



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

FOURTH SECTION

CASE OF RYCKIE v. POLAND

(Application no. 19583/05)

JUDGMENT

STRASBOURG

30 January 2007

FINAL

30/04/2007

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 Ryckie v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 9 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 19583/05) 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 12 May 2005 by Mr P. Ryckie (“the applicant”). The applicant, who had been granted legal aid, was represented by Ms R. Orlikowska-Wrońska, a lawyer practising in Sopot.

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

3. On 10 October 2005 the Court decided to give notice of the application 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1972 and lives in Gdansk.

5. On 24 May 1999 the applicant was detained on remand on suspicion of having committed numerous offences, *inter alia* kidnapping and aggravated robbery.

6. 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.

7. His pre-trial detention was extended by decisions of 15 July 1999, 20 October 1999, 24 January 2000, 27 June 2000, 10 November 2000, 3 January 2001, 26 March 2001, 30 April 2001, 21 November 2001, 25 April 2002, 16 July 2002, 8 July 2003, 20 January 2004, 13 July 2004, 28 July 2004, 6 August 2004, 20 August 2004, 27 August 2004, 3 September 2004, 12 October 2004, 11 January 2005, 19 July 2005 and 27 October 2005.

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 the courts also referred to the complexity of the case, the need to conduct further investigations, the probability of collusion between the applicant and the co-accused and exertion of unlawful pressure on witnesses by the applicant and the fear that the applicant would go into hiding.

9. On many occasions the applicant requested release or that a more lenient preventive measure be applied. Each time his requests were dismissed.

10. The applicant appealed against the decisions extending his detention on several occasions. Only one of his appeals was allowed to the effect that the period of extension of his detention was reduced by two months (the Gdańsk Court of Appeal decision of 17 August 2005).

11. On 24 January 2000 the prosecution service filed with the Gdańsk Regional Court a bill of indictment. The applicant was charged with twelve offences, including aggravated robbery, kidnapping and illegal possession of a weapon.

12. The first hearing planned for 10 April 2000 was adjourned. Subsequent hearings were held on 26 May 2000, 27 June 2000, 7 August 2000, 6 October 2000, 10 November 2000, 3 January 2001, 2 February 2001 and 26 March 2001. The hearing of 17 April 2001 was adjourned. As a consequence of the court's exceeding the permissible period of the length of intervals between hearings, the proceedings had to be conducted anew.

13. Subsequent hearings were held on 6 June 2001, 8 June 2001, 13 June 2001, 3 July 2001, 18 September 2001, 24 September 2001, 10 October 2001 and 15 October 2001. The hearing of 31 October 2001 was adjourned due to a lay judge's illness. Subsequent hearings were held on 7 November 2001, 13 November 2001, 20 November 2001, 10 December 2001, 14 December 2001 and 17 December 2001. A hearing of 21 December 2001 was adjourned due to the absence of witnesses. The next hearings took place on 27 December 2001, 7 January 2002, 14 January 2002 and 21 January 2002.

14. On 28 January 2002 the Gdańsk Regional Court convicted the applicant of nine offences, acquitted him of the remaining three and

sentenced him to 15 years' imprisonment. The applicant and other accused appealed.

15. On 9 April 2003 the Gdańsk Court of Appeal quashed the judgment and remitted the case as it found that the judges deciding on the case had not been impartial.

16. The hearings of 22 August 2003, 7 October 2003, 18 November 2003 and 19 December 2003 were adjourned since the applicant had so requested and since one of the accused had been absent.

17. A subsequent hearing was held on 24 February 2004. A hearing of 6 April 2004 was postponed due to the absence of a lawyer representing one of the accused. Hearings were held on 6 July 2004, 28 July 2004, 6 August 2004, 20 August 2004, 27 August 2004, 3 September 2004, 7 September 2004, 12 October 2004, 3 December 2004, 7 December 2004 and 14 December 2004.

18. On 28 December 2004 the Court of Appeal found that the length of proceedings had been excessive in the applicant's case and awarded him compensation. In its reasoned grounds the court stated that as a result of the fact that the trial court had exceeded the permissible length of time between the hearings of 26 March 2001 and 6 June 2001, the proceedings had to be conducted anew. It also noted that the adjournment of the hearing of 17 April 2001 had been unjustified.

19. Subsequent hearings were held on 11 January 2005, 25 January 2005, 11 February 2005, 18 March 2005, 5 April 2005, 12 April 2005, 17 May 2005, 28 June 2005, 3 July 2005, 19 July 2005, 19 August 2005, 6 September 2005, 11 October 2005, 4 November 2005, 25 November 2005, 9 December 2005 and 20 December 2005.

20. In the course of the proceedings the applicant and other accused lodged numerous requests for exclusion of several judges from the case, hearing of additional witnesses, commissioning expert opinions, transfer of the case to a different court, re-reading of the bill of indictment, drawing up a new bill of indictment, the appointment of a new legal-aid lawyer, correction of the record of a hearing, etc.

21. On 27 December 2005 the Gdansk Regional Court sentenced the applicant to 15 years' imprisonment. The reasoned grounds for this judgment are being drawn up. The applicant expressed his intention to lodge an appeal.

THE LAW

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

22. The applicant complained that the length of his pre-trial detention had violated 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.”

A. Admissibility

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

24. 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. Period to be taken into consideration

25. Neither the Government nor the applicant specified the period to be taken into consideration.

26. The Court notes that the relevant period lasted from 24 May 1999 to 28 January 2002 (when the applicant was convicted by the first-instance court) and from 9 April 2003 (when the conviction was quashed) to 27 December 2005 (when he was again convicted by the first-instance court). According to the Convention organs’ case-law, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in Article 5 § 1 (c), but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see, for example, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39).

