



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

FOURTH SECTION

CASE OF LEWANDOWSKI v. POLAND

(Application no. 29437/02)

JUDGMENT

STRASBOURG

3 July 2007

FINAL

03/10/2007

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 Lewandowski 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 12 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 29437/02) 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 Artur Lewandowski ("the applicant"), on 1 July 2002.

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

3. The applicant alleged, in particular, that the length of his pre-trial detention had been unreasonable.

4. On 17 March 2005 the President of the Fourth Section of the Court decided to communicate the complaint concerning the length of the applicant's detention on remand to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and is presently detained in Wołów Detention Centre.

6. On 21 March 2000 the applicant was arrested on suspicion of robbery.

7. On 22 March 2000 the Oława District Court (*Sąd Rejonowy*) decided to detain the applicant on remand. It considered that the applicant's

detention was justified by the existence of a reasonable suspicion that he had committed the offence and the gravity of the charges. It also relied on the risk that the applicant might induce witnesses to give false testimony or obstruct the proceedings against him by other means. On 20 April 2000 the Wrocław Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal against that decision.

8. On 21 June 2000 the Regional Court prolonged the applicant's detention until 21 September 2000. The court considered that there was a significant risk of the applicant obstructing the proper course of the proceedings or going into hiding.

9. The applicant's detention was subsequently prolonged on 21 September and 21 December 2000. The court repeated the reasons previously given for the applicant's detention and considered that it was necessary to obtain evidence from an expert psychiatrist.

10. On 19 March 2001 the Wrocław Court of Appeal (*Sąd Apelacyjny*) again prolonged his detention until 30 April 2001.

11. On 20 April 2001 the applicant was indicted before the Wrocław Regional Court. He was charged with having committed two robberies in January and February 1999.

12. The applicant's detention was further prolonged by the Wrocław Regional Court several times, for the same reasons as before.

13. On 6 March 2002 the Wrocław Court of Appeal allowed the Regional Court's request to extend the applicant's detention until 19 September 2002. Subsequently the court prolonged his detention until 19 December 2002 and, thereafter, until 19 March 2003. The applicant's appeals against those decisions were dismissed.

14. His applications for release of 22 September and 12 November 2002 were likewise dismissed.

15. On 5 March 2003 the Court of Appeal, at the prosecutor's request, prolonged the applicant's detention until 19 June 2003.

16. On 15 April 2003, at a hearing, the Regional Court dismissed the applicant's request for release, for the same reasons as before. The court found that there were "no grounds for release" provided by Article 259 of the Code of Criminal Procedure.

17. On 29 April 2003 the applicant again unsuccessfully asked the court to release him from detention.

18. On 10 June 2003 the Wrocław Court of Appeal allowed the Regional Court's application to prolong the detention until 19 September 2003.

19. On 16 September 2003 the Wrocław Regional Court convicted the applicant as charged and sentenced him to 12 years' imprisonment.

20. On 29 June 2004 the Court of Appeal upheld the applicant's sentence of 4 years' imprisonment in respect of the robbery committed in February 1999. The appeal court quashed the remainder of the impugned judgment in so far as it concerned the applicant's conviction for armed robbery.

committed in January 1999 and for which the applicant was sentenced to 12 years' imprisonment. The court remitted this part of the case.

21. The applicant lodged a cassation appeal with the Supreme Court against the part of the Court of Appeal's judgment which had become final. It appears that the proceedings ended on an unspecified later date.

22. On 31 January 2006 the Wrocław Regional Court gave a judgment with regard to the part of the judgment which had been quashed by the Court of Appeal on 29 June 2004. The applicant was convicted of having committed armed robbery in January 1999 and was sentenced to 12 years' imprisonment.

23. The applicant appealed but on 31 August 2006 the Court of Appeal dismissed the appeal.

24. The applicant lodged a cassation appeal and the proceedings are pending before the Supreme Court.

II. RELEVANT DOMESTIC LAW

25. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called "preventive measures" (*środki zapobiegawcze*).

26. A more detailed rendition of the relevant domestic law provisions is set out in the Court's judgment in *Kudła v. Poland* [GC], no. 30210/96, § 75, ECHR 2000-XI, *Celejewski v. Poland*, no. 17584/04, §§ 22 and 23, 4 May 2006.

THE LAW

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

27. The applicant complained that the length of his detention on remand had been unreasonable. 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."

