



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

FOURTH SECTION

CASE OF DOLASIŃSKI v. POLAND

(Application no. 6334/02)

JUDGMENT

STRASBOURG

19 December 2006

FINAL

19/03/2007

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 Dolasiński 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 M. PELLONPÄÄ

Mr K. TRAJA,

Mr L. GARLICKI,

Mrs L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 28 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 6334/02) 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 Sebastian Dolasiński (“the applicant”), on 17 December 2001.

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

3. The applicant alleged, in particular, that the length of his detention on remand had been unreasonable.

4. By a decision of 22 November 2005 the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Zielona Góra, Poland.

6. On 28 March 2000 the applicant was arrested by the police. On 29 March 2000 he was charged with fraud.

7. On 30 March 2000 the Wrocław District Court (*Sąd Rejonowy*) remanded the applicant in detention. The court referred to the fact that the applicant was charged with a crime which carried a heavy sentence. It also

considered that the applicant could go into hiding and that he might try to avoid the trial.

8. On 27 April 2000 the applicant applied for release from detention. On 4 May 2000 the Wrocław District Prosecutor rejected his application. The prosecutor pointed out that the applicant's co-accused was still in hiding. He also considered that the applicant's case did not disclose any of the grounds for release from detention listed in Article 259 § 1 of the Code of Criminal Proceedings. The applicant appealed against this decision but his appeal was dismissed on 19 May 2000 by the Wrocław Regional Prosecutor.

9. On 28 June 2000 the Wrocław District Court extended the applicant's pre-trial detention until 29 September 2000. The court considered that the evidence collected in the case sufficiently supported the charges laid against the applicant. It was necessary to collect several pieces of evidence and the charges laid against the applicant carried a heavy sentence. The court was also of the view that the applicant would interfere with the criminal proceedings against him.

10. On 28 September 2000 the Wrocław District Court prolonged the applicant's pre-trial detention until 29 December 2000. The court repeated the reasons given in its decision of 28 June 2000.

11. On 20 October 2000 the applicant made an application for release to the Wrocław Regional Prosecutor. He requested that his detention be replaced by police supervision and by a court order requiring him to remain in Poland.

12. On 23 October 2000 the Regional Prosecutor dismissed the application for release. The prosecutor pointed out that the applicant was a habitual offender and that the evidence collected in the case sufficiently supported the charges laid against him.

13. On 28 December 2000 the Wrocław District Court extended the applicant's pre-trial detention until 29 March 2001. The court repeated the reasons given in its decision of 28 June 2000.

14. On 2 February 2001 the Wrocław Regional Court dismissed the applicant's appeal against the decision of 28 December 2000.

15. On 16 March 2001 the applicant was indicted before the Wrocław District Court. The bill of indictment against the applicant and one co-accused concerned several counts of fraud to the detriment of several companies allegedly committed by them while running a company owned by the applicant.

16. On 28 March 2001 the Wrocław District Court prolonged the applicant's pre-trial detention until 29 June 2001. The court repeated the reasons given in its decision of 28 June 2000 and added that the applicant would remain in detention in order to "secure the proper conduct of the proceedings".

17. At the hearing held on 12 September 2001 the trial court further prolonged the applicant's detention justifying it by reference to the gravity

of the charges and the need to secure the proper conduct of proceedings. At the next hearing held on 15 November 2001 the applicant pleaded guilty to some of the charges against him.

18. On 19 December 2001 the applicant's pre-trial detention was prolonged. The court considered that the reasons for keeping him in detention were still valid.

19. Subsequently the trial court scheduled several hearings which were adjourned as the witnesses failed to appear.

20. On 13 March 2002 the Wrocław District Court made a request under Article 263 § 4 of the Code of Criminal Proceedings to the Wrocław Court of Appeal (*Sąd Apelacyjny*) in which it asked that the applicant's detention be prolonged until 28 September 2002.

