



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

THIRD SECTION

CASE OF TELECKI v. POLAND

(Application no. 56552/00)

JUDGMENT

STRASBOURG

6 July 2006

FINAL

06/10/2006

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 Telecki v. Poland,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mr L. GARLICKI,

Mrs A. GYULUMYAN,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 10 November 2005 and 15 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 56552/00) 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 Telecki (“the applicant”), on 26 March 1999.

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

3. The applicant alleged that the length of his pre-trial detention had been unreasonable.

4. The application was allocated to the Third 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.

5. By a decision of 10 November 2005 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1959 and lives in Lublin, Poland.

8. On 1 February 1999 the Bielsko-Biała District Court (*Sąd Rejonowy*) ordered that the applicant be remanded in custody in view of the reasonable suspicion that, acting in an organised group, he had committed fraud. The applicant appealed against this decision, but on 19 March 1999 the Bielsko-Biała Regional Court dismissed the appeal, finding that his detention was necessary to ensure the proper course of the proceedings.

9. On 13 April 1999 the Lublin Regional Court (*Sąd Okręgowy*), to which the case was in the meantime transferred, further prolonged the applicant's detention. The court relied in particular on the complexity of the case, the need to obtain expert opinions and the seriousness of the charges against the applicant. In addition, the court considered that there existed a danger that the applicant, if released, would obstruct the process of collection of evidence.

The applicant appealed. On 20 May 1999 the Lublin Court of Appeal (*Sąd Apelacyjny*) dismissed the appeal.

10. By a decision of 16 June 1999 the Lublin Court of Appeal further prolonged the applicant's detention on remand. The court considered that the reasons for which the detention had been ordered still existed and that the prosecuting authorities continued the process of obtaining evidence. The applicant's appeal against this decision was dismissed on 29 July 1999 by the Supreme Court (*Sąd Najwyższy*) relying on the strong suspicion against the applicant and on the complexity of the case.

11. In September 1999 the applicant was indicted before the Biskupiec District Court. The bill of indictment, directed against the applicant and one co-accused, concerned 16 counts of fraud allegedly committed by them between July and September 1997.

12. On 17 September 1999 the Biskupiec District Court prolonged the applicant's pre-trial detention relying on the strong suspicion against the applicant and the severity of the anticipated sentence. The court further stated that there was a risk of absconding, in particular, with regard to the second co-accused. The applicant appealed but his appeal was dismissed by the Olsztyn Regional Court on 15 October 1999.

13. On 14 March 2000 the Biskupiec District Court further prolonged the applicant's detention. The court found that the grounds for the detention given in previous decisions were still valid. On 31 March 2000 the Olsztyn Regional Court dismissed the applicant's appeal against this decision.

14. At an unspecified later date the applicant requested his release. By decisions of 25 April 2000 and of 10 May 2000, the Biskupiec District Court, rejected his requests, considering that the grounds for detaining the applicant still remained valid.

15. By a decision of 28 June 2000 the Biskupiec District Court prolonged the applicant's detention until 30 November 2000. The court repeated the reasons given previously. On 14 July 2000 the Olsztyn

Regional Court dismissed his appeal against this decision finding that the period of his detention was not excessive.

16. The first trial hearings scheduled for 11 and 12 April 2000 were adjourned as the applicant's lawyer failed to appear before the court. The court appointed another lawyer for the applicant. The trial started on 8 November 2000.

17. At the hearing held on 21 November 2000 the Biskupiec District Court prolonged the applicant's detention until 31 January 2001. The court stated that the reasons justifying the applicant's detention remain valid. The trial court held the hearings on 12 December 2000 and 16 January 2001.

18. By a decision of 31 January 2001, upheld by the Olsztyn Regional Court on 9 February 2001, the Biskupiec District Court prolonged the applicant's detention until 31 May 2001, finding no grounds on which to order his release under Article 259 of the 1997 Code. The trial court further established that the process of hearing witnesses was incomplete and consequently retaining the applicant in custody was necessary to secure the proper conduct of the proceedings. The court also held that the measure was justified by the severity of the anticipated sentence and the danger that the applicant would interfere with the course of the proceedings.

19. The court held hearings on 20 February, 27 February, 28 March, 24 April and 29 May 2001. From December 2000 till May 2001 the court heard over 60 witnesses.

