



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

FOURTH SECTION

CASE OF POLAKOWSKI v. POLAND

(Application no. 4657/02)

JUDGMENT

STRASBOURG

31 May 2007

FINAL

31/08/2007

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 Polakowski v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

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 10 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 4657/02) 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 Krzysztof Polakowski (“the applicant”), on 22 January 2002.

2. The applicant was represented by Mrs I. Polakowska, his wife. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant's 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 1964 and lives in Gdynia.

5. On 28 October 1996 he was arrested on suspicion of having committed armed robbery while acting in an organised criminal gang.

6. On 29 October 1996 the Gdańsk District Court remanded the applicant in custody, relying on the reasonable suspicion that he had committed the offence in question. It noted that keeping the applicant in

detention was necessary to secure the proper conduct of the proceedings, given the risk that he might tamper with evidence. The court also stressed the severity of the anticipated penalty.

7. Later, several other persons were detained and charged in connection with the same investigation conducted by the Department of Organised Crime of the Gdańsk Regional Prosecutor's Office.

8. In the course of the investigation, the applicant's detention was prolonged on several occasions. On 16 January 1997 the Gdańsk Regional Court prolonged his detention until 28 April 1997. On 16 April 1997 the Gdańsk Court of Appeal extended the applicant's detention until 29 July 1997. It relied on the reasonable suspicion that the applicant had committed the offences in question and the gravity of the charges. It also had regard to the number of suspects and the need to obtain further evidence.

9. On 16 July 1997 the Court of Appeal prolonged his detention until 27 October 1997. It considered that there was a risk that the applicant might go into hiding or obstruct the proceedings. It also relied on the severity of the anticipated penalty. Lastly, it held that further prolongation of the investigation was not attributable to the prosecuting authorities, but resulted from the fact that further suspects had been identified and arrested. Furthermore, the prolongation was due to a delay in the preparation of some expert reports and the need to request legal assistance from the German authorities.

10. On 17 September 1997 the Supreme Court extended the detention of the applicant and his 5 co-suspects until 31 December 1997. It found that there was a reasonable risk that the suspects might intimidate witnesses, given the nature of the charges against them. It further observed that the investigation could not be terminated on account of the prolonged preparation of an expert report and the need to hear a witness, W.B., who was serving his prison sentence in Germany.

11. On 28 November 1997 the prosecution filed a bill of indictment with the Gdańsk Regional Court. The applicant was charged with kidnapping, armed robbery, extortion and inflicting grievous bodily harm while being a member of an organised armed criminal group. There were 16 defendants in the case, all charged with numerous counts of armed robbery and extortion.

12. On 7 January 1998 the Regional Court prolonged his detention until 21 September 1998. In addition to the grounds previously invoked, it relied on the complexity of the case and the number of defendants.

13. On 24 February 1998 the trial court held the first hearing. It subsequently held some 56 hearings in the case.

14. On 17 September 1998 the Regional Court extended his detention on remand until 21 October 1998.

15. On 21 September 1998 the Supreme Court ordered that the applicant be kept in custody until 30 January 1999. It found that the fact that the trial had not been terminated could not be attributed to the authorities, given the

volume of evidence and the fact that some hearings had to be cancelled as the defendants' counsel or witnesses had not appeared. It further noted that the applicant had been charged with the commission of the crimes for which he was liable to a sentence of imprisonment exceeding 8 years, and that the circumstances of the case indicated that there was a reasonable risk that the applicant might obstruct the proceedings.

16. On 19 January 1999 the Supreme Court ordered that the applicant be kept in custody until 30 June 1999. It relied on the fact that witnesses had informed the trial court about having been threatened by the defendants. It also had regard to the severity of the anticipated penalty and the presumption established by Article 258 § 2 of the Code of Criminal Procedure. Furthermore, the Supreme Court considered that the prolongation of the detention beyond the statutory time-limit of two years was justified by the complexity of the case and the volume of evidence to be heard. In that respect, it also observed that in December 1998 the trial court had been prevented from hearing evidence on account of the absence of two defence counsel.

17. On 2 June 1999 the Supreme Court prolonged the applicant's detention until 31 December 1999. It noted that the trial was being efficiently conducted and that it had not been terminated for reasons which were attributable to the defendants and their counsel. It noted in particular that the defendants had attempted to intimidate witnesses and protract the trial. Further, it had regard to the nature of the charges and the severity of the likely penalty.

18. On 14 December 1999 the Gdańsk Regional Court convicted the applicant of armed robbery, kidnapping and extortion and sentenced him to 7 years' and 6 months' imprisonment and a fine. The applicant appealed.

19. The applicant's detention pending appeal was prolonged on several occasions. The last decision extending the applicant's detention until 31 March 2001 was given by the Court of Appeal on 17 January 2001.

20. On 7 March 2001 the Gdańsk Court of Appeal quashed the first-instance judgment in respect of the applicant and remitted the case.