21. On 21 March 2002 the Wrocław Court of Appeal allowed the District Court's request but decided to extend the applicant's detention only until 28 July 2002. The appellate court agreed with the District Court that the need to take evidence from nineteen witnesses could justify the extension of the applicant's detention. At the same time, the Court of Appeal pointed out that the proceedings before the trial court were slow-moving and that the conduct of the proceedings by the trial court "did not contribute to their termination within the proper time". In this connection, the appellate court noted that only nine hearings had taken place within the first year of the proceedings and that the proceedings had begun in fact on 15 November 2001. Furthermore, the Court of Appeal observed that already in December 2001 and January 2002 some of the witnesses had informed the trial court that they could not attend hearings before it and had asked that they be heard by other courts at the request of the Wrocław District Court. The delay in taking a decision concerning these requests was difficult to understand. Finally, the Wrocław Court of Appeal stated that the applicant's detention would be extended only until 28 July 2002 because a period of four months should be sufficient to allow the trial court to conclude the proceedings.

22. The applicant appealed against the decision of 21 March 2002 but his appeal was dismissed on 11 April 2002.

23. The trial court held hearings on 17 April and 8 May 2002. On 22 May 2002 the trial court gave judgment. The applicant was convicted and sentenced to five years' imprisonment.

24. The applicant lodged an appeal against the judgment.

25. On 26 February 2003 the Wrocław Regional Court gave judgment in which it partly amended the trial court's judgment.

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 prolongation of detention on remand.

A more detailed rendition of the relevant domestic law provisions is set out in the Court's judgment in *Celejewski v. Poland*, no. 17584/04, §§ 22 and 23, 4 May 2006.

THE LAW

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

27. 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.”

28. The Government contested that argument. The Government submitted that the applicant's detention that lasted almost two years and two months was not unreasonably lengthy. The Government argued that the case was complex as it concerned fraud allegedly committed by the applicant to the detriment of several companies. The complexity of the case was also shown by the extensive expert evidence obtained by the trial court. Furthermore, the Government were of the opinion that in the examination of the case the domestic courts had displayed due diligence as required in cases against detained persons.

They averred 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. In this connection they stated:

“Although not expressly mentioned in every decision refusing the applicant's release, these circumstances of the applicant's case were duly taken into account by the prosecution and judicial organs while finding that only detention on remand could secure the proper course of the proceedings conducted against the applicant.”

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

29. 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)

30. 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 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-...).

31. 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).

32. 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 *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

33. The Court first notes that the applicant's detention on remand started on 28 March 2000 and ended on 22 May 2002, with the first-instance judgment. The detention thus lasted 2 years and almost 2 months.

34. The Court observes that the authorities initially relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, and a risk that he might interfere with the conduct of the proceedings. In addition to that, the authorities relied heavily on the severity of the sentence that might be imposed, which made it probable that the applicant would obstruct the course of the criminal proceedings.

They repeated those grounds in all their decisions. In subsequent decisions the authorities failed to advance any new grounds for prolonging the most serious preventive measure against the applicant. Moreover, the authorities did not rely on any specific circumstance capable of showing that the applicant's release would, and if so why and how, obstruct the process of obtaining evidence.

35. 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 2 years and 2 months during which the applicant remained in detention (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006).

36. 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).

37. The Court observes further that the applicant was detained on charges of fraud and was finally sentenced to five years' imprisonment. Those offences, even though they carried a severe penalty, were not violent crimes. Moreover, even though the applicant had committed the offences 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 mount a case against the perpetrator as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, cited above, § 37, and *Malik*, cited above, § 49).

38. 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 means of guaranteeing 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 *Jabłoński*, 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 guarantees of 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.

39. The Court is, therefore, not satisfied that the reasons given to justify the applicant's detention for 2 years and 2 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant did not claim any particular sum in respect of pecuniary and non-pecuniary damage. He left that matter to the Court's discretion and asked the Court to award him just satisfaction in the amount it finds appropriate.

42. The Government asked the Court to rule that a finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

43. The Court considers that the applicant must have sustained non-pecuniary damage, such as distress and frustration resulting from the unreasonable length of his detention on remand. Making the assessment on an equitable basis, the Court awards the applicant 1,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

44. The applicant did not claim reimbursement of the costs and expenses incurred before the domestic courts and the Court.

C. Default interest

45. 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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 19 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President