



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

FOURTH SECTION

CASE OF DRABEK v. POLAND

(Application no. 5270/04)

JUDGMENT

STRASBOURG

20 June 2006

FINAL

20/09/2006

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 Drabek v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 30 May 2006,

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

PROCEDURE

1. The case originated in an application (no. 5270/04) 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 Grzegorz Drabek (“the applicant”), on 30 December 2003.

2. The Polish Government were represented by their Agent, Mr J. Wołasiwicz of the Ministry of Foreign Affairs.

3. On 19 April 2005 the President of the Fourth Section Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was 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 1963 and is presently detained in the Lublin Detention Centre.

A. The proceedings before the Opole Regional Court

5. On 17 July 2001 the Opole District Court (*Sąd Rejonowy*) ordered that the applicant be remanded in custody in view of a reasonable suspicion

that he had committed armed robbery acting in an organised criminal group. The court also considered that the measure was justified by the severity of the penalty that could be expected and the need to secure the proper conduct of the investigation.

6. Subsequently, the Opole Regional Court (*Sąd Okręgowy*) prolonged the applicant's detention on several occasions.

7. On 5 September 2002 the Wrocław Court of Appeal, upon the prosecutor's request, decided to prolong the applicant's detention relying, in addition to the earlier grounds, on the complexity of the case.

8. On 21 December 2002, the applicant was indicted before the Opole Regional Court. The bill of indictment was directed against 22 co-accused.

9. On 30 December 2002 the Opole Regional Court prolonged the applicant's detention relying on the strong probability that the applicant and 13 co-accused had committed the offences with which he had been charged and the severity of the sentence that could be imposed. The court further submitted that only detention would secure the applicant's appearance at the trial.

10. On 14 May 2003 the Regional Court made an application under Article 263 § 4 of the Code of Criminal Procedure (*Kodeks postępowania karnego*) to the Wrocław Court of Appeal (*Sąd Apelacyjny*) asking that the applicant's detention be prolonged beyond the statutory time-limit of two years.

11. On 21 May 2003 the Wrocław Court of Appeal granted that application and prolonged the detention of the applicant until 27 November 2003. The Court justified its decision with reference to the reasonable suspicion that he had committed the offences and the complexity of the case which concerned an organised criminal group and involved several co-accused.

12. At the hearing held by the Opole Regional Court on 22 October 2003 the applicant's application for release was dismissed.

13. On 26 November 2003 the Court of Appeal, upon another application under Article 263 § 4 of the Code of Criminal Procedure, prolonged the applicant's detention until 22 January 2004. It reiterated the grounds previously given for keeping him in custody. The court also considered that, given the severity of the penalty that might be expected, the applicant might obstruct the proceedings.

14. That decision was upheld on appeal on 13 January 2004.

15. On 16 January 2004 the Wrocław Court of Appeal further prolonged the applicant's detention. The court stressed that, due to the complex nature of the case, the applicant should be kept in custody since the grounds previously given for his detention were still valid.

16. That decision was upheld on appeal on 10 February 2004. The Court of Appeal noted that the exemplary behaviour of the applicant during the proceedings - the fact that he had confessed and had been clarifying

important details concerning the alleged crimes - would justify releasing him from detention. Nevertheless, the court found that there were “pragmatic” reasons for keeping him in detention, since he had been simultaneously detained by the Lublin Regional Court in connection with another set of criminal proceedings. If released, the applicant would have been transferred to a detention centre in Lublin, which, in the Court’s view, would make it impossible to complete the trial.

17. On 8 April 2004 the Regional Court made yet another application asking the Court of Appeal to prolong the applicant’s detention. On 16 April 2004 the court granted that application, finding that the grounds given previously were still valid. The court particularly referred to the complexity of the case, the type of offences at issue and the severity of the anticipated penalty.

18. The applicant’s numerous applications for release and his appeals against the decisions prolonging detention were to no avail.

