



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

FOURTH SECTION

CASE OF LESZCZAK v. POLAND

(Application no. 36576/03)

JUDGMENT

STRASBOURG

7 March 2006

FINAL

07/06/2006

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 Leszczak 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. BORRERO BORRERO, *judges*,

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

Having deliberated in private on 14 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 36576/03) 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 Andrzej Leszczak ("the applicant"), on 2 November 2003.

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

3. On 19 May 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant's detention 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1982 and lives in Siecie, Poland.

5. On 15 April 2000 the applicant was arrested. On the following day the Słupsk District Court remanded him in custody until 15 May 2000 on suspicion of homicide and attempted burglary. It relied on the evidence given by the applicant's co-suspect. In addition, the court held that his detention was justified in order to secure the proper conduct of the proceedings and referred to the severity of the anticipated penalty.

Furthermore, having regard to the fact that the applicant had not confessed, the court considered that there was a reasonable risk that he would attempt to induce witnesses to give false testimonies or otherwise interfere with the proceedings.

6. On 11 May 2000 the District Court prolonged the applicant's detention until 15 July 2000. It referred to the reasonable suspicion of his having committed the offences in question and the severity of the anticipated penalty. The court further held that there was a reasonable risk that the applicant would unlawfully obstruct the proceedings, having regard to the fact that his co-suspect had not been detained at the time. Additionally, it relied on the need to obtain further expert evidence. Lastly, the court considered that other preventive measures would not secure the proper conduct of the proceedings.

7. On 11 July 2000 the Słupsk Regional Court dismissed the prosecutor's request for prolongation of the applicant's detention and ordered his release. It found that there had been no other evidence of the applicant's alleged involvement in the offences in question than the statements of his co-suspect. In addition, the statements of that co-suspect had not been consistent as at the earlier stage of the investigation he had excluded a possibility of the applicant's involvement in the offences. The applicant was released on 11 July 2000.

8. On 11 July 2000 the Regional Court ordered the applicant to undergo a six-week psychiatric examination in order to determine whether he could be held criminally responsible.

9. On 17 July 2000 the prosecutor appealed against the decision refusing his request for prolongation of the applicant's detention. On 26 July 2000 the Gdańsk Court of Appeal quashed the contested decision for failure to assess all the evidence in favour and against holding the applicant in custody and remitted the case.

10. Between 10 August and 4 September 2000 the applicant underwent examination in a psychiatric hospital.

11. On 17 August 2000 the Słupsk Regional Court again refused the prosecutor's request for prolongation of the applicant's detention. The prosecutor's request was based on the evidence given by the applicant's co-suspect. The Regional Court, however, found it to be unreliable. The prosecutor appealed against the decision of 17 August 2000. On 30 August 2000 the Gdańsk Court of Appeal quashed the impugned decision on procedural grounds and remitted the case.

12. On 18 September 2000 the Słupsk Regional Court ordered the applicant's detention for a period of 2 months. It held that the period of the applicant's examination in a psychiatric hospital should count towards his detention on remand. The Regional Court relied on the statements of the applicant's co-suspect, which it had found to be consistent. Further, it had regard to a report by the smell recognition expert (*opinia osmologiczna*) of

10 September 2000 and medical evidence concerning the victim of the homicide. It also relied on the severity of the anticipated penalty. The applicant was re-detained on 22 September 2000.

13. On 19 October 2000 the bill of indictment against the applicant and three of his co-accused was submitted to the Słupsk Regional Court.

14. On 20 October 2000 the Regional Court extended the applicant's detention until 28 January 2001. In addition to the grounds invoked in its previous decision, the court considered that the applicant's continued detention was necessary in order to secure the proper conduct of the proceedings, given the serious nature of the offences with which the applicant had been charged.

15. The trial court held hearings on 22, 23 and 24 November and 8 December 2000.

16. On 15 December 2000 the Słupsk Regional Court convicted the applicant of aggravated homicide and attempted burglary and sentenced him to 15 years' imprisonment. The applicant appealed against that judgment.

17. On 22 March 2001 the Gdańsk Court of Appeal quashed the judgment of the Regional Court and remitted the case for retrial. It found that the trial court had exceeded its discretion as to the assessment of relevant evidence, in particular in respect of that given by the applicant's principal co-accused and the findings of the smell recognition expert.

18. On the same date the Court of Appeal ordered that the applicant be kept in custody until 30 June 2001. It noted, having regard to the statements of the applicant's principal co-accused and the report by the smell recognition expert, that there was a strong likelihood that the applicant had committed the offences in question. Furthermore, it relied on the severity of the anticipated penalty.

