



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

FOURTH SECTION

CASE OF DEPA v. POLAND

(Application no. 62324/00)

JUDGMENT

STRASBOURG

12 December 2006

FINAL

12/03/2007

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 Depa 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 21 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 62324/00) 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 Wojciech Depa (“the applicant”), on 26 May 1999.

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

3. On 1 December 2005 the President of the Fourth Section of the 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 1975 and lives in Kraków, Poland.

5. On 14 January 1998 the applicant was arrested by the police. On 16 January 1998 the Kraków District Court (*Sąd Rejonowy*) decided to detain the applicant on remand in view of the reasonable suspicion that he had committed offences of kidnapping, sequestration, attempted murder and theft. The court established that there was a risk that the applicant might tamper with evidence as he had attempted to intimidate the victim and that he might abscond since two other alleged perpetrators had gone into hiding.

6. Between 27 March and 11 August 1998 the applicant served a prison sentence ordered in another set of criminal proceedings.

7. On 6 April 1998 the Kraków Regional Court (*Sąd Wojewódzki*) prolonged the applicant's detention relying on the reasonable suspicion that he had committed the offences in question and on the need to continue the investigation, in particular so that he could undergo a psychiatric examination.

8. On 14 July and 27 October 1998 the applicant's pre-trial detention was further prolonged. The latter decision was taken at a public hearing at which the applicant and his lawyers were present. The court found that keeping the applicant in custody was justified by the strong suspicion that he had committed the offences, the probability that a severe sentence would be imposed and the fact that the third alleged perpetrator was still in hiding.

9. The applicant appealed against those decisions arguing that there was no evidence that once released he would obstruct the proper course of the proceedings or abscond. The applicant further asked the court to take into consideration his difficult family situation as his parents needed his support.

10. In the meantime, on 13 July 1998, the applicant was indicted before the Kraków Regional Court (*Sąd Okręgowy*).

11. At a hearing held on 16 February 1999, at which the applicant was present, the Kraków Regional Court prolonged the applicant's detention. The court found:

"The fact that [the applicant] has been charged with having committed attempted murder is a sufficient ground for imposing the most severe preventive measure, that is detention on remand."

12. Subsequently, on 14 May and 16 August 1999, the applicant's detention on remand was prolonged by the trial court. The first decision was taken at a public hearing at which the applicant and his lawyers were present. The court relied on the strong probability that the applicant had committed the offences and the advanced stage of the trial.

13. On several occasions the Kraków Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's requests to attend the court's session at which his appeals against the decisions to prolong his pre-trial detention were examined. The court established that the presence of the applicant was not necessary as he was represented by two lawyers of his choice who could attend the court's session.

14. The applicant's numerous applications for release and appeals against the decisions to prolong the detention were to no avail.

15. In 1999 the trial court held in total thirteen hearings.

16. On 10 January 2000 the Kraków Regional Court gave a judgment. The applicant was convicted as charged and sentenced to fifteen years' imprisonment.

17. The applicant lodged an appeal. On 13 April 2000 the Kraków Court of Appeal allowed the appeal, quashed the impugned judgment and remitted

the case. The court further decided to prolong the applicant's detention on remand. His lawyers were present at the hearing.

18. On 27 July 2000 the trial court held the first hearing at which the applicant and his lawyers were present. The Regional Court prolonged the applicant's detention justifying it with reference to the reasonable suspicion that he had committed offences in question and the severity of the anticipated penalty. The court dismissed the applicant's argument that his detention was contrary to international treaties, in particular the European Convention on Human Rights.

19. On 24 August 2000 the Kraków Court of Appeal dismissed the applicant's request to attend the session at which his appeal against the decision of 27 July 2000 was to be examined, on the grounds that his presence was neither obligatory nor necessary. On the same date the court dismissed the appeal. It also dismissed the applicant's requests to release him from detention and to apply another preventive measure instead, such as bail. The Court found that his family's situation was not as difficult as the applicant had indicated. It further established that the severity of the anticipated penalty was a sufficient ground ("*samodzielna przesłanka*") for his continued detention and was consistent with the jurisprudence of the European Court of Human Rights. Nevertheless, the court decided to limit the period for which the detention was to be prolonged to 31 January 2001. The applicant's lawyer was present at the session.

