



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

FOURTH SECTION

CASE OF NAJDECKI v. POLAND

(Application no. 62323/00)

JUDGMENT

STRASBOURG

6 February 2007

FINAL

06/05/2007

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 Najdecki 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 16 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 62323/00) 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 Zygmunt Najdecki (“the applicant”), on 21 April 1999.

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

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the length of the applicant’s detention on remand and censorship of his correspondence with his lawyer. 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 1950 and lives in Miłkowice, Poland.

1. The applicant's detention on remand

5. On 26 May 1998 the applicant was arrested on suspicion of having committed fraud and forgery while being a member of an organised criminal group.

6. On 27 May 1998 the Legnica District Court (*Sąd Rejonowy*) detained the applicant and two other co-suspects on remand. The Legnica Regional Court (*Sąd Okręgowy*) upheld that decision on 18 June 1998. The courts considered that the applicant's detention was justified by the existence of strong evidence against him and the gravity of the charges. They also relied on the risk that the applicant might attempt to tamper with evidence.

7. On 19 August 1998 the Legnica Regional Court ordered that the applicant be kept in custody until 26 November 1998. The court repeated the reasons previously given for the applicant's detention and noted that the applicant had attempted to influence his co-suspects to change their statements.

8. The applicant's detention was prolonged several times by the Legnica Regional Court for the same reasons as before. The applicant's appeals against those decisions were dismissed.

9. On 2 June 1999 the applicant and 12 other persons were indicted on several counts of fraud and forgery, and participation in an organised criminal gang.

10. The applicant remained in detention.

11. The first hearing before the Legnica Regional Court was scheduled for 14 September 1999. Subsequently, the court held 34 hearings.

12. On 12 April 2000 the Regional Court decided to ask the Supreme Court (*Sąd Najwyższy*) to prolong the applicant's detention.

13. The applicant's detention was subsequently prolonged numerous times by the Legnica Regional Court and the Wrocław Court of Appeal (*Sąd Apelacyjny*) for the same reasons as before. The applicant's appeals against those decisions were dismissed.

14. On 8 July 1999 and 7 November 2001 the applicant lodged unsuccessful applications for release with the Legnica Regional Court.

15. On 15 February 2002 the Legnica Regional Court asked the Wrocław Court of Appeal to prolong further the applicant's detention until 30 April 2002.

16. On 21 February 2002 the Court of Appeal refused the application. The court noted that the applicant had already been detained for 3 years and 8 months. The court further found that the interests of the trial did not justify keeping him in detention any longer, especially since a large part of the evidence had already been examined and the witnesses heard.

17. On 27 February 2002 the Legnica Regional Court released the applicant.

18. The Legnica Regional Court on 16 December 2002 convicted the applicant as charged and sentenced him to 7 years and 6 months' imprisonment.

19. On 20 November 2003 the Wrocław Court of Appeal upheld the first-instance judgment.

2. Censorship of the applicant's correspondence

20. On 9 August 2001 the applicant sent a letter to the Court, submitting that his correspondence with his defence counsel had been censored. He enclosed a fragment of the envelope of the letter his lawyer had sent him at the detention centre. The envelope bears an official stamp of the legal office: "Kancelaria Adwokacka, adw. Zenon Duda" (*Legal Office, Zenon Duda, Barrister*). It also bears the stamp "Ocenzurowano, Legnica, dn. 06.08.2001" (*Censored, Legnica on 06.08.2001*) and an illegible signature.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Preventive measures, including detention on remand

21. The relevant provisions of the domestic law relating to preventive measures are summarised in several judgments concerning similar cases (see, among others, *Kudła v. Poland* [GC], no. 30210/96, §§ 75-81, ECHR 2000-XI; *Jaworski v. Poland*, no. 25715/02, §§ 20-27, 28 March 2006).

2. Monitoring of correspondence

22. Section 73 of the Code of Criminal Procedure (*Kodeks Postępowania Karnego*) of 1997 provides, in so far as relevant:

"§ 1. An accused who is in custody may communicate with his defence counsel in the absence of third persons or by correspondence;

...

§ 3. A prosecutor may also order that the suspect's correspondence with his defence counsel be controlled;

§ 4. The order referred to in §§ 2 and 3 shall not be executed or issued after the lapse of 14 days from the date of the arrest."

THE LAW

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

23. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention had been excessive. Article 5 § 3 of the Convention 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.”

24. The Government contested that argument.

A. Admissibility

25. 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*

26. The Court observes that the applicant's detention lasted from 15 November 2001 to 18 August 2004, when he was released from custody. Accordingly, the period of his detention amounted to approximately 3 years and 8 months.

2. *The reasonableness of the length of detention*

(a) **The parties' arguments**

27. The Government maintained that the length of the applicant's detention had not been excessive. They stressed that the case was an extremely complex one as it concerned organised crime and numerous defendants and witnesses were involved. They underlined that the domestic authorities dealt with it with due diligence. They also maintained that it was the applicant and other co-accused who had contributed to the prolongation of the proceedings by making use of their procedural rights (in particular lodging numerous motions and complaints with the courts).

28. The Government stated that the applicant's detention was duly justified during the entire period at issue. There were relevant and sufficient grounds for justifying his detention. It was necessary to ensure the proper course of the proceedings, especially in view of the gravity of the charges and the severe penalty that could be expected. The applicant had been charged with participation in an organised criminal gang and there was a serious risk that, if released, he would attempt to put pressure on witnesses, just as he had done even when in detention.

29. They further maintained that all the applicant's requests for release and his appeals against the decisions prolonging his detention had been thoroughly examined by the competent courts.

