



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

SECOND SECTION

**CASE OF CHODECKI v. POLAND**

*(Application no. 49929/99)*

JUDGMENT

STRASBOURG

26 April 2005

**FINAL**

***26/07/2005***

*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 Chodecki v. Poland,**

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr L. GARLICKI,

Ms D. JOČIENĚ, *judges*,

Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 31 March 2005,

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

**PROCEDURE**

1. The case originated in an application (no. 49929/99) 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, Wiesław Chodecki (“the applicant”), on 10 August 1998.

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

3. On 9 October 2003 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant’s detention on remand to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Sosnowiec.

6. On 12 June 1994 he was arrested on suspicion of murdering his common-law wife.

7. On 13 June 1994 the Sosnowiec District Prosecutor (*Prokurator Rejonowy*) charged the applicant with homicide and remanded him in custody until 12 August 1994 in connection with the investigation against him. The prosecutor considered that, given 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 the same day the prosecutor ordered an autopsy.

8. On 23 June 1994 the applicant appealed and requested his release.

9. On 24 June and 4 July 1994 the prosecutor ordered expert opinions. On 6 July 1994 the prosecutor ordered a reconstitution of the events which had taken place on the day of the death.

10. On 11 July 1994 the Katowice Regional Court (*Sąd Wojewódzki*) dismissed the applicant's appeal of 23 June 1994. It found the same justification for the applicant's detention: the reasonable suspicion against him, the serious nature of the offence in question and the fear that the applicant might tamper with the evidence.

11. On 28 July 1994 the Sosnowiec District Prosecutor prolonged the applicant's detention until 12 September 1994.

12. On 29 July 1994 the Sosnowiec District Court ordered that two psychiatric reports be obtained in order to establish the applicant's criminal responsibility.

13. On 27 and 28 August 1994 the prosecutor ordered that two other medical reports be obtained.

14. On 5 September 1994 the Katowice Regional Court prolonged the applicant's detention on remand until 30 October 1994, relying on the existence of a reasonable suspicion that he had committed the offence in question. The court referred also to the fact that two expert reports had to be prepared. They were submitted to the court on 9 September and 24 October 1994.

15. On 24 October 1994 the applicant obtained access to the case-file.

16. On 28 October 1994 the District Prosecutor submitted the bill of indictment to the Regional Court. The prosecutor asked the court to hear evidence from 38 witnesses.

17. The trial court held hearings on 12 January, 16 March, 21 March, 28 March, 1 June, 8 June, 20 June, 12 October and 12 December 1995, as well as on 28 March 1996.

18. On 28 March 1996 the Katowice Regional Court gave judgment. The court convicted the applicant as charged, and sentenced him to twelve years' imprisonment.

19. On 30 May 1996 the applicant appealed.

20. On 13 August 1996 the Katowice Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case for re-examination. It pointed out that the conviction was based on circumstantial evidence and that certain facts required further clarification.

21. In the course of the retrial, the Regional Court held hearings on 10 December 1996, 27 February, 28 February, 26 March, 30 April, 8 May and 28 October 1997, as well as on 14 and 22 January 1998. The hearing scheduled for 17 February 1998 was adjourned.

22. At the hearings of 30 April 1997, 28 October 1997 and 17 February 1998 the applicant's counsel applied for his release, but to no avail.

23. On 1 June 1998 the court prolonged the applicant's detention until 30 November 1998. It made reference to the reasonableness of the suspicion that he had committed the offence in question. The court stressed the serious nature of that offence and the necessity to consider further evidence.

24. On 10 June 1998 the applicant's lawyer appealed against that decision. He contested the reasonableness of the charge against his client, maintaining that it was solely based on presumptive evidence. He also submitted that the applicant's prolonged detention no longer served the purpose of securing the proper course of the proceedings since all necessary evidence had been obtained by the courts.

25. On 24 June 1998 the Katowice Court of Appeal dismissed both appeals. It pointed out that the principle referred to by the applicant, whereby detention exceeding two years could be prolonged only by the Supreme Court, did not apply to his case. The court observed that that principle concerned only the proceedings before the trial court and it was no longer valid once that court had delivered its judgment, even if the judgment was subsequently quashed by the appellate court.

26. On 30 July 1998 the applicant appealed against this decision.

27. On 3 August 1998 the Katowice Court of Appeal informed the applicant that no appeal lay against a decision given by an appellate court.

28. On 24 September 1998 the Katowice Regional Court gave judgment. It again convicted the applicant of homicide and sentenced him to ten years' imprisonment. The court deducted from the sentence the period spent by the applicant in detention.

29. On 26 November 1998 the applicant's lawyer appealed.

30. On 27 November 1998 the Katowice Regional Court prolonged the applicant's detention on remand until 29 January 1999 in view of the applicant's conviction and sentence the month before.

31. On 8 December 1998 the applicant challenged that decision before a court which did not have the necessary jurisdiction. Accordingly, on

11 January 1999 the matter was transferred to the Katowice Court of Appeal, which on 25 February 1999 dismissed both of his appeals.

32. On 26 April 1999 the applicant's lawyer lodged a cassation appeal with the Supreme Court concerning the conviction and sentence.