27. The period to be taken into consideration lasted therefore 5 years, 4 months and 26 days.

2. The reasonableness of the length of detention

(a) Arguments before the Court

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

29. 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.

30. 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.

31. With regard to the proceedings on the merits, the Government argued that these had been very complex. They submitted that over forty witnesses had been examined, four accused had been involved in the proceedings, numerous expert opinions had been ordered and the first-instance judgment comprised one hundred and ninety-six pages.

32. They also noted that the applicant and other accused had contributed significantly to the length of the proceedings by their excessive use of procedural rights.

33. The Government further noted that hearings had been held at regular and brief intervals. They pointed out that some hearings had had to be postponed for reasons beyond the courts' control such as the absence of a co-accused or witnesses and that measures to expedite the proceedings had been employed.

34. The applicant contested the Government's arguments and maintained that no reasons could justify the length of his pre-trial detention. Nonetheless, he agreed with the Government that the proceedings had been complex.

35. He stressed that he had not intended to contribute to the length of the proceedings by the use of his procedural rights.

36. He maintained that it had been the inefficient organisation of the courts' work which had contributed to the length of proceedings. He pointed out that the courts had failed to make use of the procedural possibility to hold hearings for several days in a row, instead of one-day hearings, and that hearings ought to have been planned earlier in advance.

(b) The Court's assessment

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

37. 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)

38. 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 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-).

39. 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 *Jablonski v. Poland*, no. 33492/96, § 80, 21 December 2000).

(ii) Application of the principles to the circumstances of the present case

40. At the outset the Court notes that the applicant was detained for a very long time, which can only be justified by special circumstances.

41. Further, the Court accepts that the case was complex and that hearings were on the whole held fairly regularly. Nonetheless, it also notes

that on one occasion an interval between hearings resulted in the need to conduct the proceedings anew.

42. The Court also observes that the applicant's detention was supervised by the courts at regular intervals. However, in their decisions extending the applicant's detention the domestic authorities repeatedly relied on the same grounds, namely a reasonable suspicion that the applicant had committed the offences 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 the witnesses and other co-accused and going into hiding. No other grounds for detention were given in those decisions, notwithstanding the lapse of time.

43. The Court notes that although the applicant made extensive use of his procedural rights, some of his motions proved to be justified. In this respect the Court observes that although the applicant's requests for exclusion of judges from the case had all been dismissed at an early stage of the proceedings, the court examining the applicant's appeal took a different view of the matter and quashed the first-instance judgment on the basis of the trial court's lack of impartiality.

44. Moreover, the domestic court allowed in part the applicant's claim for compensation for the excessive length of proceedings. In the reasoned grounds for this decision the domestic court found that the adjournment of a hearing, which subsequently resulted in the need to conduct the proceedings anew, had been unjustified.

45. 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".

46. In view of the above considerations, the Court finds that the applicant's detention for over five years was in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. The applicant complained in substance under Article 13 that Polish law did not provide for an effective remedy against the excessive length of pre-trial detention, comparable to a complaint under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time.

49. The Court notes that in Polish law, like in the domestic law of many other Contracting States, there is no specific remedy for "excessive length of detention on remand", comparable to the above-mentioned complaint about excessive length of proceedings. However, there are numerous

remedies provided by the Polish law by means of which the applicant could have challenged his detention on remand.

50. Firstly, he had an appeal against a decision extending his detention on remand at his disposal, of which he had availed himself on numerous occasions. Such an appeal was available in respect of every decision extending the applicant's detention on remand.

51. Secondly, the applicant had a possibility to apply for release from detention under Article 259 of the Code of Criminal Procedure. He availed himself of this remedy on several occasions. By virtue of this provision, the applicant could have challenged his detention at any time on the ground that his continued detention on remand posed a danger to his life or health or a particularly serious harm to him and his family.

52. Thirdly, he could have applied under Article 254 in conjunction with Article 253 of the Code of Criminal Procedure for release from detention or for the application of a more lenient measure in its stead. This remedy could have been relied on by the applicant where the basis for his detention ceased to exist or when new circumstances occurred which would justify his release from detention or a change of a preventive measure. He also availed himself of this remedy.

53. The fact that the courts did not decide in the applicant's favour does not automatically lead to the conclusion that the above-mentioned remedies were ineffective.

54. Moreover, the Court notes that there were two possibilities available to the applicant under Polish law to claim compensation in relation to his detention on remand. He could have instituted proceedings for compensation for unjustified detention (Article 552 § 4 of the Criminal Code of Procedure) or he could have claimed compensation from the State Treasury for damage caused by the unlawful action of a State official carried out in the course of performing his duties (Article 417 of the Civil Code).

55. In view of the above, the applicant's complaint is manifestly ill-founded and must be declared inadmissible according to Article 35 §§3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government found this amount exorbitant and suggested that the finding of a violation was of itself sufficient just satisfaction.

59. The Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

60. The applicant, who was granted legal aid, also claimed EUR 1,000 for the costs and expenses incurred before the Court.

61. The Government reiterated that an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

62. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court, less EUR 850 received by way of legal aid from the Council of Europe. It therefore awards EUR 150 (one hundred and fifty euros).

C. Default interest

63. 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 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 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 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 150 (one hundred and fifty euros) in respect of costs and expenses 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 amounts 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 30 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President