30. The applicant contested these arguments. He submitted that his detention had been inordinately lengthy and that the authorities had failed to exercise all due diligence when dealing with his case.

(b) The Court's assessment

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

31. 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 (*McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-....)

32. 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 laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

33. Under Article 5 § 3 the national judicial authorities must ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for a departure from the rule in Article 5 and must set them out in their decisions on the applications for release.

34. 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. The Court must then 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 be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (see, for instance, *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

35. The Court observes that in their decisions concerning the applicant’s detention the judicial authorities relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, their serious nature and the heavy sentence which could be expected. The Court agrees that the strong suspicion against the applicant of having committed serious offences could have initially warranted his detention. However, with the passage of time, the initial grounds for pre-trial detention become less and less relevant and the domestic courts should rely on other “relevant” and “sufficient” grounds to justify the deprivation of liberty.

36. The Court reiterates that, if due to the particular circumstances of the case, detention on remand is extended beyond the period generally accepted under the Court’s case-law, particularly strong reasons would be required for an applicant’s lengthy detention to have been justified under Article 5 § 3 (see *Celejewski v. Poland*, no. 17584/04, §38, 4 May 2006).

37. The Government pointed out that the applicant had been charged with being a member of an organised criminal gang. The Court accepts that in cases concerning organised crime, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. Moreover, in cases such as the present one concerning organised criminal gangs, the risk that a detainee if released might put pressure on witnesses or might otherwise obstruct the proceedings, is often particularly high. All these factors can justify a relatively longer period of detention on remand. However, they do not give the authorities unlimited power to prolong this preventive measure (see *Celejewski v. Poland* judgment cited above, §§ 37-38).

38. Even if the Court were to accept the Government’s argument that the applicant had contributed to certain delays during the trial by making use of his procedural rights, the Court considers that those grounds could not justify the entire period of the applicant’s detention.

39. The Court observes further that, in their decisions prolonging the applicant’s detention, the judicial authorities held that there was the danger that, if released, he might induce witnesses or co-defendants to give false testimonies. They referred to the fact that the applicant had attempted to do so several times, even when in custody. The Court agrees that the applicant’s attempt to obstruct justice justified keeping him in custody at the initial stages of the proceedings. However, the Court considers that this ground gradually lost its relevance as the trial proceeded and the witnesses were interviewed.

40. The Court cannot but note that the Legnica Regional Court eventually released the applicant when the Wrocław Court of Appeal refused to prolong his detention, finding that his time in custody had been too long.

41. In these circumstances, even taking into account the particular difficulty in dealing with a case concerning organised crime and the conduct of the applicant, the Court finds that the grounds given for the applicant's pre-trial detention were not "relevant" and "sufficient" to justify holding him in custody for a total period of 3 years and 8 months.

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

II. ALLEGED VIOLATION OF ARTICLE 8 § 1 OF THE CONVENTION

43. The applicant complained that his correspondence with his counsel had been censored. He alleged a breach of Article 8 of the Convention which, in its relevant part, reads:

"1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

44. The Government refrained from expressing their opinion on the admissibility and merits of the complaint under Article 8 § 1. They maintained, however, that, in their opinion, the applicant's counsel's letter had only been stamped with the "Censored" stamp by "oversight".

A. Admissibility

45. 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

46. Any "interference by a public authority" with the right to respect for correspondence will contravene Article 8 of the Convention unless it is "in

accordance with the law, pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is “necessary in a democratic society” in order to achieve them (see, among many other authorities, *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34 and *Niedbala v. Poland* no. 27915/95, § 78).

47. As to the expression “in accordance with the law”, the court has established three fundamental principles. The first one is that the interference in question must have some basis in domestic law. The second principle is that “the law must be adequately accessible”, a person must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to his case. The third principle is that “a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable a person to regulate his conduct; he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail” (see the *Silver and Others* judgment cited above, §§ 86-88).

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

(a) Existence of interference

48. The Court notes that the envelope bore the stamp: “Censored (*Ocenzurowano*) on, signature” (see paragraph 20 above). It considers that even if there is no separate stamp on the letter as such, there is a reasonable likelihood that the envelope had been opened by the domestic authorities and the content of the letter controlled. The Court has held on many occasions that, as long as the domestic authorities continue the practice of marking detainees’ letters with an *ocenzurowano* stamp, the Court would have no alternative but to presume that those letters had been opened and their contents read (see *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003; *Michta v. Poland*, no. 13425/02, § 58, 4 May 2006).

49. It follows that the monitoring of the applicant’s correspondence with his counsel constituted an “interference by a public authority”, within the meaning of Article 8 § 2, with the exercise of the applicant’s right to respect for his correspondence.

(b) Whether the interference was “in accordance with the law”

50. The Court notes that section 73 § 4 of the Code of Criminal Procedure specifically prohibits controlling a detained suspect’s correspondence with his defence counsel after the lapse of 14 days from the date of the arrest (see paragraph 22 above). The applicant was arrested on 26 May 1998; the censored envelope bears the date 6 August 2001.

51. The Court considers that the authorities acted against that clear legal prohibition. The interference with the applicant's correspondence was therefore not "in accordance with the law", as required by Article 8 of the Convention.

52. It follows that there has been a violation of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 6,816,000 Polish zlotys (PLN) in respect of pecuniary and 1,124,000 PLN in respect of non-pecuniary damage.

55. The Government maintained that the claimed sum was excessive.

56. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of his detention and monitoring of his correspondence – which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head.

B. Costs and expenses

57. The applicant did not seek reimbursement for any costs and expenses.

C. Default interest

58. 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 application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *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 the national currency of the respondent State 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President