



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

FOURTH SECTION

**CASE OF HASS v. POLAND**

*(Application no. 2782/04)*

JUDGMENT

STRASBOURG

7 November 2006

**FINAL**

*07/02/2007*

*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 Hass 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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 17 October 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 2782/04) 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 Ryszard Hass (“the applicant”), on 18 December 2003.

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

3. On 17 March 2005 the President of the Fourth Section of the Court decided to communicate the complaint concerning the length of the applicant’s detention on remand 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****THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1976 and lives in Toruń, Poland.

5. On 15 November 2001 the applicant was arrested on suspicion of having committed several car thefts.

6. On 17 November 2001 the Toruń District Court (*Sąd Rejonowy*) remanded the applicant in custody until 15 February 2002. The court considered that his detention was justified by the existence of substantial evidence against him and the gravity of the charges. It also noted that the

applicant had attempted to induce one of the witnesses to change her testimony.

7. On 11 February 2002 the court prolonged the applicant's detention until 15 May 2002. It repeated the reasons previously given and added that the need to obtain additional evidence justified keeping the applicant in custody.

8. The applicant's detention was subsequently prolonged several times by the District Court and the Gdańsk Court of Appeal (*Sąd Apelacyjny*) until 30 March 2003.

9. His appeal against the prolongation of his detention was dismissed by the Court of Appeal on 15 January 2003.

10. On 14 March 2003 the applicant and 22 other persons were indicted on charges of being members of an organised criminal group and having committed numerous car thefts.

11. Subsequently, the applicant's detention was extended several times by the Toruń District Court and the Gdańsk Court of Appeal, for the same reasons as before.

12. On 18 November 2003 the District Court refused the applicant's application for release.

13. On 3 February 2004 the Court of Appeal granted the District Court's request to prolong the applicant's detention until 15 May 2004. The court considered that the case was very complex and that it was necessary to examine voluminous evidence. It also found that the detention was justified by the existence of strong evidence against the applicant and the gravity of the charges. There was also the possibility that the applicant would attempt to tamper with evidence. His appeal against that decision was dismissed on 16 March 2004.

14. On 11 May and 12 July 2004 the Court of Appeal again granted the District Court's requests and ordered that the applicant be detained until 30 September 2004. It dismissed the applicant's appeals against those decisions.

15. On 18 August 2004 the District Court released the applicant under police supervision; it also prohibited him from leaving the country. The court considered that the applicant suffered from a personality disorder and depression and that his isolation from the outside world constituted a danger to his life and health. The court based its view on a report by two expert psychiatrists.

16. The proceedings are still pending.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

17. 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*).

18. 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.”

19. 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.”

20. 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.”

21. 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.

22. 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. The court of appeal within whose jurisdiction the offence in question has been committed 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.”

## THE LAW

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

23. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention was excessive. Article 5 § 3 of the Convention, 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.”

24. The Government contested that argument.

#### **A. Admissibility**

25. 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. Period to be taken into consideration*

26. The Court observes that the applicant's detention lasted from 15 November 2001 to 18 August 2004, when he was released from custody. Accordingly, the period of his detention amounted to approximately 2 years and 9 months.

### *2. The reasonableness of the length of detention*

#### **(a) The parties' arguments**

27. The Government maintained that the length of the applicant's detention was not excessive. They stressed that the case was a very complex one as it concerned organised crime. They underlined that the domestic authorities dealt with it with due diligence.

28. The Government stated that the applicant's detention was duly justified during the entire period at issue. There were relevant and sufficient grounds for justifying his detention. It was necessary to ensure the proper course of the proceedings, especially in view of the gravity of the charges and the severe penalty that could be expected. The applicant was charged with participation in an organised criminal group and there was a serious risk that if released, he would attempt to put pressure on witnesses, as he had done before his arrest.

29. They further maintained that all the applicant's requests for release and his appeals against decisions prolonging his detention had been thoroughly examined by the competent courts.

30. The applicant contested these arguments. He submitted that his detention had been inordinately lengthy and that the authorities had failed to exercise all due diligence when dealing with his case. He stressed that his isolation had caused a deterioration of his physical and mental health as well as substantial pecuniary loss.

#### **(b) The Court's assessment**

##### *(i) Principles established under the Court's case-law*

31. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of

innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

32. Under Article 5 § 3 the national judicial authorities must ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for a departure from the rule in Article 5 and must set them out in their decisions on the applications for release.

