



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

FOURTH SECTION

CASE OF WIENSZTAL v. POLAND

(Application no. 43748/98)

JUDGMENT

STRASBOURG

30 May 2006

FINAL

30/08/2006

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 Wiensztal 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 M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 9 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 43748/98) 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 Rafał Wiensztal ("the applicant"), on 31 August 1995.

2. The applicant was represented by Mr Przemysław Rybiński, a lawyer practising in Gdańsk. The Polish Government ("the Government") were represented by their Agents, Mr Krzysztof Drzewicki and, subsequently, by Mr Jakub Wołasiewicz.

3. The applicant alleged, in particular, that his detention on remand had been unreasonably long.

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 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. By a decision of 21 October 2004, the Court declared the application partly admissible.

7. 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1946 and lives in Radom.

9. The applicant was arrested on 24 August 1994 on suspicion of extorting protection money from an escort agency. By a decision of 26 August 1994 given by the Gdańsk Regional Prosecutor the applicant and other suspects were detained on remand. On 2 September 1994 the applicant's lawyer appealed against the decision of 26 August 1994. His appeal was dismissed by a court on 8 September 1994.

10. On 24 October 1994 the Gdańsk Regional Prosecutor dismissed the applicant's lawyer's appeal of 19 October 1994 against the detention decision, considering that a number of witnesses had given evidence incriminating all the suspects. On 24 October 1994 the Gdańsk Regional Prosecutor ordered the applicant to undergo psychiatric observation.

11. On 10 November 1994 the Gdańsk Regional Court prolonged the applicant's detention on remand until 21 January 1995, considering that the charges against the applicant were of a serious nature and that they had been supported by the evidence gathered in the proceedings. The court pointed out that the investigation had not yet been completed and that the group the applicant belonged to had brought improper pressure upon the witnesses to change their testimony.

12. On 21 November 1994 an expert opinion on the state of the applicant's mental health was issued.

13. On 7 December 1994 the Gdańsk Court of Appeal dismissed the applicant's lawyer's appeal of 24 November 1994 against the decision of 10 November 1994 prolonging the applicant's detention on remand. The court emphasised that there was a strong likelihood that the applicant might obstruct the proper course of the proceedings by inciting the witnesses to give false testimony. The court also stated that the applicant's case did not disclose any of the grounds for release provided by Article 218 of the Code of Criminal Procedure.

14. On 17 January 1995 the Gdańsk Regional Court prolonged the applicant's detention on remand until 31 March 1995. It found that in view of the seriousness of the offence he was charged with, the strong probability of his guilt and the danger that he (or another member of the group) would exert additional pressure on the witnesses, the applicant's detention was warranted. The court also pointed to the necessity of taking further evidence.

15. On 10 February 1995 the Gdańsk Regional Prosecutor dismissed the applicant's lawyer's request that the preventive measure be replaced by a more lenient one, considering that the grounds on which the detention on

remand had been ordered had not ceased to exist. On 9 March 1995 the Gdańsk Appellate Prosecutor dismissed the lawyer's appeal against this decision, relying on the grounds previously invoked by the courts.

16. By a decision of 21 March 1995 the Gdańsk Regional Court prolonged the applicant's detention on remand until 30 June 1995. The court was of the opinion that the applicant's detention was justified by the strong probability of his guilt, the necessity to obtain further evidence and the risk of pressure being brought to bear on the witnesses. On 5 April 1995 the applicant's lawyer appealed against this decision. On 12 April 1995 the Gdańsk Court of Appeal upheld it, referring to the seriousness of the offence in question and the complexity of the case. The court remarked that the negative effect of the continuing detention upon his family situation was not such as to call for his release.

17. On 27 June 1995 the bill of indictment was lodged with the Gdańsk Regional Court against the applicant and eleven co-accused.

18. The court held hearings on 9, 16 and 23 November 1995. It heard the co-accused and several witnesses.

19. The hearing fixed for 11 January 1996 was adjourned due to the absence of the lawyer representing one of the co-accused. On 17 January 1996 another hearing was held. The court heard four witnesses.

20. At the hearing of 25 January 1996 the applicant lodged an application for release. The court refused, considering that his detention was justified by the existence of strong evidence of his guilt, the nature of the charges against him and a risk of interference with witnesses in order to influence their testimony. Moreover, conditions for release referred to in Article 218 of the Code of Criminal Procedure were not satisfied. The hearing was then adjourned in view of the absence of the applicant's lawyer.

21. On 5 March 1996 the applicant appointed a new lawyer to represent him.

22. On 6 March 1996 the court held a hearing and heard seven witnesses.

23. On 15 March 1996, in a separate set of criminal proceedings, the applicant was sentenced by the Elbląg Regional Court to two and a half years imprisonment and a fine. He served his sentence between 15 March 1996 and 11 September 1997.