19. The applicant's detention was subsequently prolonged by the Regional Court on five occasions: on 28 June 2001 (until 30 October 2001), on 29 October 2001 (until 30 January 2002), on 15 January 2002 (until 30 April 2002), on 18 April 2002 (until 30 June 2002) and on 14 June 2002 (until 30 August 2002). In all those decisions, the Regional Court reiterated the grounds given in the Court of Appeal's decision of 22 March 2001. In addition, it referred to the circumstances in which the offences in question had been committed and the need to obtain further expert evidence.

20. The Regional Court held hearings on 11, 12 and 13 December 2001 and 13 February, 18 March, 18 April and 10 May 2002.

21. On 10 July 2002 the Słupsk Regional Court convicted the applicant and his co-accused of aggravated homicide and attempted burglary and sentenced him to 15 years' imprisonment. The applicant appealed against that judgment. On the same date the Regional Court prolonged the applicant's detention until 30 October 2002.

22. On 30 January 2003 the Court of Appeal quashed the first-instance court judgment in respect of the applicant on the same grounds as previously and remitted the case.

23. Subsequently, the applicant's detention was extended by the Regional Court on five occasions: on 28 April 2003 (until 30 July 2003), on 17 June 2003 (until 30 October 2003), on 10 October 2003 (until 30 December 2003), on 12 December 2003 (until 31 January 2004) and on 15 January 2004 (until 31 March 2004). The Regional Court reiterated the grounds previously given for his detention. In addition, the court held that the applicant's continued detention was justified by the gravity of the offences with which he had been charged. In the court's view, the applicant's detention was the only measure which could secure the proper conduct of the proceedings. In the decision of 17 June 2003 the Regional Court noted that his continued detention was necessary in order to obtain another report of the smell recognition expert.

24. The applicant's numerous appeals against the prolongation of his detention and requests to be released were to no avail.

25. The Regional Court held hearings on 17, 18, 20, 21 November, 10, 12 December 2003 and 15 January and 20 February 2004. In September and November 2003 respectively two reports of the smell recognition experts were submitted to the trial court.

26. On 27 February 2004 the Regional Court gave judgment and acquitted the applicant. He was released on the same day. On 8 July 2004 the Gdańsk Court of Appeal upheld the judgment of the Regional Court. The prosecution filed a notice of cassation appeal, but subsequently withdrew it.

27. In February 2005 the applicant filed an application for compensation in respect of his manifestly unjustified detention with the Słupsk Regional Court. These proceedings are pending.

II. RELEVANT DOMESTIC LAW

28. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called "preventive measures" (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition on leaving the country (*zakaz opuszczania kraju*).

29. Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

"1. Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused's committing

another, serious offence; they may be imposed only if the evidence gathered shows a significant probability that an accused has committed an offence.”

30. Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

“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 his identity cannot be established or when he has no permanent abode [in Poland];

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

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years’ imprisonment, or if a court of first instance has sentenced him to at least 3 years’ imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed.”

31. The Code sets out the margin of discretion as to the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

“1. Detention on remand shall not be imposed if another preventive measure is sufficient.”

Article 259, in its relevant part, reads:

“1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

(1) seriously jeopardise his life or health; or

(2) entail excessively harsh consequences for the accused or his family.”

32. The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

“1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on an application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date of the first conviction at first instance may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, 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 stay of the proceedings, for the purpose of a prolonged psychiatric observation of the accused or a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad or when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome.”

33. On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested in the court of appeal within whose jurisdiction the offence in question has been committed.

THE LAW

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

34. The applicant complained that the length of his detention on remand had been unreasonable. He relied on 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.”

35. The Government contested that argument.

A. Admissibility

36. The Court notes that the application 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

37. The Court observes that the applicant was arrested on 15 April 2000 and remanded in custody on 16 April 2000. He was released on

11 July 2000, and subsequently re-detained on 22 September 2000. On 15 December 2000 the Słupsk Regional Court convicted him of aggravated homicide and attempted burglary. 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. *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). On 22 March 2001 the Court of Appeal quashed the applicant’s conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 10 July 2002, when the trial court again convicted the applicant. On 30 January 2003 the Court of Appeal quashed that conviction. The subsequent period of the applicant’s detention again falls within the scope of Article 5 § 3. On 27 February 2004 the applicant was acquitted and released.

38. Consequently, the period to be taken under consideration lasted just over 2 years and 10 months.

2. The reasonableness of the length of detention

(a) The parties’ arguments

39. The Government argued that the applicant’s complaint was manifestly ill-founded. They were of the opinion that there had been valid reasons for holding the applicant in custody for the entire period in question. They referred in particular to the fact that the applicant had been charged with offences for which he had been liable to a severe penalty.

