



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

FOURTH SECTION

CASE OF RUCIŃSKI v. POLAND

(Application no. 33198/04)

JUDGMENT

STRASBOURG

20 February 2007

FINAL

09/07/2007

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 Ruciński 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 30 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 33198/04) 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 W. Ruciński, on 6 August 2004.

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

3. On 11 October 2005 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 1943 and lives in Kielce.

5. In April 2002 the Kielce Regional Prosecutor ordered the applicant’s house, car and premises used for commercial activities to be searched in view of the strong suspicion that he had been a member of a criminal group and had committed offences concerning property and documents.

6. On 28 May 2002 the applicant was arrested and on 29 May 2002 he was remanded in custody by the Kielce District Court on suspicion of

forging documents, financial fraud and membership of a criminal gang. The court considered that there was a reasonable risk that the applicant would tamper with evidence, given the fact that he had had close personal and business connections with several other persons charged with the same offences. On 17 June 2002 the Kielce Regional Court upheld the decision to detain him.

7. In decisions of 21 August and 22 November 2002 the Katowice District Court prolonged the applicant's detention, holding that there was a contradiction between the applicant's statements and the evidence collected in the course of the proceedings. In addition, some documents had been forged and the prosecuting authorities could not yet identify all the perpetrators of the offences. The court made reference to the activities already carried out and gave a precise indication of the evidence that still had to be taken. Consequently, it decided that it was indispensable to separate the applicant from the other suspects and from the evidence which had not yet been secured. The court also relied on the serious nature of the charges against the applicant and the severity of the penalty he faced.

8. On 20 January 2003 the Kielce Regional Prosecutor extended the charges against the applicant.

9. The applicant's detention was prolonged on 24 February 2003 by the Kielce District Court and subsequently by the Cracow Court of Appeal on 22 April 2003. The courts relied on the same grounds as previously invoked by the District Court. They pointed to the complexity of the case and the existence of a fear of collusion, given the applicant's role in the criminal gang and the considerable number of witnesses acquainted with the applicant who had yet to give evidence.

10. On 21 July 2003 a bill of indictment concerning 20 persons was filed with the Kielce District Court. The applicant was indicted on charges of multiple fraud, insurance fraud, misuse of property and membership of a criminal gang. The prosecution asked the court to hear evidence from 254 witnesses and to obtain over 300 other pieces of evidence.

11. On 30 July 2003 the Kielce District Court prolonged the applicant's detention until 30 October 2003, holding that there was a reasonable risk that the applicant and other defendants with whom he maintained close personal or business relations would tamper with evidence by inducing others to give false statements. On 28 August 2003 the Kielce Regional Court dismissed an appeal by the applicant against that decision.

12. On 17 September and 17 November 2003 the Kielce District Court held hearings. Owing to the fact that many of the accused had entered into a plea bargain, the prosecutor filed a new bill of indictment and the hearings scheduled for 17, 18 and 19 November 2003 were adjourned until 17 December 2003 in order to give the accused the opportunity to familiarise themselves with the new bill.

13. Hearings were held on 17 December 2003, 19, 20, 21, 28 and 29 January, 16, 17, 18, 23 and 25 February, 15, 17, 22 and 24 March, 21 April, 19 May, 16 and 30 June, 14, 15, 21 (adjourned on an application by the accused) and 29 July (a hearing scheduled for 22 July was adjourned because the lawyer of one of the accused was absent), and 1, 6, 7, 8, 13 and 15 September 2004.

14. Meanwhile, the applicant's detention was prolonged on 29 October 2003 and 28 January (an appeal by the applicant was dismissed on 11 February 2004), 24 March and 15 April 2004. The court relied on the fear of collusion stemming from the fact that many of the witnesses had not yet given evidence and that the members of the criminal group had maintained close relations. In particular, the court stressed that during the preparatory proceedings the defendants had illegally tried to contact each other. In its last decision the court also stated that the applicant and another defendant had twice lodged applications to adjourn the hearings at which it was to take evidence from the former co-accused, who possessed the greatest knowledge about the defendants' activities.

15. On 16 September 2004 the District Court made an application to the Cracow Court of Appeal under Article 263 § 4 of the Code of Criminal Procedure, requesting the prolongation of the applicant's detention beyond the statutory time-limit of 2 years. On 13 October 2004 the Court of Appeal prolonged his detention until 21 December 2004, partly allowing the application. The court stressed that the proceedings had almost been completed and that there was therefore no need to prolong the applicant's detention for the whole period requested. Its decision was upheld on 23 November 2004.

16. A hearing scheduled for 18 October 2004 was adjourned until 19 October owing to the illness of one of the defendants. The hearing set down for 20 October 2004 had to be adjourned owing to the absence of a witness. It was held on 21 October 2004.

17. Further hearings were held on 10, 17 and 24 November 2004. The hearing scheduled for 29 November was adjourned at the request of one of the accused.

