



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

FOURTH SECTION

CASE OF TERESZCZENKO v. POLAND

(Application no. 37326/04)

JUDGMENT

STRASBOURG

3 April 2007

FINAL

03/07/2007

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 Tereszczenko 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 13 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 37326/04) 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”) on 15 September 2004 by Mr W. Tereszczenko (“the applicant”).

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

3. On 9 September 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1956 and lives in Warszawa.

5. On 19 November 2002 the applicant was placed in police custody on suspicion of drug trafficking. On 20 November 2002 the Częstochowa District Court ordered that the applicant be detained on remand.

6. The court based its detention order on a reasonable suspicion that the applicant had committed the offence of drug trafficking and the severity of the likely penalty, which gave rise to a fear that the applicant would obstruct the proceedings. Moreover, the court took into account that other suspects

had remained at large, which would pose a risk of collusion if the applicant were released.

7. Subsequent decisions on the extension of the applicant's pre-trial detention were taken on 11 February 2003, 8 May 2003, 3 October 2003, 31 December 2003, 29 March 2004 and 29 June 2004.

8. The courts referred to the complexity of the case, the need to conduct further investigations, the probability of collusion between the applicant and other suspects and exertion of unlawful pressure on witnesses by the applicant. They stressed that the fact that the applicant had not pleaded guilty posed an additional risk of his influencing other persons involved in the proceedings. In their opinion no other preventive measure could ensure the proper conduct of the proceedings.

9. The applicant appealed on several occasions against the decisions extending his detention and requested release from detention or the imposition of a more lenient preventive measure, drawing the court's attention to his poor state of health.

10. On 27 November 2002 a telephone company was requested to provide an itemised bill of the applicant's telephone calls to other suspects.

11. On 18 December 2002 and 29 January 2003 confrontations of witnesses and suspects took place.

12. On 19 December 2002 the prosecutor ordered an expert opinion of a heart specialist with a view to establishing the applicant's state of health. No grounds for the applicant's release from detention were found.

13. On 19 March 2003 an expert opinion was ordered with a view to determining whether the substance found in the course of police operations had been an illegal drug. The opinion was submitted on 15 May 2003.

14. On 30 April 2003 and 8 June 2003 expert opinions concerning a weapon which had been found by the police were submitted.

15. On 5 May 2003 another expert opinion of a heart specialist was ordered. Again, the applicant was found to be fit for detention.

16. On 25 June 2003 a bill of indictment against the applicant and ten other co-accused was lodged with the court. The applicant did not plead guilty.

17. On 15 September 2003 the court decided to transfer the case file to the Prosecutor's Office so that shortcomings in the investigation could be corrected.

18. On 24 December 2003 two expert opinions were ordered with a view to establishing the applicant's mental health.

19. On 9 February 2004 expert opinions on cardiology and diabetology were ordered. The experts did not find any grounds for the applicant's release.

20. Hearings were held on the following dates: 27 November 2003, 25 March 2004, 15 April 2004, 13 May 2004, 17 June 2004, 8 July 2004,

12 August 2004, 9 September 2004 and 27 September 2004. Over thirty-five witnesses were examined by the court.

21. On 17 June 2004 the court ordered that witnesses who had previously failed to appear at hearings be escorted to the court.

22. On 5 July 2004 an expert opinion on neurology was submitted. No grounds for the applicant's release were found, although it was stated in this opinion that his prolonged detention might pose some future risk to his health and he was referred to a prison hospital for observation. The date of his admission to hospital was fixed for 1 July 2004.

23. On 30 September 2004 the Częstochowa District Court gave a judgment. The applicant was found guilty of drug trafficking and sentenced to three years' imprisonment. The court ordered that the applicant remain in custody until the prison sentence could be enforced.

24. On 1 October 2004 the applicant appealed against the decision of 30 September 2004 on the extension of his detention.

25. On 21 October 2004 the Częstochowa Regional Court allowed the applicant's appeal of 1 October 2004 and on the same day he was released from detention.

26. On 6 December 2004 two appeals against the judgment of 30 September 2004 were lodged by the applicant's lawyers.

27. On 22 June 2005 the Częstochowa Regional Court quashed the judgment and remitted the case. The proceedings are pending.

II. RELEVANT DOMESTIC LAW

28. The relevant domestic law 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*) is 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).

29. The relevant domestic provisions and practice concerning the State's liability for a tort committed by its official, in connection with a right to a trial within a reasonable time, have already been cited in previous cases against Poland (see, for example, *Rybczyńscy v. Poland*, no. 3501/02, 3 October 2006, and *Białas v. Poland*, no. 69129/01, 10 October 2006).

THE LAW

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

30. 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

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

32. 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. Arguments before the Court

33. The Government observed that the applicant's pre-trial detention had lasted from 19 November 2002 to 30 September 2004 (one year, ten months and twelve days).

34. The Government maintained 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.

35. 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.

36. The Government maintained that the evidence obtained in the proceedings had indicated that there had been a reasonable suspicion that the applicant had committed the offence of drug trafficking. They emphasised the serious nature of the charge and the fact that the applicant had been sentenced to three years' imprisonment by the first-instance court.

37. They also submitted 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.

38. The Government drew the Court's attention to the fact that the applicant had been a recidivist offender. He had already been convicted of robbery on three occasions (in 1983, 1986 and 1989) and sentenced to five, two and two years' imprisonment, respectively.

39. With regard to the review of the applicant's detention, the Government pointed out that it had been subject to regular supervision by the courts and on each occasion the decisions had been reasoned in a relevant and sufficient manner.