40. The Government underlined that the applicant’s detention had been subject to the regular supervision by the courts. They further argued that his detention had been based on the grounds specified in the Code of Criminal Procedure. Lastly, the Government submitted that the length of the applicant’s detention had not been excessive.

41. The applicant maintained that the length of his detention had been unreasonable, and thus in breach of Article 5 § 3 of the Convention.

(b) The Court’s assessment

(i) Principles established under the Court’s case-law

42. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed 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 with further references, ECHR 2000-XI).

43. It falls in the first place to the national judicial authorities to ensure that, in a given case, 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 or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

44. 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. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

(ii) *Application of the principles to the circumstances of the present case*

45. The Court observes that the judicial authorities relied, in addition to the reasonable suspicion against the applicant, on two principal grounds, namely the severity of penalty to which the applicant had been liable and the serious nature of the offences with which he had been charged (see paragraphs 5, 6, 12, 14, 18, 19 and 23 above). Having regard to those two grounds, they considered that the applicant’s detention had been the only measure which could secure the proper conduct of the proceedings (see paragraphs 5, 6, 14 and 23 above). Furthermore, the domestic courts relied on the risk of pressure being brought to bear on witnesses or obstructing the proceedings by other means and the need to obtain expert evidence (see paragraphs 5, 6, 19 and 23 above).

46. The Court accepts that the reasonable suspicion against the applicant of having committed the offences with which he had been charged may have warranted his detention at the early stage of the proceedings against him. However, with the passage of time that ground inevitably became less and less relevant. In particular, the Court considers that that ground cannot

suffice to justify the entire period in issue. It must then establish whether the other grounds advanced by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of his liberty.

47. The Court notes that the judicial authorities also relied on the likelihood that a severe sentence might be imposed on the applicant given the serious nature of the offences at issue (see paragraphs 5, 6, 12, 14, 18, 19 and 23 above). In this respect, the Court recalls that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. It acknowledges that, in view of the seriousness of the accusations against the applicant, the authorities could justifiably consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilykov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). In the circumstances of the present case, the Court finds that the severity of the anticipated penalty alone, or in conjunction with the other grounds relied on by the authorities, cannot constitute a “relevant and sufficient ground” for holding the applicant in detention for a relatively long period of over 2 years and 10 months.

48. As regards the risk of pressure being brought to bear on witnesses or of the obstruction of the proceedings by other unlawful means, the Court is not persuaded that they constituted valid grounds for the applicant’s pre-trial detention in its entire length. Firstly, it notes that the Słupsk District Court, when originally remanding the applicant in custody, held that the risk of pressure on witnesses was justified by the fact that the applicant had not confessed (see paragraph 5 above). In the Court’s view such reasoning of the District Court showed a manifest disregard for the principle of the presumption of innocence and cannot, in any circumstances, be relied on as a legitimate ground for deprivation of liberty. Secondly, the Court notes that other relevant decisions of the judicial authorities did not put forward any argument indicating that the risk of the applicant’s obstructing the proceedings had been substantiated. In the absence of any other factor capable of showing that the risk relied on actually existed, the Court cannot accept that ground as a justification for holding the applicant in custody for the entire relevant period.

49. The Court would also 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 *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 3, § 3; and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

50. In the present case the Court notes that during the entire period the applicant was kept in detention, and despite his applications for release, the

authorities did not give consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraph 28 above).

51. What is more, it is not apparent from the relevant decisions why the judicial authorities considered that those other measures would not have ensured the applicant’s appearance before the court or in what way the applicant, had he been released, would have obstructed the course of the trial. Nor did they mention any factor indicating that there was a real risk of his absconding or obstructing the proceedings. In that regard the Court would also point out that, although such a potential danger may exist where an accused is charged with a serious offence and where the sentence faced is a long term of imprisonment, the degree of that risk cannot be gauged solely on the basis of the severity of the offence and anticipated sentence (see *Muller v. France*, judgment of 17 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 388., § 43).

52. The foregoing considerations are sufficient to enable the Court to conclude that the grounds given for the applicant’s pre-trial detention were not “sufficient” and “relevant” to justify holding him in custody for over 2 years and 10 months. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government argued that the applicant’s claim was excessive. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, the Government invited the Court to make an award on the basis of case-law in similar cases and with reference to domestic economic conditions.

57. The Court considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of his

detention – which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

B. Costs and expenses

58. The applicant did not submit any claim in respect of costs and expenses.

C. Default interest

59. 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 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 in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President