



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

FOURTH SECTION

CASE OF W.B. v. POLAND

(Application no. 34090/96)

JUDGMENT

STRASBOURG

10 January 2006

FINAL

10/04/2006

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 W.B. v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 8 December 2005,

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

PROCEDURE

1. The case originated in an application (no. 34090/96) 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 W.B.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and, subsequently, by Mr Jakub Wołasiwicz.

3. The applicant alleged, in particular, that after his arrest he was not brought promptly before "judge or an officer authorised by law to exercise judicial power", as required by Article 5 § 3 of the Convention. He further complained, invoking also Article 5 § 3 of the Convention, about the length of his detention on remand. He was represented before the Court by Mr W. Hermeliński, a lawyer practising in Warsaw.

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). 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).

5. The application was allocated to the Fourth 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 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

7. By a decision of 5 April 2005 the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1967 and lives in Dębica.

9. On 10 October 1995 the applicant and other suspects were arrested on suspicion of assault and inflicting torture. On 11 October 1995 the applicant was remanded in custody by the Tarnów District Prosecutor, who referred to the strong probability of his guilt, the gravity of the charges against him and the high risk of his hindering the proper conduct of the proceedings by exerting pressure on witnesses. His detention was ordered for a period of three months. On the same day the applicant lodged an appeal against the detention order, questioning the credibility of the evidence of the victims of the alleged assault and claiming that he was innocent. He also referred to the difficult situation of his family.

10. On 12 October 1995 the applicant requested the Tarnów Regional Prosecutor to order his release. On 20 October 1995 the Tarnów Regional Court dismissed this request. It considered that the victims of the assault had given evidence pointing to the applicant's guilt. It referred to the serious nature of the charges and expressed the view that his case did not disclose any of the grounds provided by Article 218 of the Code of Criminal Procedure for challenging the lawfulness of his detention.

11. On 24 October 1995 the Tarnów Regional Court dismissed the applicant's appeal of 11 October 1995, referring to its decision of 20 October 1995.

12. On 24 October 1995 the Tarnów District Prosecutor charged the wives of three suspects with the offence of inducing a victim of the assault to give false testimony.

13. On 3 November 1995 the applicant requested the prosecutor to release him on bail. This was refused on 6 November 1995 on the ground that the reasons for the applicant's detention had not ceased to exist and that there were no circumstances justifying his release under Article 218 of the Code of Criminal Procedure. The applicant appealed against this decision, but his appeal was dismissed on 15 November 1995.

14. On 14 November 1995 the victims of the assault changed their testimony and withdrew charges against the suspects. They had left Poland and their whereabouts were unknown.

15. On 1 December 1995 the applicant unsuccessfully requested the prosecutor to replace the detention with police supervision and bail.

16. On 3 January 1996 the Tarnów Regional Court prolonged the applicant's detention until 10 February 1996. It noted that the investigation had not yet been completed since one of the co-accused had lodged a complaint concerning an anonymous witness and, in addition, some of the witnesses, whose whereabouts were unknown, had still not been heard. It further noted that, in spite of the fact that the victims of the assault had changed their initial testimony, there were still serious grounds for believing that the applicant had committed the offences in question. The court also observed that the law did not require that the evidence in support of detention had to be such as to justify a conviction.

17. The applicant's appeal against this decision was dismissed on 24 January 1996 by the Kraków Court of Appeal.

18. On 6 February 1996 the Tarnów District Prosecutor lodged a bill of indictment with the Tarnów Regional Court. It comprised charges in respect of seven persons. The prosecutor requested the summoning of 19 witnesses.

19. On 26 February 1996 the applicant requested the court to quash the detention or replace it with a more lenient measure. The court dismissed this request reiterating the arguments set out in the decisions of 20 and 24 October 1995 and of 3 January 1996.