19. In total, the trial court held 43 hearings during which it heard 86 witnesses and the depositions of 130 other witnesses were read at the hearings. On 21 July 2004 the Opole Regional Court gave judgment. The applicant was convicted and sentenced to 3 ½ years’ imprisonment. On the same date the court decided to place the applicant under police supervision finding that, given his low sentence, there were no grounds for prolonging the applicant’s detention.

B. The proceedings before the Lublin Regional Court

20. On 21 November 2002 the Strzelce Opolskie District Court (*Sąd Rejonowy*) ordered that the applicant be remanded in custody in view of the existence of a reasonable suspicion that he had committed a robbery, the severity of the penalty which could be expected and the need to secure the proper conduct of the investigation.

21. Subsequently, the District Court prolonged the applicant’s detention on several occasions.

22. On 13 February 2003 the applicant was indicted before the Lublin Regional Court (*Sąd Okręgowy*). The bill of indictment comprised numerous charges brought against 8 co-accused.

23. On 18 February and 14 October 2003 the Regional Court prolonged the applicant’s detention, finding that the grounds originally given for keeping him in custody were still valid. The court further decided to examine the applicant’s case separately due to the fact that the applicant was being simultaneously tried before the Opole Regional Court.

24. On 27 January and 6 April 2004 the Lublin Regional Court prolonged the applicant’s detention. The court gave identical grounds for continuing the applicant’s detention and dismissed his application for release for personal reasons.

25. It appears that the trial started on 6 October 2004.

26. The trial court held in total 7 hearings and on 30 May 2005 it gave judgment. The applicant was convicted of robbery and sentenced to three years' imprisonment.

II. RELEVANT DOMESTIC LAW

27. 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 to leave the country (*zakaz opuszczania kraju*).

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

"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 evidence gathered shows a significant probability that an accused has committed an offence."

28. 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 justified fear 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."

29. 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.”

30. 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 the 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 on which the first conviction at first instance is imposed 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, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome.”

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 with the court of appeal within whose jurisdiction the offence in question has been committed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

31. The applicant complained that he was arbitrarily deprived of his liberty contrary to Article 5 §§ 1 and 2 of the Convention.

32. However, pursuant to Article 35 § 1 of the Convention:

“1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken...”

33. The Court notes that the decision about which the applicant complains was given on 17 July 2001, thus more than six months before the date on which this complaint was submitted to the Court. In so far as it can be understood that the applicant complains about the second decision ordering his detention, given on 21 November 2002, the Court notes that this complaint was also lodged outside the six-month time-limit.

34. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

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

35. 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.”

36. The Government contested that argument.

A. Admissibility

37. 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. Arguments before the Court

38. The applicant submitted that he had been kept in detention for an unjustified period of time due to the automatic and superficial prolongation of his detention and examination of his application for release by the domestic courts. He also underlined that he had not been convicted of participation in an organised criminal group. The applicant argued that Polish law does not provide for a “pragmatic” ground for refusal to release an individual from detention because the trial would be obstructed by another set of pending criminal proceedings.

39. The Government considered that the applicant’s pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by “relevant” and “sufficient” grounds. These grounds were, in particular, the gravity of charges against the applicant as well as the risk that he might obstruct the

course of the proceedings. The latter was particularly justified as the applicant had been charged with membership of two organised criminal groups.

The Government further argued that the domestic authorities showed due diligence, as required in cases against detained persons. Finally, the Government referred to the complexity of both cases, which concerned organised crime and involved numerous co-accused.

2. *The Court's assessment*

(a) Principles established under the Court's case-law

40. Under 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, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

41. It falls in the first place to the national judicial authorities to ensure that, in a given case, pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned 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 of the Convention.

42. 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 judicial 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, § 153, ECHR 2000-IV, and *Jablonski v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

43. The Court first notes that the applicant was detained on remand on 17 July 2001 and that the first-instance judgment against him was given on 21 July 2004. Consequently, the period to be taken into consideration lasted 3 years and 5 days.

44. The Court observes that in the case that was pending before the Opole Regional Court the authorities initially relied on the existence of a reasonable suspicion that the applicant had committed the offences with which he had been charged and on the risk that he might interfere with the conduct of the proceedings since he had been accused of being a member of an organised criminal group. In addition, the authorities relied heavily on the severity of the sentence that could be expected and on the complexity of the case.