40. With regard to the proceedings on the merits, the Government highlighted their complexity. They submitted that several co-accused had been involved in the proceedings. They further submitted that nine hearings had been held at regular and brief intervals and the court had taken disciplinary measures to expedite the proceedings (e.g. it had ordered that witnesses who had previously failed to appear be escorted to a hearing). They also pointed out that the court had encountered some difficulties as a number of witnesses had changed their addresses and could not easily be contacted.

41. The applicant maintained that his detention had lasted two years. He contested the Government's arguments and stated that the grounds for his detention had ceased to exist with the passage of time and that his poor health had constituted grounds for his release. He specified the illnesses from which he suffered, *inter alia*, heart problems and diabetes.

2. The Court's assessment

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

42. 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).

43. 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-).

44. 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).

(b) Application of those principles to the circumstances of the present case

45. The Court notes that the applicant's pre-trial detention lasted from 19 November 2002 to 30 September 2004, when the applicant was convicted by the first-instance court, which amounted to one year, ten months and twelve days.

46. The Court is of the opinion that the case was rather complex. The charge was of a serious character as the applicant risked up to ten years' imprisonment, there were eleven accused involved in the proceedings and over thirty-five witnesses were examined. Moreover, the domestic courts had had regard to the fact that the applicant was a recidivist offender. He had been convicted of robbery on three occasions.

47. The Court observes that the investigative phase of the proceedings was conducted very speedily, bearing in mind that numerous expert opinions were ordered, including expert opinions on whether the applicant's state of health allowed for his detention. Many other measures were taken by the authorities in this phase of the proceedings such as the organisation of two confrontations of witnesses and suspects.

48. Furthermore, the applicant's detention was supervised by the courts at regular intervals. In their decisions extending his detention the domestic authorities relied on 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. They also noted that the applicant had pleaded not guilty, which posed an additional risk of his influencing other persons involved in the proceedings. They considered that no other preventive measure could ensure the proper conduct of the proceedings. The need to conduct further investigations also constituted a ground for the applicant's detention. The courts took into account new

elements that emerged in the course of the proceedings and the applicant's state of health, which, however, was not such as to constitute a ground for his release.

49. In fact, numerous expert opinions concerning the applicant's health were ordered in the course of the proceedings, namely expert opinions on cardiology (the prosecutor's decisions of 19 December 2002, 5 May 2003 and 9 February 2004), an expert opinion on diabetology (the prosecutor's decision of 9 February 2004) and an expert opinion on neurology (ordered by the court and submitted on 5 July 2004). On 24 December 2003 two expert opinions were ordered with a view to establishing the applicant's mental health. It transpires from the case file that the applicant was found to be fit for detention and his medical treatment in the detention centre did not raise any issue. In the opinion of the neurologist submitted on 5 July 2004 it was stated that the applicant's continued detention had not posed any risk to his health. As it was also stated in the expert's opinion, that the applicant's extended detention might have negative consequences for his future state of health, arrangements were made to admit the applicant to a prison hospital. It should be stressed that soon afterwards the applicant's request for release was allowed and he was released on 21 October 2004 (after the first-instance judgment had been given on 30 September 2004).

50. The Court also notes that hearings were held regularly and at brief intervals, notwithstanding the fact that some witnesses had failed to appear at hearings or changed their addresses. Disciplinary measures were taken by the court in order to expedite the proceedings.

51. 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".

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

53. The applicant complained, relying on Article 5 § 4 of the Convention, that the grounds for his detention had ceased to exist with the lapse of time and that the state of his health militated in favour of his immediate release.

54. The Court observes that the applicant's complaint should be examined under Article 5 §§ 1 (in so far as it concerns his initial detention) and 3 (in so far as it concerns extensions of his detention) and not under Article 5 § 4.

55. In so far as the complaint falls to be examined under Article 5 § 1, the Court observes that the applicant did not show that he lodged an appeal against the first detention order.

56. Therefore, his complaint under Article 5 § 1 must be declared inadmissible for non-exhaustion of domestic remedies according to Article 35 §§ 1 and 4 of the Convention.

57. In so far as the applicant complained in substance under Article 5 § 3, the Court notes that the applicant's complaint under this Article has already been extensively considered. The Court does not find any new elements to be added to its reasoning in paragraphs 40-50 above.

58. The complaint is therefore manifestly ill-founded and must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

59. The applicant further complained under Article 3 about the fact that he had been subjected to inhuman treatment as his state of health had not allowed for his prolonged detention.

60. It transpires from the case file that the applicant was given regular medical examinations while detained and medical treatment if needed. It was established by experts that the applicant's detention did not cause any risk to his health (see paragraph 48 above). Therefore, the applicant was not subjected to any inhuman treatment within the meaning of Article 3 of the Convention.

61. In view of the above, this part of the application is manifestly ill-founded and must be declared inadmissible according to Article 35 §§ 3 and 4 of the Convention.

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

62. The applicant further complained under Article 6 that the length of the proceedings was unreasonable. That Article provides, in so far as relevant:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

63. The applicant failed to avail himself of any remedy provided for by Polish law. He had several remedies at his disposal, namely a complaint under sections 5 and 18 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time as well as a civil action under Article 417 of the Civil Code read together with section 16 of the above-mentioned Law (as to the effectiveness of the latter remedy, see *Krasuski v. Poland*, judgment of 14 June 2005, no. 61444/00, § 72, ECHR 2005-V (extracts)).

64. Therefore, he did not exhaust domestic remedies and his complaint must be declared inadmissible according to Article 35 §§ 1 and 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 3 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President