21. On 14 March 2001 the Court of Appeal ordered that the applicant be kept in custody until 30 June 2001. Having regard to Article 258 § 2 of the Code of Criminal Procedure, it observed that the applicant might attempt to obstruct the proceedings given the likelihood of a severe penalty being imposed on him. It also relied on the nature of the charges.

22. On 19 June 2001 the Court of Appeal prolonged his detention until 30 September 2001, finding that continuation of that measure was necessary in order to secure the proper conduct of the proceedings, having regard to the severity of the anticipated penalty.

23. On 28 September 2001 the Gdańsk Regional Court ordered that the applicant be kept in custody until 30 December 2001. It found that the applicant's continued detention was necessary in order to prevent the

applicant from interfering with witnesses. On 10 October 2001 the Court of Appeal dismissed the applicant's appeal against that prolongation. Referring to Article 5 § 3 of the Convention, it observed that the applicant's detention, although undeniably long, was justified by the particular circumstances of the case. In this respect, it emphasised that the applicant had been charged with particularly serious and violent crimes, and thus his continued detention was justified on public interest grounds.

24. On 28 December 2001 the Regional Court prolonged the applicant's detention until 30 March 2002. It observed that following the Court of Appeal's instructions most of the witnesses who had given evidence at the original trial had to be heard again. In that case there was a reasonable risk that the defendants might interfere with the witnesses. In addition, the court found that given the gravity of the charges and the likelihood that severe penalties would be imposed on them, the defendants might obstruct the proceedings by going into hiding. On 23 January 2002 the Gdańsk Court of Appeal upheld that decision. It considered, *inter alia*, that the Regional Court had attempted to examine the case within a reasonable time, but there had been significant delays at the trial which were attributable to the defendants or their counsel. In this respect, it pointed to the obstructive conduct of all the defendants on 18 December 2001 which had prevented the Regional Court from holding a hearing on that day. On the other hand, the Court of Appeal instructed the Regional Court to assess the length of detention of each defendant separately. It pointed out that the further prolongation of the detention of those defendants who were not simultaneously serving prison sentences could not be accepted in the long term.

25. Further decisions prolonging the applicant's detention were taken by the Gdańsk Regional Court on 15 March 2002 (until 30 June 2002) and on 21 June 2002 (until 30 September 2002). The applicant appealed against the latter decision.

26. On 31 July 2002 the Court of Appeal altered the Regional Court's decision and ordered that the applicant be released under police supervision. It underlined that the applicant's detention on remand had been exceptionally long and had thus lost its provisional nature. Having regard to the current progress of the trial, the court observed that it was not possible to predict when the proceedings would be terminated. Furthermore, it noted that 7 out of 10 co-defendants were serving long-term prison sentences.

27. Prior to his release under police supervision, the applicant filed numerous but unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention.

28. It appears that the criminal proceedings against the applicant are still pending.

II. RELEVANT DOMESTIC LAW

29. The relevant domestic law and practice concerning the imposition of detention on remand (*tymczasowe aresztowanie*), the grounds for its prolongation, release from detention and rules governing other, so-called “preventive measures” (*środki zapobiegawcze*) at the material time are stated in the Court's judgments in the cases of *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-45, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

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

30. The applicant complained that the length of his detention on remand had been excessive. He relied on 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.”

31. The Government contested that argument. At the same time, they refrained from taking a position on the merits of the applicant's complaint, having regard to the Court's case-law concerning the length of pre-trial detention.

A. Admissibility

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. Period to be taken into consideration

33. The Court observes that the applicant was arrested on 28 October 1996 and remanded in custody on 29 October 1996. On 14 December 1999 the Gdańsk Regional Court convicted him of armed robbery, kidnapping

and extortion. As from that date he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (cf. *Kudła*, cited above, § 104). On 7 March 2001 the Gdańsk Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 31 July 2002 when the applicant was released under police supervision. Consequently, the period to be taken into consideration lasted 4 years, 6 months and 10 days.

2. The reasonableness of the length of detention

(a) The parties' arguments

34. The Government submitted that the applicant's pre-trial detention had been justified by the existence of substantial evidence of his guilt, the nature of the offences with which he had been charged and the severity of the anticipated penalty. They underlined that the length of the applicant's detention should be assessed taking into account the fact that he and his co-defendants had acted in an organised criminal gang. The risk that the defendants might obstruct the proceedings or tamper with evidence was aggravated by the fact they been closely linked as members of an organised criminal group. Thus, the domestic courts had considered it necessary to remand the applicant and his co-defendants in custody until all relevant witnesses had been heard.

35. The Government emphasised that the serious nature of the charges as well as the fact that there had been 16 defendants charged with numerous offences committed in a criminal gang required that the proper conduct of the proceedings be secured with particular diligence. The necessity of the applicant's continued detention had been thoroughly examined by the courts which on each occasion had given sufficient reasons for their decisions. Lastly, they maintained that the authorities had displayed special diligence in dealing with the applicant's case.