33. On 6 March 2000 the Supreme Court dismissed that appeal.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

34. 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.

35. Article 209 set out the general grounds justifying the imposition of preventive measures, as follows:

"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."

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

"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..."

37. 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.”

38. The Code envisaged a 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.

39. On 4 August 1996 an amendment to the Code of Criminal Procedure entered into force, according to which time-limits for detention on remand were introduced.

40. From that date onwards, Article 222 of the Code read, in so far as relevant, as follows:

” 3. The whole period of detention on remand until the date on which the court of first instance gives judgment may not exceed one year and six months in cases concerning ordinary offences. In cases concerning serious offences this period may not exceed two years.

4. In particularly justified cases, the Supreme Court may, upon the request of the court competent to deal with the case ... prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a suspension of the proceedings, a prolonged psychiatric observation of the accused, when evidence needs to be obtained from abroad or when the accused has deliberately obstructed the termination of the proceedings within the time-limits referred to in paragraph 3.”

41. Article 263 of the 1997 Code provides, in so far as relevant:

“3. The length of detention on remand until the delivery of a first judgment by the trial court shall not exceed two years.

4. Detention on remand may be prolonged for a fixed period exceeding the periods provided for in paragraphs 2 and 3 only by the Supreme Court at the request of the court dealing with a case ... – if it is necessary because of the suspension of criminal proceedings, the prolonged psychiatric observation of an accused, the prolonged preparation of an expert opinion, the collection of evidence in a particularly complicated case or abroad, a delay in the proceedings caused by an accused, as well as other obstacles which could not be overcome.”

## THE LAW

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

42. The applicant complained that the unreasonable length of his detention on remand was in breach of Article 5 § 3 of the Convention, which 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.”

43. The Government contested that argument.

#### **A. Admissibility**

44. 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. The Government's submissions*

45. The Government submitted that the period of the applicant's detention falling within the scope of Article 5 § 3 of lasted 3 years, 10 months and 27 days. However, in their opinion, keeping him in custody was justified for the entire period. First of all, there had been a reasonable suspicion based on evidence that the applicant had committed homicide, for which he had been charged. There was also a considerable risk of criminal collusion because several witnesses from the applicant's close environment had to be heard during the investigation. Therefore, the authorities conducting the case had to prevent the applicant from interfering with the process of obtaining evidence.

46. Secondly, given the complexity of the issues involved, in particular the number of witnesses and expert opinions ordered during the proceeding, the authorities had shown due diligence in dealing with the case.

47. Finally, the applicant's detention had been subject to frequent review by the domestic courts. The courts had examined his applications for release diligently and had given detailed reasons.

## 2. *The applicant's submissions*

48. The applicant generally disagreed with the Government's submissions.

49. He argued that the period of 3 years, 10 months and 27 days he had spent in detention was not compatible with the "reasonable time" requirement.

50. He claimed that one of the reasons for keeping him in custody given by the courts had been the alleged risk that he could have interfered with the process of hearing evidence from witnesses. However, the court had only heard evidence from witnesses during the investigation in 1994 and not thereafter. In the applicant's opinion, this fact confirmed that he could have been released much earlier.

## 3. *The Court's assessment*

### I. *Period to be taken into consideration*

51. The Court notes that the applicant was remanded in custody on 12 June 1994. On 28 March 1996 the trial court convicted him of homicide. As from that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (cf. *Český v. the Czech Republic*, no. 33644/96, § 71, 6 June 2000). On 13 August 1996 the Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 24 September 1998, when the trial court again convicted the applicant. Consequently, the period to be taken under consideration lasted nearly 3 years and 11 months.

### II. *Reasonableness of the period in question*

#### a) *General principles*

52. 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).

53. 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.

54. 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, *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

55. 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. They added that the applicant should be kept in custody in order to ensure that the process of obtaining evidence followed its proper course (see paragraphs 7, 14 and 23 above).

56. 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 not been taken.

57. However, with the passage of time, those grounds inevitably became less relevant. Nevertheless, when rejecting the applicant’s requests for release, the domestic courts still relied on the same reasons (see paragraphs 10 and 23 above).

58. 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 (see paragraphs 34-38 above).

59. 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 *Jabłoński* judgment cited above, § 83).

60. Furthermore, it appears that the authorities referred to the risk of collusion in the very general manner and without indicating how his release would upset the course of the proceedings. The Katowice Regional Court heard evidence from witnesses only during the investigation in 1994 and not later on. Therefore, the applicant's prolonged detention no longer served the purpose of securing the proper course of the proceedings.

61. 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 on remand for nearly 3 years and 11 months.

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

## II. 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 submitted that the length of his detention put a severe strain on him. However, he was not able to either quantify the pecuniary damage or even supply any documents confirming the costs and expenses incurred during the proceedings. He asked the Court to make the relevant assessment in the light of its case-law.

65. The Government did not comment on the applicant's claim.

66. The Court accepts that the applicant may have suffered some non-pecuniary damage as a result of the protracted remand period, 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 1,000 under the head of non-pecuniary damage.

**B. Costs and expenses**

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

**C. Default interest**

68. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *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 1,000 (one thousand 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;

Done in English, and notified in writing on 26 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH  
Deputy Registrar

J.-P. COSTA  
President