20. Afterwards, the applicant's detention was further prolonged at public hearings held on 22 November 2000 and 20 April, 13 June, 27 September and 13 December 2001. The applicant and his lawyers were present at these hearings. In the meantime, the court held a session on 23 February 2001 at which it prolonged the detention. One of the applicant's lawyer was present. It appears that on each occasion the Regional Court repeated the grounds for detention given previously: the reasonable suspicion that the applicant had committed the offences and the severity of the penalty that might be imposed. The court further dismissed the applicant's requests for release and found that the situation of his parents and his state of health were undoubtedly difficult but not "catastrophic". The decisions were upheld on appeal by the Kraków Court of Appeal.

21. The applicant's numerous requests for release were to no avail. His applications and appeals against the decisions to prolong his detention were dismissed at court sessions. The applicant's lawyers were present at most of those sessions.

22. On 6 February 2002 the Kraków Regional Court gave judgment. The applicant was convicted as charged and sentenced to fifteen years' imprisonment. The applicant lodged an appeal against the judgment.

23. On 19 September 2002 the Kraków Court of Appeal partly allowed the appeal. The applicant was acquitted of the charge of attempted murder and his sentence was reduced to five years' imprisonment.

24. Subsequently, the applicant's court-appointed lawyer lodged on his behalf a cassation appeal with the Supreme Court (*Sąd Najwyższy*). On 3 June 2003 the Supreme Court partly allowed the cassation appeal, quashed the appeal court's judgment and remitted the case.

25. On 24 June 2004 the Krakow Court of Appeal gave a judgment. The court amended its judgment of 19 September 2002 but it upheld the applicant's sentence. The judgment became final.

II. RELEVANT DOMESTIC LAW

26. 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*).

Article 249 § 5 provides that the lawyer of a detained person should be informed of the date and time of court sessions at which a decision is to be taken concerning the prolongation of detention on remand.

27. A more detailed rendition of the relevant domestic law provisions is set out in the Court's judgment in *Kudła v. Poland* [GC], no. 30210/96, § 75, ECHR 2000-XI, *Celejewski v. Poland*, no. 17584/04, §§ 22 and 23, 4 May 2006.

28. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are stated in the Court's decisions in cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

29. 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."

30. The Government refrained from expressing an opinion on whether the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. The Government submitted, however, that his pre-trial detention was duly justified and that during the entire period the authorities had given relevant

and sufficient reasons for prolonging it. Moreover, the Government argued that the domestic courts had acted diligently and speedily, particularly in view of the complexity of the case, which had involved several co-accused.

A. Admissibility

31. 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. Principles established under the Court's case-law

32. 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)

33. The presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, p. 37, § 4), the second limb of Article 5 § 3 does not give the judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...).

34. It falls in the first place to the national judicial authorities to ensure that, in a given case, the 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 established 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 (see *McKay*, cited above, § 43).

35. 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. 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).

2. Application of the principles to the circumstances of the present case

36. The Court first notes that the applicant had been detained on remand on 14 January 1998 and that the first-instance judgment was given on 10 January 2000. Subsequently, on 13 April 2000, the appeal court quashed the judgment and remitted the case. The applicant’s detention on remand lasted until 6 February 2002 when the trial court again convicted him. Moreover, the period between 27 March and 11 August 1998 should be deducted from the overall period of his detention as during this time the applicant had been serving a prison sentence ordered in another set of criminal proceedings. The detention thus lasted 3 years and 5 months.

37. The Court observes that in the present case the authorities relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and on the severity of the sentence that might be imposed. They repeated those grounds in all their decisions. The authorities failed to advance any other justifications to prolong the applicant’s detention.

38. 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. However, with the passage of time, these grounds became less relevant and cannot justify the entire period of 3 years and 5 months during which the most serious preventive measure against the applicant had been imposed (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006).

39. Moreover, the authorities relied heavily on the likelihood that a severe sentence would be 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 *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

40. The Court further observes that the applicant was detained on charges of, *inter alia*, attempted homicide and was finally convicted of causing bodily harm. Moreover, even though the applicant had committed these crimes with the help of accomplices, there is no indication that he was a member of an organised criminal 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 mount a case against the perpetrator 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).

41. Finally, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative measures of ensuring his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jablonski*, cited above, § 83).

In the present case the Court notes that there is no express indication that during the entire period of the applicant’s pre-trial detention the authorities envisaged any other means of guaranteeing his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

42. The Court is, therefore, not satisfied that the reasons given to justify the applicant’s detention for 3 years and 5 months were “relevant” and “sufficient”, as required under Article 5 § 3.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

43. The applicant complained about the procedure relating to the prolongation of his pre-trial detention, in particular that he and his lawyer did not attend the sessions at which his detention was prolonged. The Court will examine this complaint under Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

44. The Government submitted that according to Article 249 § 1 of the Code of Criminal Procedure, the lawyer of the accused was notified of the court’s sessions at which detention on remand was prolonged and was entitled to take part in them. The Government maintained that the applicant’s lawyers were summoned to those sessions, although they were

absent from some of them. The Government submitted that, taking into consideration all the proceedings devoted to the review of the lawfulness of the applicant's pre-trial detention, the principles guaranteed in Article 5 § 4 of the Convention had been respected in the present case.