18. On 30 November 2004 the Kielce Regional Prosecutor filed another bill of indictment against the applicant and some of his co-defendants.

19. In the course of the proceedings, the applicant lodged several unsuccessful applications for release from detention, which were dismissed on 23 July, 25 September and 31 October 2002, 17 December 2003, and 16 June and 1 September 2004.

20. On 8 December 2004 the Cracow Court of Appeal dismissed a second application by the District Court for the prolongation of the applicant's detention. The appellate court held that the District Court had failed to conclude the proceedings within the expected time-frame and that the applicant should not have to suffer the negative consequences of that

fact. It further argued that the proceedings could be terminated in the course of the forthcoming hearings, given that there remained only one witness to be examined and that in the event of his absence his statements could be read out. On 15 October 2004 an appeal by the prosecutor against that decision was dismissed.

21. Hearings were held on 1, 15 and 20 December 2004.

22. At the hearing on 20 December 2004 the court decided to place the applicant under police supervision and to prohibit him from leaving the country.

23. On 28 July 2005 the Kielce District Court gave judgment, convicting the applicant and sentencing him to four years and six months' imprisonment for a total of 24 offences, most of them committed when acting within an organised criminal group.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. 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 set out 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

ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

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

"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

26. The Government in the first place submitted that the applicant had not exhausted the remedies provided for in Polish law as regards his complaint under Article 5 § 3 of the Convention, in that he had failed to appeal against the decisions of 21 August and 22 November 2002, 24 February, 22 April and 29 October 2003 to prolong his detention.

27. The Court observes that it is well established in its case-law that applicants must make normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see, *mutatis mutandis*, *Crémieux v France*, no. 11471/85, Commission decision of 19 January 1989, and *Yaşa v. Turkey*, *Reports of Judgments and Decisions* 1998-VI, p. 2431, § 71).

28. In the present case the applicant lodged appeals against most of the decisions to prolong his detention, including the decisions in the final stage of the proceedings, when the length of the detention reached its most critical point. He also applied to be released from detention. The Court considers that the purpose of the remedies attempted by the applicant was to obtain a review of his detention on remand. In the circumstances of the case these remedies constitute adequate and effective remedies within the meaning of Article 35 of the Convention as their aim was to obtain his release. They accordingly have the same purpose as the remedies advocated by the Government.

29. The Court notes that the arguments raised by the Government are similar to those already examined and rejected in a previous case against Poland (see *Grzeszczuk v. Poland*, no. 23029/93, Commission decision of 10 September 1997) and that the Government have not mentioned any new circumstances which could lead the Court to depart from that case-law.

30. It follows that this complaint cannot be dismissed for non-exhaustion of domestic remedies. The Court 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

31. The Court observes that the applicant was arrested on 28 May 2002 and remanded in custody on 29 May 2002. He was released on 20 December 2004. Accordingly, the total period of his detention amounts to about two years and six months.

2. Reasonableness of the length of the applicant's detention

(a) The parties' arguments

32. The Government were of the opinion that there had been valid reasons for holding the applicant in detention for the entire period in question. They firstly referred to the serious suspicion that he had committed the offences with which he had been charged. The Government emphasised that there had existed other "relevant and sufficient" grounds

justifying the applicant's continued detention. In this connection, they submitted that his detention had been necessary in order to secure the proper conduct of the proceedings, having regard to the severity of the penalty he faced.

33. The Government further referred to the serious risk of the applicant's absconding or tampering with evidence. In that connection, they submitted that evidence had had to be heard from the members of the gang who had maintained close personal and business relations with the applicant. In addition, some of the accused had entered into a plea bargain and had later become witnesses in the proceedings. On the date on which this preventive measure had been applied, the investigation had still been in progress and it had been expected that it would be necessary to extend the scope of the investigation. Having said that, the Government concluded that only the isolation of the members of the group, at least until all of them had been detained and had given evidence, could have prevented them from colluding and coordinating their statements, and from exerting improper pressure on witnesses.

34. The Government also argued that during the entire period of the applicant's detention there had been no circumstances that had justified lifting that measure or replacing it with a more lenient one.

35. As regards the review of the applicant's detention, the Government pointed out that on each occasion the decisions extending it or dismissing his applications for release had been sufficiently reasoned and detailed. The courts had considered not only the conditions for the applicant's further detention but also developments in his situation. They had not relied solely on the reasons given in the first decision to detain the applicant but had also taken into account new elements which had emerged in the course of the proceedings; accordingly, they had not ordered his detention automatically but had based their decisions on a careful consideration of each individual case and had decided to release him as soon as they found that the reasons justifying his detention had ceased to persist.

36. The Government stressed that the case had been very complex. They pointed out that both the prosecutor and the trial court had conducted extensive evidentiary proceedings, which was typical for proceedings conducted in cases concerning organised crime. The proceedings had concerned 20 accused and numerous criminal acts. Almost 250 witnesses had been examined and the applicant had given evidence nine times.

