



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

FOURTH SECTION

CASE OF OSUCH v. POLAND

(Application no. 31246/02)

JUDGMENT

STRASBOURG

14 November 2006

FINAL

14/02/2007

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 Osuch 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 Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 24 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 31246/02) 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 Piotr Osuch ("the applicant"), on 29 July 2002.

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

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the excessive length of the applicant's detention on remand 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 1976 and lives in Warsaw, Poland.

5. On 10 March 1999 the applicant was arrested on suspicion of robbery and extortion. He was also suspected of being a member of an organised criminal group.

6. On 12 March 1999 the Warsaw District Court (*Sąd Rejonowy*) ordered that the applicant be detained until 9 June 1999. The court found

that there was a reasonable suspicion that the applicant had committed the offences in question.

7. On 1 June 1999 the District Court prolonged the applicant's detention. It referred to the interests of the pending investigation, such as the need to obtain additional evidence. The court also considered that the applicant, if released, could induce witnesses to give false testimony.

8. The applicant's detention was subsequently prolonged several times by the District Court for the same reasons as before.

9. On 27 August 1999 the Warsaw Regional Prosecutor (*Prokurator Okręgowy*) lodged with the Warsaw District Court a bill of indictment against the applicant and six other persons. They were indicted of several counts of robbery, extortion, and membership of an organised criminal group.

10. The applicant's detention was subsequently extended by the Warsaw Court of Appeal (*Sąd Apelacyjny*) on 6 March, 26 June, 28 September and 30 November 2001. The court considered that keeping the applicant in custody was justified by the existence of strong evidence against him and the gravity of the charges. It was also necessary as he could obstruct the proper course of the proceedings or induce witnesses to give false testimony. The applicant's appeals against those decisions were dismissed.

11. On 16 January 2002 the Warsaw District Court convicted the applicant of several counts of robbery and extortion committed in an organised criminal group. The applicant was sentenced to 9 years' imprisonment.

12. The Warsaw Regional Court (*Sąd Okręgowy*) upheld the first-instance judgment on 6 February 2003.

13. On 28 October 2003 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant's cassation appeal.

II. RELEVANT DOMESTIC LAW

The relevant provisions of the domestic law relating to preventive measures are set out in several judgments (see, among others, *Jaworski v. Poland*, no. 25715/02, §§ 20-27, 28 March 2006).

THE LAW

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

14. The applicant complained under Article 5 §§ 3 and 5 and under Article 3 of the Convention that the length of his pre-trial detention was excessive. The Court considers that this complaint falls to be examined under 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.”

15. The Government contested that argument.

A. Admissibility

16. 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*

17. The Court observes that the applicant's detention lasted from 10 March 1999 to 16 January 2002, when the first-instance judgment was given. Accordingly, the period of his detention amounts to approximately 2 years and 10 months.

2. *The reasonableness of the length of detention*

(a) **The parties' arguments**

18. The Government maintained that the length of the applicant's detention was not excessive. They stated that there were relevant and sufficient grounds for justifying his detention during the entire period at issue. 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 Government drew attention to the fact that the applicant had been charged with membership of an organised criminal group. There was therefore a serious risk that, if released, he would attempt to put pressure on witnesses or obstruct the proceedings.

19. The Government argued that the domestic authorities showed due diligence when dealing with the case. They stressed that it was an extremely complex one as it concerned organised crime. They further maintained that all the applicant's requests for release and appeals against decisions prolonging his detention were thoroughly examined by the competent courts.

20. The applicant contested these arguments. He submitted that his detention had been inordinately lengthy.

(b) The Court's assessment

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

21. 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).

22. 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.

23. 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

24. 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 penalty 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 6-8 and 10 above).

25. 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 relevant and the domestic courts should rely on other "relevant" and "sufficient" grounds to justify the deprivation of liberty.

26. 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, the Court considers that in cases such as the present one, concerning organised criminal groups, the risk that a detainee if released might put pressure on witnesses or other co-accused, 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 the *Celejewski v. Poland*, no. 17584/04, §§ 37-38, 4 May 2006). Moreover, the Court cannot but note that there is no indication that before his arrest the applicant tried to induce witnesses or to obstruct the course of the proceedings in any other way.

27. It should be noted that during the entire period of his detention, the authorities did not envisage the possibility of imposing on the applicant other measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

28. 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 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 the *Jabłoński* judgment cited above, § 83).

29. 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 period of 2 years and 10 months.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 20,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

33. 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.

34. 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 some 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

35. The applicant also claimed 200 PLN for each hearing that took place before the domestic courts. He submitted that about 40 hearings were held during the course of the proceedings.

36. The Government contested these claims.

37. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In the present case, the Court finds that he has not produced any evidence supporting his claim as required by Rule 60 § 2 of the Rules of Court. Accordingly, it makes no award under this head.

C. Default interest

38. 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 remainder of 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 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on 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 14 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President