45. The Court reiterates the following principles which emerge from the Court's case law on Article 5 § 4, so far as relevant in the present case:

(a) Article 5 § 4 of the Convention entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty (see, among many others, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).

(b) Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162, and *Włoch v. Poland*, no. 27785/95, § 125, ECHR 2000-XI, both with reference to *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22).

(c) The proceedings must be adversarial and must always ensure "equality of arms" between the parties. In the case of a person whose detention falls within the ambit of Article 5 § 1(c) a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II; *Assenov and Others*, cited above, § 162, with references to *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, p. 13, §§ 30-31; *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no. 107, p. 19, § 51; and *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47).

(d) Furthermore, Article 5 § 4 requires that a person detained on remand be able to take proceedings at reasonable intervals to challenge the lawfulness of his detention (see *Assenov and Others*, cited above, p. 3302, § 162, with a reference to *Bezicheri v. Italy*, judgment of 25 October 1989, Series A no. 164, pp. 10-11, §§ 20-21).

46. Turning to the circumstances of the instant case, the Court firstly notes that it cannot examine events complained of by the applicant which took place before 26 November 1998, that is more than six months before the date on which this complaint was submitted to the Court.

47. The procedure for the prolongation of the applicant's pre-trial detention during the period under consideration was based on Article 249 § 5 of the Code of Criminal Procedure which requires the domestic courts to inform the lawyer of a detained person of the date and time of court sessions at which a decision was to be taken concerning prolongation of detention on

remand, or an appeal against a decision to impose or to prolong detention on remand was to be considered. It was open to the lawyer to attend such sessions.

48. The Court observes that the majority of decisions to prolong the applicant's detention were given at public hearings at which the applicant was present and was legally represented. He was therefore able to personally support his applications for release.

As regards the remaining sessions at which his detention was prolonged, the Court notes that the applicant's lawyers were properly summoned to and were present at the great majority of those sessions. They were also present at the examination of most of the applicant's numerous requests for release and appeals against the decisions to prolong the detention. In this connection the Court reiterates that in cases where characteristics pertaining to the applicant's personality and level of maturity and reliability are of importance in deciding on his dangerousness, Article 5 § 4 requires an oral hearing in the context of an adversarial procedure involving legal representation (see *Waite v. the United Kingdom*, no. 53236/99, § 59, 10 December 2002). The Court considers, however, that in the present case the questions of assessment of the applicant's character or mental state did not arise. His personal attendance at all of the sessions at which his detention on remand had been prolonged was therefore not required, and the presence of his lawyers ensured respect for equality of arms in those proceedings.

49. In view of the above, the Court is of the opinion that the proceedings in which the prolongation of his detention was examined satisfied the requirements of Article 5 § 4 (see *Telecki v. Poland*, (dec.), no. 56552/00, 3 July 2003 and *Celejewski v. Poland*, no. 17584/04, § 47, 4 May 2006).

50. It follows that this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

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

51. The applicant complained under Article 6 § 1 of the Convention that the length of the criminal proceedings had exceeded a "reasonable time" within the meaning of this provision and that he had not had a "fair trial".

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

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law..."

53. As regards the complaint about the unreasonable length of the proceedings, the Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic courts.

54. It further observes that, pursuant to section 18 of the 2004 Act, it was open to an applicant whose case was pending before the Court to lodge, within six months from 17 September 2004, a complaint about the unreasonable length of the proceedings with the relevant domestic court, provided that his application to the Court had been lodged in the course of the impugned proceedings and had not yet been declared admissible. The applicant in the present case satisfied these requirements.

55. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-V).

56. However, the applicant, despite having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under the 2004 Act, has chosen not to avail himself of this remedy. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

57. With regard to the applicant's assertion that the proceedings in his case were unfair, the Court notes that it is not clear whether the applicant lodged a cassation appeal with the Supreme Court. However, even assuming that the applicant had exhausted domestic remedies, the Court reiterates that it is not 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).

58. The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing. Assessing the criminal proceedings against the applicant as a whole, it 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

59. 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.”

60. The applicant did not submit any claim in respect of just satisfaction or costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the unreasonable 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.

Done in English, and notified in writing on 12 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President