 1 January 1996 sub-paragraphs 3 and 4 of Article 217 § 1 were repealed and the whole provision was redrafted. From that date onwards the relevant sub-paragraphs read:

“(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or he has no permanent abode [in Poland]; or

(2) [as it stood before 1 January 1996].”

Paragraph 2 of Article 217 provided:

“If an accused has been charged with a serious offence or an intentional offence [for the commission of which he may be] liable to a sentence of a statutory maximum of at least eight years’ imprisonment, or if a court of first instance has sentenced him to at least three years’ imprisonment, the need to continue detention in order to secure the proper conduct of proceedings may be based upon the likelihood that a heavy penalty will be imposed.”

29. The Code set out the margin of discretion in maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the precept that detention on remand was the most extreme preventive measure and that it should not be imposed if more lenient measures were adequate.

THE LAW

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

30. The applicant complained under Article 5 § 3 of the Convention that his pre-trial detention had lasted too long. That provision reads, in so far as relevant:

“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.”

A. The parties' submissions

1. The applicant

31. The applicant argued that the period of 3 years and 8 months that he had spent in detention was not compatible with the “reasonable time” requirement.

32. He claimed that one of the reasons for keeping him in detention given by the courts was that he could have interfered with the process of obtaining evidence. However, after 30 April 1998, i.e. the date on which he had been released from detention, the trial court continued to hear evidence from witnesses. In the applicant's opinion this fact confirmed that he could have been released earlier.

33. The applicant further maintained that the authorities had failed to act with due diligence. He stressed that the first-instance proceedings lasted more than 7 years. In his view, the time that he had spent in detention while the trial court had gathered evidence was too lengthy.

34. In sum, the applicant asked the Court to find a violation of Article 5 § 3 of the Convention.

2. The Government

35. The Government submitted that the period of the applicant's detention falling within the scope of Article 5 § 3 lasted from

24 August 1994 to 30 April 1998. However, in their opinion, there had been valid reasons for holding the applicant in custody. First of all, the applicant's detention had been subject to a frequent review of the domestic courts. The courts had examined his applications for release diligently and had given detailed reasons. Also the courts had on several occasions allowed the applicant's family to visit him in prison. Secondly, given the complexity of the issues involved and, in particular, the number of witnesses and co-accused involved in the proceedings, the authorities had shown due diligence in dealing with the case.

36. Moreover, there had been a reasonable suspicion based on voluminous evidence that the applicant had committed the offences with which he had been charged. There had been further a sufficient basis to believe that, had the applicant been released, he might have obstructed the process of obtaining evidence.

37. In conclusion, the Government maintained that there had been no breach of Article 5 § 3.

B. The Court's assessment

1. Period to be taken into consideration

38. The Court observes that the period of the applicant's detention to be considered under Article 5 § 3 started on 24 August 1994 when the applicant was arrested and ended on 30 April 1998 when he was released pending trial (see paragraphs 9 and 22 above). It accordingly lasted 3 years, 8 months and 6 days.

2. Reasonableness of the period in question

(a) General principles

39. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

40. Under Article 5 § 3 the national judicial authorities must ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for a departure

from the rule in Article 5 and must set them out in their decisions on the applications for release.

41. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (see, for instance, *Jablonski v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

42. The authorities gave several grounds for the applicant’s detention. Firstly, they relied on a reasonable suspicion that he had committed the serious offence with which he had been charged. Secondly, they added that given the number of suspects, the applicant should have been kept in custody in order to ensure that the process of obtaining evidence followed its proper course (see paragraphs 12, 13 and 17 above).

43. The Court agrees that the suspicion against the applicant of having committed the serious offence could have initially warranted his detention. It also accepts that the need to ensure the proper conduct of the proceedings justified keeping him in custody at least as long as most of the evidence from the witnesses had been taken.

44. However, with the passage of time those grounds inevitably became less and less relevant. Nevertheless, when rejecting the applicant’s requests for release the domestic courts still relied on the same reasons (see paragraphs 12, 17 and 20).

45. In this respect it should be noted that during the entire period of the applicant’s pre-trial detention, the authorities did not envisage the possibility of imposing on the applicant other measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

46. In that context, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that provision proclaims not only the right to “trial within a reasonable time or to release pending trial” but also lays down that “release may be conditioned by guarantees to appear for trial” (see the *Jablonski* judgment cited above, § 83).

47. Furthermore, it appears that the applicant’s prolonged detention no longer served the purpose of securing the proper course of the proceedings. Holding him in custody does not seem to have helped the Gdańsk Regional Court to proceed with obtaining evidence as following the applicant’s

release the trial court continued to take evidence from witnesses (see paragraph 31 above). On 19 December 1997 the Supreme Court admitted that the proceedings had been lengthy, despite the fact that it prolonged the applicant's detention for a further period of 4 months (see paragraph 20 above).

48. Lastly, the Court observes that the applicant was sentenced to four years' imprisonment, and therefore, it appears that the time spent in detention before his conviction was very close to the term of imprisonment actually imposed.

49. In the circumstances, the Court concludes that the grounds stated in the impugned decisions were not sufficient to justify the applicant being kept in detention for 3 years, 8 months and 6 days.

50. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed a sum of EUR 100,000 for non-pecuniary damage.

53. The Government averred that the applicant's claim was inordinate. They asked the Court to rule that a finding of a violation of the Convention constituted in itself sufficient just satisfaction. Alternatively, the Government requested that the award be made on the basis of case-law in similar cases and with reference to domestic economic conditions.

54. The Court considers that, the applicant suffered non-pecuniary damage, such as distress resulting from the protracted length of his detention, which is not sufficiently compensated by the finding of violation of the Convention. In the circumstances of this particular case and deciding on an equitable basis, it awards the applicant EUR 3,500 under the head of non-pecuniary damage.

B. Costs and expenses

55. The applicant did not make any claim under this head.

C. Default interest

56. 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. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of the settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President