24. The hearing scheduled for 20 March 1996 was adjourned following a request of one of the lawyers. On 22 May and on 3 June 1996 the court held hearings. At the hearing held on 18 June 1996 the court dismissed the applicant's request for release, referring to the gravity of the charges against him and considering that his case did not disclose any of the grounds for release provided by Article 218 of the Code of Criminal Procedure. The hearing was adjourned due to the absence of one of the co-accused.

25. Hearings fixed for 7 and 21 August and 11 and 18 October 1996 were cancelled for various reasons, mostly because of the absence of

defence lawyers. On 15 November 1996 the court held a hearing and heard four witnesses. The hearing scheduled for 22 November 1996 was adjourned because of the illness of one of the lawyers. The court dismissed the applicant's request for release, considering that his continuing detention was necessary to ensure the proper conduct of the proceedings and that there were no grounds for releasing the applicant under Article 218 of the Code of Criminal Procedure.

26. On 30 December 1996 the Gdańsk Regional Court requested the Supreme Court to prolong the applicant's detention until 30 June 1997, submitting that from 9 November 1995 until 22 November 1996 nineteen hearings had been fixed but only eight out of them had in fact been held. The adjournments had been ordered mainly due to the absence of defence counsel. The co-accused and 41 witnesses had been heard until then, nevertheless 65 witnesses remained to be examined. On 16 January 1997 the Supreme Court granted the Regional Court's request, pointing to the complexity of the case and concluding that the delay in the proceedings could not be attributed to the Regional Court.

27. On 5 February 1997 the court held a hearing and heard 8 witnesses.

The hearing scheduled for 5 March and 16 April 1997 were adjourned due to the absence of one of the co-accused and the illness of some lawyers. On 4 June 1997 the court held a hearing and heard seven witnesses. The court did not allow the applicant's request for release. The hearing scheduled for 11 June 1997 was adjourned due to the absence of some of the lawyers.

28. On 26 June 1997 the Gdańsk Regional Court lodged a request with the Supreme Court to prolong the applicant's detention until 31 December 1997. The court submitted that hearings had been held on 5 February 1997 and on 4 June 1997. The hearings scheduled on 19 February 1997, 5 March 1997, 16 April 1997 and 11 June 1997 had been adjourned or cancelled because of the illnesses of the accused and the defending counsel. The court had heard 15 witnesses, but 50 other witnesses were still to be examined and the continuing detention was necessary to ensure the proper conduct of the proceedings. On 13 August 1997 the Supreme Court, relying on the grounds given above, prolonged the applicant's detention. However, the limit of the duration of the detention was set at 1 December 1997 and not at 31 December 1997 as the Regional Court had requested.

29. The hearing held on 11 September 1997 was adjourned due to the absence of one of the co-accused.

30. On 16 September 1997 the Gdańsk Regional Court refused to release the applicant, observing that he had failed to indicate any new relevant circumstances in the case.

31. The hearing scheduled for 25 September 1997 was adjourned as one of the co-accused was ill.

32. The hearing scheduled for 1 October 1997 was adjourned because of the illness of the judge rapporteur.

33. The hearing held on 13 October 1997 was adjourned as two of the co-accused failed to attend.

34. On 25 November 1997 the Gdańsk Regional Court again requested the Supreme Court to prolong the applicant's detention on remand. On 19 December 1997 the Supreme Court granted this request and prolonged the applicant's detention on remand until 30 April 1998. The Supreme Court observed that a number of hearings had not been held due to the absence of either the co-accused or their defence counsel. Moreover, the composition of the court had to be changed owing to the illness of the presiding judge. The case was complex and multi-layered and the charges of a serious nature. In addition, some of the accused had contributed to the overall length of the proceedings by lodging motions with the court. In these circumstances, even though the proceedings in the case had been lengthy, the Regional Court could not be held responsible for this delay.

35. On 30 December 1997 the court decided to issue an arrest warrant in respect of the co-accused who had kept failing to attend hearings.

36. The hearings fixed for 7 January and 11 February 1998 were adjourned due to the absence of one of the co-accused.

37. On 25 February 1998, as a result of the change in its composition, the court recommenced the examination of the case. The co-accused did not agree to continue the proceedings with new judges. The court decided to exclude two of the co-accused who would not appear at the hearings. The court adjourned the hearing due to the absence of some of the lawyers.

38. On 12 and 26 March the court held hearings. It heard the co-accused and 13 witnesses. On 8 April 1998 the court adjourned the hearing as the applicant's lawyer and other co-accused did not appear.

39. On 30 April 1998 the applicant was released under police supervision.

40. On 22 October 2002 the court gave a judgment by which the applicant was convicted as charged and sentenced to three years' imprisonment.

II. RELEVANT DOMESTIC LAW

41. At the material time, the 1969 Code of Criminal Procedure listed as preventive measures, *inter alia*, detention on remand, bail and police supervision. Article 209 of the Code, which set out general grounds justifying the imposition of preventive measures, provided as follows:

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

42. Furthermore, the Code of Criminal Procedure allowed authorities a margin of discretion as to whether to continue the enforcement of preventive measures. Detention on remand was regarded as the most severe preventive measure. Article 213 of the Code provided as follows:

“A preventive measure shall be immediately quashed or changed if the grounds therefor have ceased to exist or if new circumstances have arisen, which justify quashing a given measure or replacing it with one that is either more or less severe.”

