



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

FOURTH SECTION

CASE OF BOGDANOWICZ v. POLAND

(Application no. 38872/03)

JUDGMENT

STRASBOURG

16 January 2007

FINAL

16/04/2007

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 Bogdanowicz 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 12 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 38872/03) 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 Mr. J. Bogdanowicz (“the applicant”). The applicant was represented by Mr. K. Woliński, a lawyer practising in Gdańsk.

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

3. On 26 September 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1953 and lives in Gdynia.

The applicant's detention for the purpose of the first set of criminal proceedings

5. On 5 September 2003 the applicant was arrested and placed in custody. He was suspected of having committed offences of kidnapping and acting in an organisation of a criminal character.

6. On an unknown date the Gdańsk District Court ordered that the applicant be detained until 14 December 2003. The court based its detention order on a reasonable suspicion that the applicant had committed the offences and on the severity of the likely penalty, which gave rise to a fear that the applicant would obstruct the proceedings. The court also stressed his relapse into crime.

7. Subsequent decisions as to the extension of the applicant's pre-trial detention were taken on 25 November 2003, 18 December 2003, 17 February 2004, 3 June 2004, 28 September 2004, 22 December 2004 and 30 March 2005.

8. In all the above-mentioned decisions the courts mainly relied on the same grounds for detention as those given for the making of the first detention order. In addition, they indicated the need to conduct further investigations and the probable collusion of the accused.

9. On many occasions the applicant unsuccessfully requested his release from detention and, also unsuccessfully, appealed against decisions extending his pre-trial detention.

10. On 4 February 2004 a bill of indictment was filed against the applicant and thirteen co-accused. The applicant was charged with kidnapping and acting in an organisation of a criminal character.

11. From 30 September 2004 to 4 May 2005 the applicant was serving a prison sentence in respect of another conviction.

12. On 30 June 2004 the first hearing was held before the Gdańsk Regional Court. Hearings scheduled for 14 and 22 September 2004 were postponed due to the necessity of replacing one of the judges.

13. On 6 October 2004 a new judge was assigned to the case.

14. Subsequent hearings were held on 5 January 2005, 12 January 2005, 2 March 2005, 9 March 2005, 16 March 2005, 30 March 2005, 6 April 2005, 13 April 2005, 27 April 2005, 4 May 2005, 18 May 2005, 30 May 2005, 1 June 2005, 15 June 2005, 29 June 2005, 19 July 2005, 17 August 2005, 7 September 2005, 21 September 2005, 13 October 2005, 9 November 2005, 7 December 2005, 21 December 2005, 11 January 2006, 8 February 2006, 1 March 2006 and 29 March 2006.

15. The applicant's pre-trial detention ended on 1 June 2005.

16. The proceedings are pending before the first-instance court.

The length of the second set of criminal proceedings and the applicant's pre-trial detention in their respect

17. On 18 April 2002 the applicant was arrested and placed in custody.

18. On 19 April 2002 the Gdańsk District Court ordered that the applicant be detained for three months on suspicion of having committed armed robbery and having acted in an organisation of a criminal character. The court based its detention order on a reasonable suspicion that the applicant had committed the offences and on the severity of the likely penalty, which gave rise to a fear that the applicant would obstruct the proceedings.

19. From 18 April 2002 to 28 August 2003 the applicant was serving a prison sentence in respect of another conviction.

20. The applicant's detention was extended on the following dates: 9 July 2002, 12 September 2002, 23 May 2003, 25 July 2003, 28 November 2003, 23 March 2004, 7 April 2004 and 22 June 2004.

21. In all the above-mentioned decisions the courts mainly relied on the same grounds for detention as those given for the making of the first detention order. In some of the decisions, the courts also indicated the need to conduct further investigations.

22. On 12 December 2002 a bill of indictment was filed against the applicant and eighteen co-accused. The applicant was charged with armed robbery and acting in an organisation of a criminal character.

23. The first hearing, scheduled for 25 April 2005, was cancelled due to a judge's illness.

24. Subsequent hearings were held on 16 May 2003, 23 May 2003, 13 June 2003, 24 June 2003, 27 June 2003, 1 December 2003, 19 December 2003, 29 December 2003. In January and February 2004 altogether five hearings were held. Hearings scheduled for 18 March 2004 and 1 April 2004 were cancelled due to a judge's illness. Subsequently, hearings were held on 21 May 2004, 28 May 2004, 18 June 2004, 23 July 2004, 17 September 2004, 22 October 2004, 19 November 2004, 28 January 2005, 25 February 2005, 25 March 2005, 15 April 2005 and 22 April 2005.

25. On 30 September 2004 the applicant was released from detention.

26. On 14 December 2004 the applicant's complaint lodged under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time was rejected on formal grounds.

27. On 29 April 2005 the Gdańsk Regional Court convicted the applicant of the offences and sentenced him to three years' imprisonment. On 13 February 2006 the applicant appealed.

28. The proceedings are pending before the Gdańsk Court of Appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Length of pre-trial detention

29. For a description of the relevant domestic law, see *Kozik v. Poland*, no. 25501/02, judgment of 18 July 2006.

B. Length of proceedings ¹

30. On 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) entered into force (“the 2004 Act”). It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings. A party to pending proceedings may ask for the acceleration of those proceedings and/or just satisfaction for their unreasonable length under section 2 read in conjunction with section 5(1) of the 2004 Act.