36. The applicant's case has been extremely complex on account of the number of charges and the defendants, and the volume of evidence. Furthermore, the conduct of the proceedings had been significantly hindered by the unwarranted exercise of procedural rights by the defendants and their defence counsel. The defendants had lodged hundreds of applications and appealed against every decision, even when they had been informed that the appeal had been inadmissible. Thus, the applicant and other defendants contributed to the length of the proceedings.

37. The applicant argued that the length of his detention had been unreasonable.

(b) The Court's assessment*(i) Principles established under the Court's case-law*

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

39. Continued detention therefore 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*, cited above, §§ 110-111).

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, 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 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 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

41. 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. 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. 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 of Judgments and Decisions* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

42. In sum, domestic courts are under an obligation to review the continued detention of persons pending trial with a view to ensuring release when circumstances no longer justify continued deprivation of liberty. For

at least an initial period, the existence of reasonable suspicion may justify detention but there comes a moment when this is no longer enough. As the question whether or not a period of detention is reasonable cannot be assessed in the abstract but must be assessed in each case according to its special features, there is no fixed time-frame applicable to each case (see *McKay*, cited above, § 45).

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

43. The Court observes that the judicial authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the serious nature of the charges against him, (2) the severity of the penalty to which he was liable and (3) the risk of obstruction of the proceedings. In respect of the latter, they relied on the defendants' attempts to intimidate witnesses. The domestic courts also referred to the obstructive attitude of the defendants and their counsel aimed at delaying the trial. Lastly, they had regard to the complexity of the case related to the nature of the charges, the number of defendants and volume of evidence to be heard.

44. The Court notes that the applicant was charged with kidnapping, armed robbery, extortion and inflicting grievous bodily harm which had been committed in an organised armed criminal gang. When assessing compliance with Article 5 § 3 of the Convention, it will take into account the fact that the present case concerned a member of a criminal gang (*Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

45. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences may initially have warranted his detention. In addition, it considers that the authorities were faced with a difficult task of determining the facts and the degree of alleged responsibility of each of the defendants, who had been charged with acting in an organised criminal group. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the fact that in the course of the investigation new suspects had been identified, constituted relevant and sufficient grounds for the applicant's detention at the early stages of the trial.

46. However, with the passage of time those grounds inevitably became less and less relevant. It must then establish whether the other grounds advanced by the judicial authorities were "relevant" and "sufficient" to continue to justify the deprivation of liberty.

47. The Court notes that the judicial authorities relied heavily on the likelihood that a severe sentence would be imposed on the applicant given the serious nature of the offences at issue. According to them, that likelihood created a presumption that the applicant would obstruct the proceedings. In this respect, the Court recalls that the severity of the sentence faced is a relevant element in the assessment of the risk of

absconding or re-offending. It acknowledges that in view of the seriousness of the accusations against the applicant the authorities could justifiably consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

48. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal gang. In this regard, the Court reiterates that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings (see, *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent prolongations of the detention (see, *Celejewski*, cited above, § 37). It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. In these circumstances, the Court considers that the need to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-defendants, constituted relevant and sufficient grounds for the applicant's detention during the period necessary to terminate the investigation, to draw up the bill of indictment and to hear evidence from the accused. Moreover, the Court considers that in cases such as the present concerning organised criminal gangs, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused, or might otherwise obstruct the proceedings, is by the nature of things often particularly high. Indeed, the Court notes that the defendants made attempts to intimidate the witness at their original trial (see paragraph 16 above). Furthermore, it accepts that certain delays during the trial were caused by the defendants' obstructiveness (see paragraph 24 above).

49. While all the factors considered above could justify a relatively longer period of detention on remand, they do not however give the authorities unlimited power to prolong this preventive measure. Firstly, 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 (see, among many other authorities, *I.A.*, cited above, § 102; *Labita*, cited above, § 153). Secondly, even if the particular circumstances of the case required detention on remand to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify this (*Wolf v. Poland*, nos. 15667/03 and 2929/04, § 90, 16 January 2007). In this respect the Court notes that the applicant had already spent 3 years and more than 1 month in detention on remand before his first conviction was pronounced. The situation was further aggravated following the quashing of

the applicant's conviction on 7 March 2001, after which he spent nearly 17 months more in custody.

50. Having regard to the foregoing, even taking into account the particular difficulties in dealing with a case concerning an organised criminal gang, the Court concludes that the grounds given by the domestic authorities were not “relevant” and “sufficient” to justify holding the applicant in detention for 4 years and over 6 months. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 60,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

54. The Government submitted that the applicant's claim was exorbitant and should be rejected. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, the Government invited the Court to award a sum which would be considerably lower than the amount claimed.

55. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

56. On the other hand, it considers that the applicant has suffered non-pecuniary damage 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 basis¹, the Court awards the applicant EUR 1,000 under this head.

B. Costs and expenses

57. The applicant submitted no claim for costs and expenses.

1. Having regard, in particular, to the exceptionally long period of the applicant's detention on remand (4 years and 6 months).

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 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 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President