



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

FOURTH SECTION

CASE OF TRZNADEL v. POLAND

(Application no. 26876/03)

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 Trznadel 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. 26876/03) 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”) on 6 August 2003 by Mr M. Trznadel (“the applicant”). He was represented by Mr J. Runowski, a lawyer practising in Żary.

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

3. On 25 October 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant’s pre-trial detention 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 1970 and lives in Wrocław.

5. On 15 April 1999 the applicant was detained on remand until 14 July 1999 on suspicion of two attempted murders. The court based its detention order on a reasonable suspicion that the applicant had committed the offences, on the severity of the likely penalty, which gave rise to a fear that the applicant would obstruct the proceedings, and on the risk of the applicant’s going into hiding as he had done previously.

6. On an unknown date a bill of indictment was lodged. The applicant was charged with two attempted murders and possession of an unlicensed weapon.

7. Subsequent decisions on the extension of the applicant's pre-trial detention were taken on 10 June 1999, 8 September 1999, 10 December 1999, 9 March 2000, 23 May 2000, 12 December 2000, 14 September 2000, 12 March 2002, 27 June 2002, 13 September 2002, 16 December 2002, 21 March 2003, 27 June 2003 and 16 December 2004.

8. In all the above-mentioned decisions the courts relied on the same grounds for detention as those given in the first detention order. In some of them the courts also referred to the complexity of the case, the need to conduct further investigations, the probability of collusion between the applicant and other co-accused and exertion of unlawful pressure on witnesses by the applicant. They also stressed that the applicant had previously gone into hiding.

9. The applicant appealed against the decisions extending his detention on several occasions. All of his appeals were dismissed.

10. On many occasions the applicant requested release from detention or the imposition of a more lenient preventive measure. His requests were dismissed.

11. Hearings were held on the following dates: 9 November 1999, 10 December 1999, 24 February 2000, 9 March 2000, 23 May 2000, 20 June 2000, 21 July 2000, 14 September 2000, 17 October 2000, 16 November 2000, 12 December 2000 and 30 January 2001.

12. On 2 February 2001 the Legnica Regional Court changed the legal qualification of the offences and convicted the applicant of attempted robbery endangering the lives others as well as possession of a weapon. It sentenced him to 10 years' imprisonment. Both the prosecutor and the applicant lodged appeals.

13. On 29 April 2002 the Wrocław Court of Appeal quashed the judgment and remitted the case.

14. A hearing was held on 13 September 2002. A hearing of 18 October 2002 was cancelled due to a lay judge's absence. A hearing of 15 November 2002 was adjourned since the accused who had been detained had not been transported to the hearing, and a hearing of 17 January 2003 was adjourned since the applicant had challenged the impartiality of the judges. Subsequent hearings were held on 14 February 2003, 21 March 2003, 25 April 2003, 30 May 2003, 27 June 2003, 12 September 2003, 10 October 2003, 21 November 2003, 5 December 2003 and 14 January 2004.

15. On 21 January 2004 the Legnica Regional Court gave a judgment. It convicted the applicant of one attempted murder and acquitted him of the other attempted murder and possession of an unlicensed weapon. The prosecutor and the applicant appealed.

16. On 5 May 2004 the Wrocław Court of Appeal quashed the judgment and remitted the case.

17. Subsequent hearings were held on 28 July 2004, 7 September 2004, 23 September 2004, 12 October 2004, 26 October 2004, 16 November 2004, 23 November 2004, 7 December 2004, 16 December 2004, 11 January 2005, 25 January 2005, 8 February 2005, 1 March 2005, 12 March 2005, 29 March 2005, 10 April 2005, 26 April 2005, 13 May 2005, 31 May 2005 and 21 June 2005.

18. On 23 June 2005 the Legnica Regional Court convicted the applicant of two attempted murders and possession of a weapon and sentenced him to twelve years' imprisonment. On 9 August 2005 the applicant lodged an appeal which he had drafted himself. On 16 August 2005 the applicant appealed through a lawyer.