31. On 18 January 2005 the Supreme Court (*Sąd Najwyższy*) adopted a resolution (no. III SPP 113/04) in which it ruled that while the 2004 Act produced legal effects as from the date of its entry into force (17 September 2004), its provisions applied retroactively to all proceedings in which delays had occurred before that date, but only when they had not yet been remedied.

THE LAW

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

32. The applicant complained that the length of his pre-trial detention was in breach of Article 5 § 3, which provides:

“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.”

¹ For a more detailed presentation of the relevant domestic law see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005; *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005.

A. Admissibility

33. The Government acknowledged that the applicant had exhausted domestic remedies in respect of both sets of proceedings.

34. 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

35. The Government conceded that the applicant's pre-trial detention lasted from 5 September 2003 to 1 June 2005, which amounts to one year, eight months and twenty-six days (in respect of the first set of proceedings), and from 18 April 2002 to 30 September 2004, which amounts to over two years, five months and fourteen days (in respect of the second set of proceedings). However, the period of his pre-trial detention in respect of those two sets of proceedings overlapped between 5 September 2003 and 30 September 2004.

36. The Government stressed that from 30 September 2004 to 4 May 2005 (in respect of the first set of proceedings) and from 18 April 2002 to 28 August 2003 (in respect of the second set of proceedings) the applicant was serving prison sentences as a result of other convictions. Accordingly, after the deduction of these periods, the applicant was detained for the purpose of the first set of proceedings for one year and twenty-six days and for the purpose of the second set of proceedings for one year, one month and four days. As the periods of the applicant's pre-trial detention overlapped, the Government concluded that the applicant had been deprived of his liberty in respect of both sets of proceedings from 28 August 2003 to 30 September 2004, which amounted to one year, one month and two days.

37. The Government were of the opinion that the whole period of the applicant's detention had been justified. The evidence obtained in the proceedings indicated that there was a reasonable suspicion that the applicant had committed the offences.

38. The Government drew the Court's attention to the serious nature of the charges against the applicant, in particular that he had been charged with acting in an organisation of a criminal character. They also underlined that the applicant had relapsed into crime.

39. The Government also argued that the applicant's detention had been aimed at securing the proper conduct of the investigation, as there had been a risk that he would obstruct the proceedings and influence witnesses and other co-accused.

40. With regard to the review of the applicant's detention, the Government pointed out that the applicant's detention had been reviewed at

regular intervals. On each occasion the decisions had been reasoned in a relevant and sufficient manner.

41. With regard to the proceedings on the merits, the Government maintained that these had been very complex (there had been thirteen co-accused in the first set of proceedings and eighteen in the second). The case files had amounted to thirty and ninety volumes, respectively.

42. The Government further stressed that the investigative phase of the proceedings had been conducted speedily. They further noted that hearings had been held at regular and brief intervals.

43. The applicant stated that he did not wish to present observations in reply.

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

44. 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, the *W. v. Switzerland* judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

45. 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 stated 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 the *Contrada v. Italy* judgment of 24 August 1998, *Reports 1998-V*, p. 2185, § 54; *Mc Kay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-...).

46. 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, ECHR 2000-IV, § 153).

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

47. At the outset, the Court notes that the applicant's pre-trial detention was not of a very significant length. It agrees with the Government's view (see paragraphs 35 to 36 above) that the period to be taken into consideration lasted one year and one month.

48. The Court notes that pre-trial detention was imposed on the applicant in view of a reasonable suspicion that he had committed the offences, the severity of the likely penalty and the risk of the applicant's hampering the proper conduct of the proceedings.

49. The applicant's detention was subsequently reviewed by the courts at regular intervals. In their decisions extending the detention the domestic authorities relied on the need to conduct further investigations, the reasonable suspicion that the applicant had committed the offences and the risk that he would obstruct the proper course of justice by influencing witnesses and other accused.

50. The Court therefore considers that, in the particular circumstances of the instant case, the grounds given by the judicial authorities for the applicant's detention satisfied the requirement of being "relevant" and "sufficient".

51. The Court accepts the Government's opinion that the case was very complex, regard being had to the nature of the charges against the accused and the scope of the evidence to be taken.

52. The Court also notes that hearings were held regularly and at short intervals, notwithstanding the fact that some of them had to be postponed, and the investigative phase of the proceedings was conducted speedily.

53. For these reasons, it considers that the domestic authorities cannot be criticised for a failure to observe "special diligence" in the handling of the applicant's case.

54. Furthermore, the Court notes that during a significant period of the applicant's pre-trial detention, he was serving prison sentences in respect of other convictions and that periods of his pre-trial detention imposed in two sets of proceedings overlapped.

55. Finally, the Court observes that the overall period of detention was not unreasonable in the circumstances of the case.

56. In view of the above considerations, the Court considers that the applicant's prolonged detention was not in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention.

57. There has, accordingly, been no violation of Article 5 § 3 of the Convention.

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

58. The applicant's complaint relates to the length of the proceedings, which began on 18 April 2002 and are still pending. Therefore, they have lasted four years and seven months so far before two instances.

59. According to the applicant, the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

60. The Government noted that the applicant had not exhausted domestic remedies, as his complaint under the 2004 Act had been rejected on formal grounds.

61. The applicant stated that he did not wish to present observations in reply.

62. The Court's accepts the Government's view and considers that the applicant did not exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention, having regard to the effectiveness of the remedy under the 2004 Act in the circumstances of cases such as the applicant's (see, *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005).

This complaint must therefore be declared inadmissible according to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 16 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President