



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

FOURTH SECTION

CASE OF TONDERYS v. POLAND

(Application no. 14382/04)

JUDGMENT

STRASBOURG

10 July 2007

FINAL

10/10/2007

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 Tonderys 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 19 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 14382/04) 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 Mr R. Tonderys (“the applicant”) on 5 April 2004. He was represented by Mr W. Hermeliński and subsequently by Ms A. Metelska, lawyers practising in Warszawa.

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

3. On 7 February 2006 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 1958 and lives in Wołów.

5. On 14 June 1999 the applicant was arrested and remanded in custody on suspicion of, *inter alia*, murder and causing grievous bodily harm.

6. On 16 June 1999 the Stalowa Wola Regional Court ordered that the applicant be detained on remand in view of the reasonable suspicion that he had committed the offences. The court found that there was a reasonable

risk that the applicant would obstruct the proper conduct of the proceedings, having regard to the severity of the anticipated penalty.

7. In the subsequent decisions prolonging the applicant's detention, the courts referred to the complexity of the case, the need to conduct further investigations and to take further evidence including psychiatric opinions. The court held that no other measures could prevent the applicant from attempting to exert unlawful pressure on witnesses.

8. Between 14 June 1999 and 1 March 2000 twenty-four witnesses were heard and eight expert opinions were submitted to the court, including with respect to the post-mortem examination. Several scene-of-crime inspections were conducted. The applicant was heard on two occasions.

9. On 1 March 2000 the prosecutor lodged a bill of indictment with the Tarnobrzeg Regional Court. The applicant was charged with numerous offences, including murder, attempted murder, causing grievous bodily harm, possession of an unlicensed weapon and failure to pay child maintenance. The prosecutor requested that fifty-three witnesses be heard and sixty-one documents be produced in court.

10. Between 10 March 2000 and 6 September 2000 eleven hearings were held.

11. On 6 September 2000 the Tarnobrzeg Regional Court gave a judgment. It convicted the applicant as indicted except for one charge – the failure to pay child maintenance. The applicant was sentenced to twenty-five years' imprisonment. On 4 December 2000 the applicant appealed.

12. On 15 February 2001 the Rzeszow Court of Appeal upheld the judgment insofar as it concerned one of the charges (handling stolen goods), sentencing the applicant to one year's imprisonment and counting towards the sentence the period from 14 June 1999 to 13 June 2000. The court quashed the remaining part of the sentence and remitted the case. It found that the written grounds for the judgment were inadequate, which made it impossible to follow and assess the reasoning of the lower court.

13. On 30 March 2001 the Tarnobrzeg Regional Court remitted the case to the prosecution in order to remedy shortcomings in the bill of indictment.

14. On 1 August 2001 the prosecutor lodged a new bill of indictment with the court. The applicant was charged with four offences including murder, attempted murder, causing grievous bodily harm and possession of an unlicensed weapon. Another forty-eight witnesses were called.

15. Between 10 September 2001 and 12 February 2002 the Regional Court held ten hearings.

16. On 12 February 2002 the Tarnobrzeg Regional Court delivered a judgment. It convicted the applicant as charged and sentenced him to fifteen years' imprisonment. The applicant and the prosecutor appealed.

17. On 27 June 2002 the Rzeszow Court of Appeal quashed the judgment and remitted the case, finding that the lower court had applied the wrong legal provisions to the facts under examination.

18. Between 10 September 2002 and 25 March 2003 the Regional Court held fifteen hearings.

19. On 25 March 2003 the Tarnobrzeg Regional Court gave a judgment. It convicted the applicant as charged and sentenced him to twenty-five years' imprisonment. The applicant appealed.

20. On 4 March 2004 the Rzeszów Court of Appeal amended the judgment in part, but confirmed the sentence of twenty-five years' imprisonment. On 25 May 2004 the applicant lodged a cassation appeal with the Supreme Court.

21. On 9 November 2004 the Supreme Court quashed the judgment of the second-instance court and remitted the case for re-examination.

22. On 7 April 2005 the Rzeszów Court of Appeal quashed the judgment of the first-instance court and remitted the case.

23. Between 27 April 2005 and 7 December 2005 the Tarnobrzeg Regional Court held ten hearings.

24. On 7 December 2005 the Tarnobrzeg Regional Court convicted the applicant as charged and sentenced him to twenty-five years' imprisonment. On 23 February 2006 the applicant lodged an appeal.

25. On 6 April 2006 the Rzeszów Court of Appeal upheld the judgment. Apparently the applicant has not lodged a cassation appeal.

II. RELEVANT DOMESTIC LAW

26. 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 stated in the Court's judgments in cases of *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-46, 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

27. The applicant complained that the length of his pre-trial detention had been 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

28. 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*

29. The period to be taken into consideration started on 14 June 1999, when the applicant was taken into police custody. The end of the period referred to in Article 5 § 3 is “the day on which the charge is determined, even if only by a court of first instance” (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, pp. 23-24, § 9) and, consequently, detention after acquittal is again covered by that provision.

30. The Court reiterates that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see, for example, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39).