20. The first hearing was held on 1 April 1996. On 24 April 1996 the applicant requested the court to quash his detention or to replace it with a less severe measure. His request was dismissed on 26 April 1996 by the Tarnów Regional Court, which noted that the investigative proceedings had not yet been completed and that there were more witnesses to be questioned.

21. The trial continued on 7 June 1996. On 11 June 1996 the applicant asked to be released. The next hearing was held on 17 June 1996 and adjourned *sine die*.

On 10 July 1996 the Kraków Court of Appeal upheld the decision of 17 June 1996 refusing to quash the applicant's detention. On 19 July 1996 the applicant lodged with the court a request for release on bail. His request was refused on 23 July 1996.

22. On 8 August 1996 the Kraków Court of Appeal dismissed the applicant's appeal against the decision of 23 July 1996 refusing to release him. In the court's view, the final verification of the evidence was not possible at that stage of the proceedings and there was no clear indication that the charges laid against the applicant were unfounded. The court also observed that the conditions for release referred to in Article 218 of the Code of Civil Procedure were not satisfied since effective steps were being taken to support the applicant's family.

23. On 22 and 26 August and 2 September 1996 the applicant lodged complaints with the Tarnów Regional Court, the Minister of Justice and the Tarnów Regional Prosecutor, complaining about the slow progress in the

proceedings. He alleged that the prosecuting authorities had breached his rights guaranteed by the Convention. He also submitted that he and his family had suffered undue hardship since there were no grounds whatsoever justifying his detention.

24. On 4 September 1996 the Tarnów Regional Court dismissed the applicant's request for release of 22 August 1996. It observed that the victims of the assault had left the country and could not be heard. The applicant had failed to indicate any new circumstances justifying his request.

25. On 24 September 1996 the Tarnów Regional Court convicted the applicant of assault and sentenced him to six years' imprisonment and a fine. On the same day the court decided to uphold his detention within the meaning of the Polish Code of Criminal Procedure. The prosecutor and the defence counsel lodged an appeal against the judgment.

26. On 20 March 1997 an appellate hearing was held.

27. On 27 May 1997 the Kraków Court of Appeal quashed the judgment of 24 September 1996 and referred the case back to the Regional Court. On the same day the Court of Appeal decided to uphold the applicant's detention on remand, having regard to the existence of a strong probability of his guilt, the necessity to secure the conduct of the proceedings and to the fact that there were no circumstances referred to in Section 218 of the Code of Criminal Procedure.

28. On 24 June 1997 the applicant lodged a complaint with the Kraków Court of Appeal, claiming that he had been detained in breach of Article 5 § 3 of the Convention.

29. On 9 July 1997 the Kraków Court of Appeal dismissed the applicant's request for release, considering that, in the circumstances of the case, and given the number of witnesses to be heard, his continuing detention had not exceeded a reasonable time; nor did his family situation militate against his continuing detention. In the court's opinion, the co-accused had contributed to the delay in the proceedings by submitting evidence motions at the late stage of the trial.

30. On 28 July 1997 the Tarnów Regional Court refused to release the applicant, considering that his continuing detention was justified in view of the serious charges confirmed by the evidence and in order to secure the proper conduct of the proceedings. The court was of the opinion that although the applicant's family situation was difficult, it was not sufficient to justify his release.

31. On 7 August 1997 the president of the Tarnów Prison informed the applicant that there were no legal grounds for his release.

32. On 12 September 1997 the Tarnów Regional Court dismissed the applicant's request for release, considering that the law did not require that the evidence in support of detention had to be such as to justify conviction. The court observed that even if the Court of Appeal had quashed the first-

instance judgment, it had not decided to release the applicant. The court referred to the risk of severe punishment for the accused and to the need to secure the proper conduct of the proceedings. The applicant's family situation was difficult but not critical.