28. The Government contested that argument.

A. Admissibility

29. 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. The parties' submissions

30. The applicant submitted that he had been kept in detention pending trial for an unjustified period of time. The fact that he had been detained for many years showed disregard for the right to individual liberty in Poland and had justified his application to the Court.

31. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. They submitted that on 17 May 2005 the applicant started serving a sentence imposed on him in another set of criminal proceedings. His detention was justified by "relevant" and "sufficient" grounds. These grounds were, in particular, the gravity of the charges against the applicant as well as the risk that he might obstruct the course of the proceedings. The latter ground was particularly justified as the applicant, a recidivist offender, had been convicted of having committed two robberies, including an armed robbery.

The Government further argued that the domestic authorities had shown due diligence, as required in cases against detained persons.

2. The Court's assessment

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

32. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI)

33. 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-...).

34. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *McKay*, cited above, § 43).

35. 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, § 153, ECHR 2000-IV, and *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

36. The Court first notes that the applicant's detention on remand started on 21 March 2000 when he was arrested, and ended with his conviction by the court of first-instance on 16 September 2003. On 29 July 2004 the Court of Appeal remitted the case to the trial court. The period to be taken into consideration for the purposes of Article 5 § 3 of the Convention ended on 17 May 2005 when the applicant started to serve a prison sentence ordered in another set of criminal proceedings (see paragraph 31 above). The period following that date is covered by Article 5 § 1 (a) of the Convention. The detention thus lasted 4 years, 3 months and 15 days.

37. The Court observes that the authorities initially relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, and the risk that he might interfere with the conduct of the proceedings. In addition, the authorities relied heavily on the severity of the sentence that might be imposed, which made it probable that the applicant would obstruct the course of the criminal proceedings.

They repeated those grounds in all their decisions. In subsequent decisions the authorities failed to advance any new grounds for prolonging the most serious preventive measure against the applicant. Moreover, the authorities did not rely on any specific circumstance capable of showing that the applicant's release would, and if so why and how, obstruct the process of obtaining evidence.

38. The Court accepts that the suspicion against the applicant of having committed the offences and the need to secure the proper conduct of the proceedings might initially justify his detention. However, with the passage of time, these grounds became less relevant and cannot justify the entire period of 4 years and over 3 months during which the applicant remained in detention (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006).

39. Moreover, the authorities relied heavily on the likelihood that a heavy sentence would be imposed on the applicant given the serious nature of the offences at issue. In this respect, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. 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 *Ilykov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

40. The Court observes further that the applicant was detained on charges of robbery and was finally sentenced to twelve years' imprisonment. Even though the applicant had committed the offences with the help of accomplices, there is no indication that he was a member of an organised criminal group. It does not appear therefore that his case presented particular difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the perpetrator (see *Bak v. Poland*, no. 7870/04, § 60, ECHR 2007-... (extracts)), as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, cited above, § 37, and *Malik*, cited above, § 49).

41. Finally, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative means of guaranteeing his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jabłoński*, cited above, § 83).

In the present case the Court notes that there is no express indication that during the entire period of the applicant's pre-trial detention the authorities envisaged any other guarantees of his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

42. The Court is, therefore, not satisfied that the reasons given to justify the applicant's detention for 4 years and over 3 months were “relevant” and “sufficient”, as required under Article 5 § 3.

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

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

43. The applicant complained that he did not have a “fair trial” and that he was innocent. He relied on Article 6 of the Convention.

However, pursuant to Article 35 § 1 of the Convention:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...”

44. The Court notes that the criminal proceedings against the applicant, as regards some of the charges against him, are still pending following the applicant's cassation appeal lodged with the Supreme Court. Accordingly, the applicant still can, and should, put the substance of the complaint before the domestic authorities and ask for appropriate relief.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

45. As regards the part of the proceedings which have apparently ended, the Court reiterates that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

46. The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing. Assessing the criminal proceedings against the applicant as a whole, it finds no indication that they were unfairly conducted.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 66,000 euros (EUR) in respect of pecuniary damage and EUR 50,000 under the head of non-pecuniary damage.

49. The Government contested those claims.

50. 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, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

51. The applicant did not claim reimbursement of any costs and expenses.

C. Default interest

52. 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 applicant's complaint concerning the unreasonable length of his pre-trial detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at a 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 3 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President