37. According to the Government, hearings had been held regularly and at short intervals. In the Government's opinion, the proceedings had been concluded with reasonable speed and without any undue delays.

38. The applicant contested the Government's arguments and emphasised that the courts had not given relevant and sufficient reasons for his continued detention. He submitted that the courts had not pointed to any factor indicating that there had been a risk of his absconding, going into

hiding or otherwise evading justice. He argued that the courts had not provided any arguments in support of their findings concerning his membership of a criminal gang or his illegal business activities.

(b) The Court's assessment

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

39. 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, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111 with further references, ECHR 2000-XI).

40. 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, judgment of 6 October 2006, § 43).

41. 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, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented 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 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

42. 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 *Labita v. Italy* [GC], no. 26772/95, cited above, § 153). The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

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

43. The Court observes that the judicial authorities relied, in addition to the reasonable suspicion against the applicant, on the need to ensure the proper conduct of the proceedings. In this connection, they referred to the risk that he might obstruct the proceedings and exert unlawful pressure on witnesses, in particular since the case concerned, *inter alia*, financial offences and fraud committed in co-operation with other persons.

44. The Court accepts that the reasonable suspicion against the applicant of having committed the offences with which he had been charged may have warranted his detention at the early stage of the proceedings against him. However, with the passage of time that ground inevitably became less and less relevant. In particular, the Court considers that that ground cannot suffice to justify the entire period in issue. It must therefore establish whether the other grounds advanced by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of his liberty.

45. As regards the risk of the applicant’s tampering with evidence or going into hiding, the Court observes that the judicial authorities based their findings in this regard on the existence of close business and personal relations between the defendants and other members of the criminal group. Moreover, the courts had regard to the contradiction between the applicant’s statements and the evidence collected in the course of the proceedings, which, together with the fact that some of the evidence had been forged, resulted in the need to separate the applicant from other suspects and from the evidence which had not yet been secured.

46. The applicant’s detention was subsequently supervised by the courts at regular intervals. In their decisions prolonging his detention the domestic authorities further relied on the reasonable suspicion that the applicant had committed the offences concerned and on the severity of the likely penalty. However, they also took into account new elements that emerged in the course of the proceedings and the conduct of the trial court. In particular, the courts pointed to the persistent risk of collusion and unlawful

obstruction of the proceedings, increased by the fact that some of the accused had entered into a plea bargain and were later witnesses in the proceedings. This risk justified the court's findings that no other preventive measure would be sufficient to ensure the proper conduct of the proceedings. The courts further argued that the attitude of the applicant during the hearings was an additional ground for keeping him in custody. The applicant was finally sentenced for 24 crimes and found guilty of acting within a criminal gang.

47. The Court accepts that, in the special circumstances of the case, the risk flowing from the nature of the applicant's criminal activities actually existed and justified holding him in custody for the relevant period.

48. The foregoing considerations permit the Court to conclude that the grounds given for the applicant's pre-trial detention satisfied the requirement of being "relevant" and "sufficient".

49. The Court lastly observes that the proceedings were of considerable complexity, regard being had to the number of defendants, their relations and the extensive evidentiary proceedings the trial court had conducted. The proceedings had concerned 20 accused and numerous criminal acts.

50. In assessing the conduct of the authorities in the present case, the Court will take into account the special circumstances deriving from the fact that it concerned a member of a criminal gang (see *Celejewski v. Poland*, no. 17584/04, 4 May 2006, *Buta v. Poland*, no. 18368/02, 28 November 2006, *Bąk v. Poland*, no. 7870/04, 16 January 2007).

51. The Court's attention has been drawn in particular to the significant number of 250 witnesses questioned in the course of the investigation and by the first-instance court. Nevertheless, the hearings in the applicant's case were held regularly and at short intervals. Between February 2003, when the bill of indictment was lodged, and July 2005, when the first-instance judgment was given, over 40 hearings were held. There were no significant periods of inactivity on the part of the prosecution authorities and the trial court.

52. In conclusion, the Court takes note of the seriousness and the nature of the charges against the applicant, as well as the number of other persons charged, the relations between them and the amount of evidence examined. The complexity of the case undoubtedly prolonged its examination and contributed to the length of the applicant's detention on remand.

53. The applicant was released on 20 December 2004 at an advanced stage of the proceedings.

54. The Court consequently considers that in the particular circumstances of the case the domestic authorities cannot be criticised for a failure to observe "special diligence" in the handling of the applicant's case.

55. Assessing the above elements as a whole, the Court does not consider that the facts of the case disclose a violation of the applicant's right

to a trial within a reasonable time or to release pending trial, within the meaning of Article 5 § 3 of the Convention.

Accordingly, there has been no violation of this provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 20 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President