33. In a letter to the applicant of 25 September 1997 the President of the Kraków Court of Appeal recalled that the grounds for his detention on remand had been repeatedly examined by the courts during numerous proceedings held on 20.10.1995, 3.01.1996, 24.01.1996, 28.02.1996, 26.04.1996, 17.06.1996, 23.07.1996, 4.09.1996, 24.09.1996, 14.10.1996, 24.01.1997, 27.05.1997, 9.07.1997, 28.07.1997 and 12.09.1997.

34. On 29 September and 2 October 1997 hearings were held. On 2 October 1997 the Tarnów Regional Court refused to release the applicant, considering that, in view of the sufficient likelihood of his guilt and the seriousness of the charges, his detention was warranted. As regards the applicant's situation, difficult as it might be, it was not so critical as to justify his release.

35. On 14 and 15 October 1997 hearings were held. On 15 October the court dismissed the applicant's request for release, repeating the grounds stated in previous decisions.

36. On 29 October and 3 November 1997 the applicant lodged requests for release, referring to Section 213 § 1 and Section 214 of the Code of Criminal Procedure.

37. On 6 November 1997 the applicant asked the court to stay the proceedings. At the hearing held on 19 November 1997 the court refused to do so or to release him, referring to the grounds invoked in previous decisions. The subsequent hearing was held on 8 December 1997. The court decided to read out the testimonies of the victims of the assault and to close the trial.

38. By a judgment of 10 December 1997 of the Tarnów Regional Court the applicant was found guilty of the charges against him and sentenced to six year's imprisonment. Additionally, the court deprived him of his civic rights for three years. The court decided that the applicant's further detention was unnecessary in view of the fact that the proceedings had been completed, that his family was in a difficult situation and that he had spent over two years in the detention centre. The applicant was released on the same day.

39. By a judgment of 17 June 1998 of the Kraków Court of Appeal, the applicant was eventually acquitted of all the charges against him as the court considered that there was no sufficient evidence of his guilt.

II. RELEVANT DOMESTIC LAW

1. Evolution of Polish criminal law in the relevant period

40. Polish criminal legislation was amended several times during the relevant period. The Code of Criminal Procedure enacted in 1973 (“old” Code) was replaced by a new Code of Criminal Procedure, adopted by Parliament on 6 June 1997, which entered into force on 1 September 1998.

41. The “old” Code was significantly amended by the Law of 29 June 1995 on Amendments to the Code of Criminal Procedure and Other Criminal Statutes, which entered into force on 1 January 1996. However, the entry into force of the provisions concerning the imposition of detention on remand was postponed until 4 August 1996. In accordance with these provisions, detention on remand was imposed by a judge (whereas before it was imposed by a prosecutor - see § 44 below).

2. Preventive measures

42. The 1969 Code of Criminal Procedure, which remained in force until 1 September 1998, listed as preventive measures, *inter alia*, detention on remand, bail and police supervision.

43. Article 209 of the Code, which set out general grounds justifying the imposition of preventive measures, provided that preventive measures could be imposed in order to secure the proper course of proceedings if the evidence against the accused sufficiently justified the opinion that he had committed a criminal offence.

44. Article 212 provided that a decision concerning preventive measures could be appealed to a higher court. A prosecutor’s order on detention on remand could be appealed to the court competent to deal with the merits of the case. Article 213 of the Code provided that a preventive measure should be immediately quashed or changed if the grounds therefore ceased to exist or if new circumstances arose, which justified quashing a given measure or replacing it with another.

45. Article 225 of the Code provided that detention on remand should be imposed only when it was mandatory and should not be imposed if bail or police supervision, or both of these measures, were considered adequate.

46. Article 217 of the Code, before it was amended on 1 January 1996, provided insofar as relevant:

“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 his identity cannot be established or he has no permanent domicile,

2. there is a reasonable risk that he will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means.”

THE LAW

I. ALLEGED VIOLATION OF THE RIGHT TO BE BROUGHT PROMPTLY BEFORE A “JUDGE” GUARANTEED UNDER ARTICLE 5 § 3 OF THE CONVENTION

47. The applicant complained under Article 5 § 3 that after having been detained he had not been brought promptly before a “judge or other officer authorised by law to exercise judicial power”

Article 5 § 3, in its relevant part, reads:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power ...”