33. 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 (see, for instance, *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

34. The Court observes that in their decisions concerning the applicant’s detention the judicial authorities relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, their serious nature and the heavy sentence which could be expected. They also referred to the risk that the applicant, if released, might obstruct the proper conduct of the trial or induce witnesses to give false testimony. They repeated those grounds in nearly all the decisions concerning the applicant’s detention (see paragraphs 6-7, 11 and 13 above).

35. The Court agrees that the strong suspicion against the applicant of having committed serious offences could have initially warranted his detention. However, 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.

36. The Court reiterates that, if due to the particular circumstances of the case, detention on remand is extended beyond the period generally accepted under the Court’s case-law, particularly strong reasons would be required for the applicant’s lengthy detention to have been justified under Article 5 § 3 (see *Celejewski v. Poland*, no. 17584/04, §38, 4 May 2006).

37. The Government pointed out that the applicant had been charged with being a member of an organised criminal group. The Court accepts that in cases concerning organised crime, involving numerous accused, the process of gathering and hearing evidence is often a difficult task.

Moreover, in cases such as the present case concerning organised criminal groups, the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings, is often particularly high. All these factors can justify a relatively longer period of detention on remand. However, they do not give the authorities unlimited power to prolong this preventive measure (see *Celejewski v. Poland* judgment cited above, §§ 37-38).

38. The Court observes that, in their decisions prolonging the applicant's detention, the judicial authorities held that there was the danger that, if released, he might induce witnesses to give false testimonies. They referred to the fact that the applicant had attempted to do so before his arrest. The Court agrees that the applicant's attempt to obstruct justice justified keeping him in custody at the initial stages of the proceedings. However, the Court considers that this ground gradually lost its relevance as the trial proceeded and witnesses were heard. Moreover, there is no indication that the applicant made any further attempts to induce witnesses or to obstruct the course of the proceedings while in custody or after his release.

39. The Court cannot but note that the District Court eventually released the applicant under police supervision because he suffered from a personality disorder and depression and that his further isolation constituted a danger to his life and psychological state of health. Before that decision, the authorities had not deliberated on the possibility of imposing on the applicant measures other than detention expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraphs 17 and 18 above).

40. In that context, the Court would reiterate that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures for 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 the *Jabłoński v. Poland* judgment cited above, § 83).

41. Furthermore, the Court observes that the proceedings against the applicant started November 2001 and, after nearly five years, his case is still pending before the first-instance court. The Court considers the complicated nature of the case does not relieve the national authorities of their obligation to exercise due diligence when dealing with it. The Court has stressed on many occasions, in the context of Article 5 § 3, that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities (see *Kreps v. Poland*, no. 34097/96, § 52, 26 July 2001).

42. In the circumstances, the Court finds that the grounds given for the applicant's pre-trial detention were not "relevant" and "sufficient" to justify holding him in custody for a total period of 2 years and 9 months.

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

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

44. The applicant alleged a breach of Article 6 § 1 in that he did not have a “fair trial”. He alleged that the courts committed errors of fact and law when dealing with his case.

45. However, the Court notes that the proceedings in question are still pending before the first-instance court. This complaint is therefore premature.

46. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 20,000 euros (EUR) for pecuniary damage and EUR 20,000 for non-pecuniary damage.

49. The Government considered that the sum claimed by the applicant was excessively high. They asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

50. 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, 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 1,000 under this head.

### B. Costs and expenses

51. The applicant also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and in the proceedings before the Court.

He maintained, however, that he could not provide any documents which would support his claims.

52. The Government contested these claims.

53. The Court recalls that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and reasonable as to quantum. The Court reiterates further that costs incurred before national courts may only be taken into account if they were incurred in seeking redress for the violations of the Convention found, which was not so in the instant case (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). On the other hand, making its assessment on an equitable basis and according to the criteria laid down in its case-law, the Court awards the applicant, who was not represented by a lawyer, EUR 100 for the costs and expenses incurred in Strasbourg proceedings.

### C. Default interest

54. 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 excessive length of the applicant's detention on remand 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, the following amounts, to be converted into national currency at the rate applicable at the date of settlement:
    - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
    - (iii) any tax that may be chargeable on the above amounts;
  - (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 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Nicolas BRATZA  
President