Article 225 of the Code provided:

“Detention on remand shall be imposed only when it is mandatory; this measure shall not be imposed if bail or police supervision, or both of these measures are considered adequate.”

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, or
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, or
3. the accused was charged with a commission of a criminal offence or acted as a habitual offender, as provided for by the Criminal Code, or
4. the accused was charged with the commission of an act which constituted significant danger to society.”

43. Pursuant to Article 218 of the “old” Code, if there were no special considerations to the contrary, detention on remand should not be imposed or should be lifted, if it involved danger to life or limb or entailed particular hardship for a suspect or his family.

44. Until 4 August 1996, when the Code of Criminal Procedure was amended, Polish law did not set any statutory time-limits concerning detention on remand in court proceedings, but only in respect of the investigative stage.

45. Article 222 of the Code of Criminal Procedure, as applicable after 4 August 1996, provided, insofar as relevant:

“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 cases where it is particularly justified 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 in the terms referred to in paragraph 3.”

Subsequently, point 4 was extended to include also “other significant circumstances, which could not be overcome by the organs conducting the proceedings”.

THE LAW

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

46. The applicant complained about the length of his detention on remand. He invoked Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

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

A. Period to be taken in consideration

47. The Court observes that the applicant was arrested on 24 August 1994 and was deprived of his liberty under Article 5 § 1 (c) of the Convention until 15 March 1996, on which date, in a separate set of criminal proceedings, the Elbląg Regional Court sentenced him to two years and six months’ imprisonment. 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, for instance, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, p. 14, § 36). The applicant finished serving this sentence on 11 September 1997. He was again detained on remand until his release on 30 April 1998. Accordingly, the overall period of the applicant’s detention on remand lasted over two years and two months.

B. The Court’s assessment

48. The Government argued that the applicant’s detention had been in conformity with the reasonable time requirement of Article 5 § 3 of the Convention. The Government pointed out that the entire period in question

had lasted twenty-six months. In their opinion there had been valid reasons for maintaining the applicant in custody. His detention had been subject to regular judicial supervision and the reasons given by the courts were sufficient and relevant. The applicant had been detained on the basis of voluminous evidence justifying the reasonable suspicion that he had committed the offences in question. The Government further referred to the seriousness of the charges against the applicant and to a risk of his interfering with the proper course of the proceedings. The Government stressed that almost all prerequisites of detention on remand, listed by the Code of Criminal Procedure at the material time, applied in the applicant's case.

49. The applicant disagreed. He submitted that, according to relevant provisions of the Code of Criminal procedure, the extension of time-limits of detention on remand could be justified only in cases where, owing to exceptional circumstances, investigation could not be completed. In his opinion, there was nothing exceptionally complex in the nature of the proceedings against him. He maintained that the overall period of his detention had been particularly long and consequently, it had had a punitive character.

50. According to the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. 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, overweighs the rule of respect for individual liberty (see, among other authorities, the *W. v. Switzerland* judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

It falls in the first place to the national judicial authorities to examine all the circumstances arguing for or against the existence of such a requirement and to 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 established 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 the *Contrada v. Italy* judgment of 24 August 1998, *Reports of judgments and decisions* 1998-V, p. 2185, § 54).

The persistence of a 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 cited by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see the *Muller v. France* judgment of

17 March 1997, *Reports* 1997-II, p. 388, § 35, and the I.A. v. France judgment of 23 September 1998, *Reports* 1998-VII, p. 2979, § 102).

51. The Court observes that the domestic courts, while rejecting the applicant's requests for release, relied on a reasonable suspicion that he had committed the offence and on the gravity of the offences. They further referred, taking into consideration his involvement in the activities of organised criminals, to the tangible danger that the process of obtaining evidence from witnesses might be obstructed if he was released.

52. The Court further observes that the criminal case against the applicant can be considered complex as it concerned charges of extorting money, there were several co-accused and the proceedings were multi-layered. In that regard the Court considers that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings (*Górski v. Poland*, no. 289043/02, §58, 4 October 2005) and in some circumstances also for subsequent prolongations of the detention. The Court accepts that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. Admittedly, the domestic authorities seem not to have shown special diligence in the conduct of the proceedings. Nonetheless, the Court is of the view that the reasons given by the national courts remained "relevant" and "sufficient" throughout the whole relevant period of the applicant's detention on remand.

53. The Court observes that it is relevant for the assessment of the case to note that the applicant was released on 30 April 1998 and placed under police supervision, while the trial was still in progress, as the courts had found that in view of the advanced stage of the proceedings the risk that his release would jeopardise a proper conduct of the proceedings had ceased to exist.

54. The Court finally considers that in view of its above findings as to the complexity of the case and the need to establish the circumstances, which were 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.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 5 § 3 of the Convention;

Done in English, and notified in writing on 30 May 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President