48. The applicant argued that the prosecutor could not be considered a “judge” or “officer authorised by law to exercise judicial power” within the meaning of Article 5 § 3.

49. The Government refrained from any comments in this connection.

50. The Court recalls that in a number of its previous judgments – for instance, those in the cases of *Niedbala v. Poland* (no 27915/95, 4 July 2000, §§ 48-57) and of *Salapa v. Poland* (no. 35489/97, 19 December 2002, §§ 68-70) it has already dealt with the question whether under the Polish legislation in force at the material time a prosecutor could be regarded as a “judicial officer” endowed with attributes of “independence” and “impartiality” required under Article 5 § 3.

51. The Court has found that a prosecutor did not offer these necessary guarantees because the prosecution authorities not only belonged to the executive branch of the State but also concurrently performed investigative and prosecution functions in criminal proceedings and were a party to such proceedings. Furthermore, it has considered that the fact that the prosecutors in addition acted as guardian of the public interest could not by itself confer on them the status of “officer[s] authorised by law to exercise judicial power”.

52. The Court finds that the present case is similar to the above-mentioned precedents. It sees no reasons to come to a different conclusion in this case. Consequently, it concludes that the applicant’s right to be brought “before a judge or other officer authorised by law to exercise judicial power” was not respected.

53. There has therefore been a violation of Article 5 § 3 of the Convention.

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

54. The applicant complained under Article 5 § 3 of the Convention about the length of his detention on remand.

Article 5 § 3 reads:

“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

55. The Government were of the opinion that there had been valid reasons for holding the applicant in custody for the entire period in question. They pointed out that there had existed a serious suspicion against him and that his detention had been necessary to ensure the proper conduct of the proceedings. The Government argued that these reasons remained valid even after the quashing of the first-instance judgment of the Regional Court and that there were no circumstances that could militate in favour of the applicant's release.

56. The Government further submitted that the applicant's detention had been subject to permanent and diligent judicial supervision. In the Government's view, the domestic courts adduced “relevant and sufficient” reasons for the applicant's detention. The Government concluded that the length of the applicant's detention had not been excessive.

57. The applicant maintained that that court had not given sufficient and relevant reasons for his detention. The detention decisions were laconic, vague and sketchy. The courts had repeatedly relied on the argument that the grounds for his continuing detention had not ceased to exist. They also relied on the need to ensure the due course of the proceedings without, however, providing any explanation as to the nature of the alleged threat.

58. In the applicant's opinion the suspicion that he had committed the offences in question could suffice as a basis for his detention only at the early stage of the proceedings, whereas later, the authorities should have considered other guarantees that he would appear for trial, such as bail or police supervision.

B. The Court's assessment

1. General principles concerning the length of detention

59. 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 set them out in their decisions on the applications for release.

60. 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. In such cases, the Court must establish whether the other grounds given by the authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV)".

61. 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 and on the basis of the reasons given in the domestic decisions and of the well-documented facts mentioned by the applicant in his applications for release. In particular, the existence of the concrete facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001). 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).

2. Application of the above principles to the present case

62. The Court notes that the applicant was arrested on 10 October 1995 and was deprived of his liberty according to Article 5 § 1 (c) of the Convention until 24 September 1996, on which date, he was convicted by a judgment of the Tarnów Regional Court. After the date of the judgment, the applicant's deprivation of liberty was based on Article 5 § 1 (a) of the Convention as "the lawful detention of a person after conviction by a competent court" and cannot therefore be taken into account for the purposes of Article 5 § 3 of the Convention (see, among other authorities, *Trzaska v. Poland*, no. 25792/94, 11.7.2000, §§ 55-56).