19. On 17 February 2006 the Wrocław Court of Appeal upheld the judgment. The judgment is final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) are stated in the Court's judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

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

21. 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."

A. Admissibility

22. The Government accepted that the applicant had exhausted domestic remedies.

23. 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

24. The Government were of the opinion that the applicant's pre-trial detention had lasted four years and nine months. The applicant did not present any observations, submitting only his claims for just satisfaction.

25. The Government were of the opinion that the whole period of the applicant's detention had been justified by the existence of a genuine public interest, which had outweighed the presumption of innocence.

26. They stressed that the domestic courts dealing with the applicant's case had found his detention to be compatible with the provisions of Article 258 of the Code of Criminal Procedure and that no grounds warranting the applicant's release from detention as provided for by Article 259 of the Code had been established.

27. The Government maintained that the evidence obtained in the proceedings indicated that there was a reasonable suspicion that the applicant had committed the offences. They emphasised the serious nature of the charges and the fact that the applicant had been sentenced to twelve years' imprisonment.

28. The Government also argued that the applicant's detention had been aimed at securing the proper conduct of the investigations, as there had been a risk that he would obstruct the proceedings and influence witnesses and other co-accused. They drew the Court's attention to the fact that many witnesses had refused to give testimony.

29. With regard to the review of the applicant's detention, the Government pointed out that on each occasion the decisions had been reasoned in a relevant and sufficient manner.

30. With regard to the proceedings on the merits, the Government highlighted their complexity. They submitted that four co-accused had been involved in the proceedings, they had been charged with nine offences and the prosecutor had requested thirty-four witnesses to be heard.

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

31. 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).

32. 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; *McKay v. the United Kingdom* [GC], no. 543/03, § 43, ECHR 2006-).

33. 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

34. The Court notes that the applicant’s pre-trial detention lasted four years and eight months (from 15 April 1999 to 2 February 2001, from 29 April 2002 to 21 January 2004 and from 5 May 2004 to 23 June 2005) and not, as the Government had stated, four years and nine months. The length of the applicant’s pre-trial detention was substantial.

35. The Court is of the opinion that the case was of average complexity. It did not concern activity of an organised criminal character and the applicant did not have to reply to multiple charges. The number of accused persons changed over time from four to two since in respect of two of them the judgments had become final.

36. The Court observes that the investigative phase of the proceedings was conducted very speedily. Furthermore, the applicant’s detention was supervised by the courts at regular intervals.

37. The Court also notes that hearings were held fairly regularly, although it also observes that some of them were adjourned for reasons for which the State can be held responsible, for example the accused who were detained had not been transported to a hearing of 15 November 2002.

38. The Court further notes that the courts amended the legal qualification of the offences committed by the applicant on several occasions. The inconsistency of the courts' views on the qualification to be given to the offences undoubtedly contributed to the length of proceedings.

39. The Court further observes that in their decisions extending the detention the domestic authorities repeatedly relied on the same grounds, namely: a reasonable suspicion that the applicant had committed the offence in question, the severity of the likely penalty and the risk that the applicant would obstruct the proper conduct of the proceedings, in particular by influencing witnesses and other co-accused and going into hiding. The domestic courts referred to the risk that the applicant would interfere with the conduct of the proceedings, but based this perceived risk solely on the severity of the likely penalty and the risk of his going into hiding. No other grounds for detention were given in those decisions, notwithstanding the lapse of time. The decisions themselves were rather laconic.

40. 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 did not satisfy the requirement of being "relevant" and "sufficient".

41. In view of the above considerations, the Court considers that the applicant's prolonged detention was in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 1,000,000 zlotys (PLN), being the equivalent of 262,000 euros (EUR) in respect of non-pecuniary damage.

45. The Government found this claim far too exorbitant and suggested that a finding of a violation was itself sufficient just satisfaction.

46. The Court awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, did not claim any costs or expenses.

C. Default interest

48. 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 Polish zlotys at the rate applicable at 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 16 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President