31. Consequently, having regard to the fact that the applicant’s conviction was quashed on three occasions, the Court finds that the period to be taken into consideration in the present case consisted of several separate terms:

(a) the first period, lasting from 14 June 1999, when the applicant was arrested, until 6 September 2000, when the applicant was convicted by the first-instance court (1 year, 2 months, 24 days);

(b) the second period, lasting from 15 February 2001, when the second-instance-court remitted the case, until 12 February 2002, when the first-instance-court convicted the applicant (11 months, 27 days);

(c) the third period, lasting from 27 June 2002, when the case was again remitted, to 25 March 2003, when the first-instance court convicted the applicant (7 months, 28 days);

(d) the fourth period, lasting from 7 April 2005, when the Rzeszów Court of Appeal quashed the judgment of the first-instance court and remitted the case, until 7 December 2005, when the applicant was convicted by the first-instance court (8 months, 1 day).

With regard to the last period the Court notes that when on 9 November 2004 the Supreme Court quashed the judgment of the Court of Appeal, the judgment of the first-instance court convicting the applicant remained valid until 7 April 2005 when it was quashed by the Court of Appeal. Consequently, during this period the applicant was detained “after conviction by a competent court”.

Therefore, the Court concludes that the applicant’s pre-trial detention lasted three years and almost seven months.

2. Reasonableness of the applicant’s pre-trial detention

(a) Arguments before the Court

32. 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.

33. They stressed that the applicant had been charged with serious offences and that he had faced the likelihood of a heavy sentence. In the Government’s opinion, the suspicion against the applicant had been reasonable and was strongly supported by the evidence obtained during the investigation and by the fact that he had been sentenced to twenty-five years’ imprisonment.

34. The Government further argued that there had been a risk that the applicant, if released, might obstruct the proceedings or go into hiding. The continued detention of the applicant was aimed at securing the proper conduct of the proceedings and preventing the possibility of exerting pressure on witnesses.

35. The Government emphasised that the necessity of the applicant’s continued detention had been kept under thorough and regular supervision by the courts and the decisions on prolongation of the detention had been reasoned in a relevant and sufficient manner. The Government maintained 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 applicant maintained that the period of his detention was incompatible with the “reasonable time” requirement set out in Article 5 § 3. In his view, the grounds relied on by the authorities in their detention decisions could not be considered “relevant” and “sufficient” so as to justify the entire period of his detention, and had ceased to exist with the passage of time.

37. The applicant submitted that the domestic courts had not given sufficient consideration to other preventive measures to ensure that he would appear for trial, for instance bail or police supervision. He further

observed that the courts had not provided any arguments in support of their findings concerning the risk of his going into hiding or otherwise evading justice and that his continued detention had served the aim of securing his presence at the trial.

38. He further argued that the risk of exerting pressure on witnesses had gradually lost its relevance as the trial progressed.

39. Lastly, the applicant observed that the authorities had not displayed special diligence in the proceedings since the domestic courts had delivered ten judgments in the course of the trial and his case had been remitted to lower-instance courts on four occasions. Thus, the length of proceedings had been due to the procedural errors of the courts. He maintained that he had not contributed to the length of the proceedings in any way.

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

40. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. 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 laid down in Article 5 of the Convention (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 152 et seq., ECHR 2000-IV; *Kudła*, cited above, § 110).

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 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-).

42. 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 (*Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 35, § 84, *Kudla*, cited above, §111).

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

43. The Court observes that the authorities initially relied on the existence of a reasonable suspicion that the applicant had committed the offences with which he had been charged and on the risk that he might interfere with the conduct of the proceedings.

44. The judicial authorities appeared to presume the existence of the risk of pressure being brought to bear on witnesses or of obstruction of the proceedings on the basis of the severity of the sentence that could be expected. In this respect, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (*Górski v. Poland*, no. 28904/02, § 57, 4 October 2005). The Court also acknowledges that in view of the seriousness of the accusations against the applicant the authorities could justifiably consider in an initial stage that such a risk was present. 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).

45. 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. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2979, § 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.

46. 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 measures of ensuring his appearance at the trial. Indeed, that provision proclaims 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 v. Poland*, no. 33492/96, § 83, 21 December 2000).

47. 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 proper 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, even if in the particular circumstances of the case other preventive measures might have been less appropriate.

48. 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 did not satisfy the requirement of being "relevant" and "sufficient" to justify the applicant's being held in custody for three years and seven months.

49. That finding would, as a rule, absolve the Court from determining whether the national authorities displayed "special diligence" in the conduct of the proceedings. However, in that context the Court cannot but note that although the hearings in the case were held at regular intervals, the case was remitted to lower-instance courts on four occasions due to, *inter alia*, procedural shortcomings committed by the courts. Furthermore, the bill of indictment was also flawed which resulted in the remittal of the case to the prosecution and further delay in the proceedings (see paragraphs 13-14 above). The criminal proceedings as a whole lasted over six years and nine months.

On account of the above circumstances, the Court considers that it cannot be said that the authorities displayed "special diligence" in the conduct of the criminal proceedings against the applicant.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

53. The Government found this claim excessive and requested the Court to rule that a finding of a violation constituted of itself sufficient and just satisfaction.

54. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head.

B. Costs and expenses

55. The applicant, who was represented by a lawyer, also claimed EUR 1,000 for the costs and expenses incurred before the Court. He submitted details of his claim.

56. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, in the light of the applicant's specification of the costs and expenses incurred in the proceedings before the Court, he should be awarded the amount claimed in full. Accordingly, the Court awards the applicant EUR 1,000 for his costs and expenses together with any value-added tax that may be chargeable.

C. Default interest

57. 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, and EUR 1,000 (one thousand euros) in respect of costs and expenses to be converted into Polish zlotys 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 amounts 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 10 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President