63. On 27 May 1997 the Kraków Court of Appeal quashed the first-instance judgment and referred the case back to the first instance. At the same time, the court decided not to release the applicant. Accordingly, he was again detained on remand until his release on 10 December 1997. The overall period of the applicant's detention on remand lasted therefore one year, five months and 28 days.

64. The Court first observes that the criminal case at issue can be considered complex as it concerned various charges of violent crimes brought initially against seven accused and nineteen witnesses were to be heard by the court.

65. The Court notes that the investigations proceeded rather speedily. The investigative phase of the proceedings lasted four months, from 10 October 1995 until 6 February 1996, when the Tarnów District Prosecutor lodged a bill of indictment with the Tarnów Regional Court. As to the proceedings on the merits of the charges brought against the applicant, they subsequently lasted before the first-instance court for nine months.

66. The Court further observes that the overall period of detention was not very significant. It further notes that in their decisions concerning the applicant's detention on remand the domestic authorities repeatedly relied on the high risk of his hindering the proper conduct of the proceedings by exerting pressure on the witnesses and on a reasonable suspicion that he had committed the offences concerned. In the light of the nature of the charges, and also of the fact that on 24 October 1995 the prosecuting authorities had charged the wives of three suspects with the offence of inducing a victim of the assault to give false testimony, the Court considers that the authorities' argument that there was a fear of collusion in the case was reasonable.

67. It is further observed that the progress in the case was impeded by the fact that on 14 November 1995 the victims of the assault changed their testimony and withdrew charges against the suspects. They had left Poland and their whereabouts were unknown. However, the Court emphasises that reasonable efforts were made to find them. In April 1996 the court requested the assistance of the Central Address Office in this respect and in May 1996 the prosecuting authorities requested the Interpol to establish their whereabouts. Eventually, in June 1996 the court decided to read out the testimonies of these witnesses as it was impossible to find them.

68. The Court also notes that the lawfulness of the applicant's continued detention was many times examined by competent authorities throughout the proceedings (see, in particular, § 38 above).

69. The Court finally considers that in view of its above findings as to the complexity of the case (§ 64 above) and the need to establish the circumstances relevant for the applicant's criminal responsibility, the applicant's detention was in conformity with the "reasonable time" requirement of Article 5 § 3 of the Convention.

70. Therefore, there has been no violation of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant sought an award of PLN 100,000 in respect of non-pecuniary and pecuniary damage he argued he had suffered.

73. The Government considered that the sum in question was exorbitant. They requested the Court to rule that the finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

74. The Court recalls that in cases which concerned similar violations of Article 5 § 3 it has declined to make any award under Article 41, considering that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage suffered (see, among many other authorities, *Niedbala* cited above, § 88 with further references)

75. In the present case, the Court does not find any reason to depart from that principle. Consequently, it concludes that the pecuniary and non-pecuniary damage claimed by the applicant is adequately compensated by the finding of a violation of Article 5 § 3.

B. Costs and expenses

76. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case in the proceedings before the Court, sought reimbursement of costs and expenses in the amount of EUR 2,500.

77. The Government invited the Court to make an award, if any, only in so far as the costs and expenses claimed had been actually and necessarily incurred and were reasonable as to quantum. They relied on the *Zimmerman and Steiner v. Switzerland* judgment of 13 July 1983 (Series A no. 66, p. 35, § 36).

78. Applying the criteria laid down in its case-law (see, for instance, *Niedbala* cited above, § 93) and making its assessment on an equitable

basis, the Court awards the applicant EUR 2,000 for costs and expenses together with any value-added tax that may be chargeable, less EUR 769 already paid by way of legal aid by the Council of Europe.

C. Default interest

79. 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 in that the applicant's right to be brought promptly before a judge or other officer authorised by law to exercise judicial power was breached;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention in respect of the length of his detention on remand;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of costs and expenses plus any tax that may be chargeable, less EUR 769 received by way of legal aid from the Council of Europe to be converted into Polish zlotys at the rate applicable at the date of delivery of this judgment;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President