20. On 9 April 2001, 30 April 2001 and 14 May 2001 the Biskupiec District Court rejected other requests for the applicant's release.

21. On 31 May 2001 the Biskupiec District Court prolonged the applicant's detention until 31 July 2001 repeating the grounds given on the previous occasion. The applicant appealed. On 20 June 2001 the Olsztyn Regional Court dismissed his appeal and upheld the contested decision.

22. On 26 June 2001 the Biskupiec District Court convicted the applicant of 16 counts of fraud and sentenced him to 5 years' imprisonment. The applicant lodged an appeal.

23. On 22 January 2002 the Olsztyn Regional Court held a hearing in the appellate proceedings, at which the applicant's lawyer was present. The court dismissed the applicant's appeal and upheld the contested judgment.

24. The applicant lodged a cassation appeal but on 28 November 2002 the Supreme Court dismissed his cassation appeal as unsubstantiated.

II. RELEVANT DOMESTIC LAW

25. The Code of Criminal Procedure of 1997 ("1997 Code"), 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*).

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

27. 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.”

28. 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.”

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.

29. 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 § 3 OF THE CONVENTION

30. 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.”

31. The Government contested that argument. They stressed that the applicant had been remanded in custody in view of the strong suspicion that he had committed several serious offences of fraud committed in conspiracy with other persons in various locations of the country, and therefore his continued detention had been justified by the need to secure the proper conduct of the proceedings. They further contended that the applicant’s case was without doubt a very complex one. The Government considered, given that on the whole there had been valid grounds for keeping the applicant in custody and that the authorities had acted with due diligence, the requirements of Article 5 § 3 had been satisfied. Moreover, the Government

submitted that the proceedings in the case had been conducted diligently and speedily and that his detention had been subject to frequent review by the domestic courts.

32. The Court notes that in the present case the applicant was detained on remand on 1 February 1999 and the first-instance judgment was given on 26 June 2001. Consequently, the period to be taken into consideration lasted 2 years and 5 months and 26 days.

33. The Court observes that in the present case the authorities at the outset relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, the very serious nature of these charges and the need to secure the proper conduct of the proceedings. They repeated those grounds in all their decisions. Furthermore, the courts relied on the severity of the anticipated sentence and on the complexity of the case. They also considered that there was a risk of the applicant absconding or otherwise obstructing the proceedings. With the passage of time, the courts failed to advance any new grounds for prolonging the most serious preventive measure against the applicant.

34. The Court accepts that the suspicion against the applicant of having committed the offences and the need to secure the proper conduct of the proceedings might initially justify his detention. In addition to that, the authorities heavily relied on the likelihood that a severe sentence might have been imposed on the applicant given the serious nature of the offences at issue. In this respect, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. 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).

Moreover, the Court notes that the authorities did not invoke any specific circumstance which could confirm the danger of the applicant absconding or that his release would have obstructed the process of obtaining evidence. Consequently, the Court does not consider that these grounds, even taken with the argument of the severity of the anticipated sentence, can suffice to justify the entire period in issue.

The Court further observes that the applicant was detained on charges of having committed several offences of fraud. Even though the applicant committed them with the help of an accomplice, there is no indication that he was a member of an organised crime group. It does not appear therefore that his case presented particular difficulties for the investigation authorities and for the courts to determine the facts and the degree of responsibility of each accomplice, as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, no. 17584/04, § 37, 4 May 2006; *Dudek v. Poland*, no. 633/03, § 36, 4 May 2006).

35. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “sufficient” and “relevant” to justify the applicant’s being kept in detention for two years and almost six months.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 150,000 Polish zlotys in respect of both pecuniary and non-pecuniary damage.

38. The Government submitted that this claim was exorbitant and asked the Court to hold that finding of a violation would in itself constitute sufficient just satisfaction.

39. The Court accepts that the applicant has certainly suffered non-pecuniary damage – such as distress and frustration resulting from the protracted length of his detention– which is not sufficiently compensated by the finding of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant 1,000 euros under this head.

B. Costs and expenses

40. The applicant submitted no claim for costs.

C. Default interest

41. 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;
2. *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, to be converted into Polish zlotys at the rate applicable at the 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;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President