45. In the second set of criminal proceedings against the applicant the authorities did not advance any new grounds for detention and relied on the existence of a reasonable suspicion against the applicant and on the severity of the sentence that could be expected. With the passage of time, the courts - in both sets of proceedings against the applicant - failed to advance any new grounds for prolonging the most serious preventive measure against him.

46. The Court accepts that in the circumstances of the instant case the suspicion against the applicant of having committed the offences might initially have justified his detention in both sets of proceedings. However, the existence of a strong suspicion of the involvement of a person in serious offences, while constituting a relevant factor, cannot alone justify a long period of pre-trial detention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 35, § 89, and *Czarnecki v. Poland*, no. 75112/01, § 41, 28 July 2005).

47. The Court further agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (see, *Górski v. Poland*, no. 28904/02, § 57, 4 October 2005). In view of the seriousness of both charges against the applicant the authorities could justifiably consider in an initial stage that such a risk was present. However, with the passage of time, that ground became less relevant. Moreover, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

48. The Court also notes that in the first set of proceedings the Wrocław Court of Appeal in its decision of 10 February 2004 admitted that the applicant would have been released had it not been for the “pragmatic” reason that the second set of criminal proceedings against the applicant was pending in another city. The fact that at the same time two criminal cases against the same person had been examined before different courts could make the conduct of those proceedings more difficult. Nevertheless, in the

Court's view this ground cannot be considered a legitimate reason for deprivation of liberty under Article 5 of the Convention.

49. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal group. In this 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 (see *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent prolongations of detention. It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. In these circumstances and particularly as regards the first set of proceedings, the Court considers that the need to obtain evidence from many sources and to determine the facts and the degree of alleged responsibility of each of the co-defendants, constituted relevant and sufficient grounds for the applicant's detention during the period necessary to terminate the investigation, to draw up the bill of indictment and to hear evidence from the accused. Moreover, the Court considers that in cases such as the present concerning organised criminal groups, the risk that a detainee if released might bring pressure to bear on witnesses or other co-accused, or might otherwise obstruct the proceedings, is in the nature of things often particularly high.

50. While all the factors considered above could justify a relatively longer period of detention on remand, they do not however give the authorities unlimited power to prolong this preventive measure. Firstly, with the passage of time, the initial grounds for pre-trial detention become less and less relevant and the domestic courts should rely on other "relevant" and "sufficient" grounds to justify the deprivation of liberty (see, among many other authorities, *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2979, § 102; *Labita v. Italy* [GC], cited above, § 153). Secondly, even if the particular circumstances of the case required detention on remand to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify this.

51. In these circumstances, the Court concludes that the grounds given by the domestic authorities in both sets of criminal proceedings against the applicant were not "relevant" and "sufficient" to justify holding him in detention for 3 years and 5 days.

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

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

52. The applicant complained that he did not have a “fair trial” and that he was innocent. He relied on Article 6 of the Convention, which is so far as relevant provides as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

53. The Court firstly notes that it is not clear whether the applicant lodged appeals and cassation appeals with respect to both sets of criminal proceedings against him. However, even assuming that the applicant exhausted domestic remedies, it reiterates that it is not in any event called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

54. The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing. Assessing each set of criminal proceedings as a whole, the Court finds no indication that they were unfairly conducted.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 7,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 60,000 in respect of non-pecuniary damage.

57. The Government submitted that these claims were excessive.

58. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant 1,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

59. The applicant also claimed PLN 1,700 for the costs and expenses incurred before the Court.

60. The Government contested this claim.

61. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was unrepresented, the sum of EUR 100 covering costs and expenses for the proceedings before the Court.

C. Default interest

62. 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 complaint concerning the length of the pre-trial detention admissible and the remainder of the application inadmissible;
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 1,000 (one thousand euros) in respect of non-pecuniary damage, and EUR 100 (one hundred euros) in respect of costs and expenses, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 20 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President