



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

FOURTH SECTION

CASE OF ZENON MICHALAK v. POLAND

(Application no. 16864/02)

JUDGMENT

STRASBOURG

18 September 2007

FINAL

18/12/2007

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 Zenon Michalak 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 28 August 2007,

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

PROCEDURE

1. The case originated in an application (no. 16864/02) 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 Zenon Michalak (“the applicant”), on 11 April 2002.

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

3. On 29 January 2006 the President of the Fourth Section of the Court decided to communicate the application 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 President of the Chamber also decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the cases of *Nowak v. Poland* and *Owczar v. Poland* (applications nos. 18390/02 and 34117/02) (Rule 42 § 2 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in Brzeg, Poland.

5. On 21 May 1999 the Brzeg District Court (*Sąd Rejonowy*) issued a “wanted” notice in respect of the applicant and several other men in

connection with an investigation into allegations made by six women, some of whom were minors, that a group of several men had raped them, threatened them, beaten them and forced them to take drugs. The warrant for arrest was issued after the prosecution service had established that the applicant had gone into hiding and that the police had unsuccessfully attempted to arrest him.

6. On 21 July 1999 the applicant was arrested by the police. On 27 July 1999 the Opole District Court ordered that the applicant be remanded in custody in view of the reasonable suspicion that he had committed the offences of repeated group rape with aggravated cruelty and false imprisonment while acting in an organised criminal gang. The court also found that, given that he had absconded in the past, there was a risk that the applicant might go into hiding again and try to influence the victims.

7. The applicant appealed against the decision but his appeal was dismissed on 11 August 1999 by the Opole Regional Court (*Sąd Okręgowy*).

8. On 18 October 1999 the Opole Regional Court prolonged the applicant's detention relying on the reasonable suspicion of his having committed the offences and on the complexity of the investigation which had not yet been terminated by the prosecutor.

9. On 13 December 1999 the court decided that the applicant's detention should be prolonged. It considered that, in addition to the strong suspicion against the applicant, the severity of the sentence that might be imposed and the risk of his tampering with evidence and influencing witnesses justified holding him in custody. In addition, the court relied on the risk that, given that he had absconded in the past, he might go into hiding again. The court also observed that only detention on remand would secure the applicant's appearance at the trial.

10. On 16 December 1999 the applicant was indicted before the Opole Regional Court. It appears that the first hearing was held on 26 April 2000. In 2000 the trial court held in total 13 hearings.

11. Subsequently, the applicant's detention was prolonged by decisions of 12 June and 13 November 2000 and 15 May 2001. The decisions were based on the reasons given for the detention on previous occasions.

12. Afterwards, as the length of the applicant's detention had reached the statutory time-limit of 2 years laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), the Regional Court applied to the Wrocław Court of Appeal (*Sąd Apelacyjny*) asking for the applicant's detention to be prolonged beyond that term. On 28 June 2001 the Wrocław Court of Appeal allowed the application and prolonged his pre-trial detention. The Court of Appeal based its decision on the reasonable suspicion that the applicant had committed serious offences and on the risk that he might interfere with the course of justice. The court further

considered that the complexity of the case constituted a special circumstance justifying his remaining in custody.

13. On 7 November 2001 the Wrocław Court of Appeal again decided to prolong the pre-trial detention of the applicant, finding that the initial reasons for the detention were still valid. Furthermore, the court examined the course of the proceedings before the Opole Regional Court and agreed that the case was particularly complex and time-consuming, given the number of accused and the considerable amount of evidence which had to be examined. It considered that the trial court had acted diligently as it had taken evidence from nineteen witnesses during the last seven hearings.

14. On 13 February 2002 the Court of Appeal prolonged the applicant's detention until 15 May 2002. The court noted that the applicant had been detained on remand for a long time. However, it considered that the particular circumstances of the case justified keeping him in custody until 15 May 2002 by which time the trial should have been completed.

15. Nevertheless, the trial court again applied to prolong the applicant's detention. On 8 May 2002 the Court of Appeal granted the application. However, it criticised the Opole Regional Court for the delay in the case and requested the trial court "to take adequate and more intensive action to finish the trial". The court further took into account that the accused were partly responsible for the length of the proceedings because they had lodged vexatious applications for new evidence to be heard and had not complied with time-limits for filing new submissions.

16. The applicant's numerous applications for release and appeals against the decisions prolonging his detention were to no avail.

17. The Opole Regional Court held 23 hearings in 2001 and 21 hearings in 2002. On 31 July 2002 the Opole Regional Court gave a judgment in which it found the applicant guilty of two counts of repeated group rape with aggravated cruelty and false imprisonment committed while acting in an organised criminal gang. He was sentenced to six years' imprisonment. The applicant appealed.

18. On 20 February 2003 the applicant was released on bail.

19. On 2 June 2003 the Wrocław Court of Appeal dismissed the appeal. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

20. On 11 March 2005 the Supreme Court dismissed the cassation appeal as manifestly ill-founded.

II. RELEVANT DOMESTIC LAW

21. 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 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

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

22. The applicant complained that the length of his detention on remand had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, 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.”

23. The Government contested that argument.

A. Admissibility

24. 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

25. The applicant's detention started on 21 July 1999, when he was arrested, and ended on 31 July 2002 when the Opole Regional Court convicted him at first instance. Thus, his detention lasted 3 years and 11 days.

2. The parties' submissions

26. The applicant submitted that he had been kept in detention pending trial for an unjustified period of time. He claimed that the trial and appellate courts had failed to display the required degree of diligence and had been responsible for the protracted length of the proceedings. The applicant also maintained that the procedure for prolongation of his detention had been automatic and that the courts had repeated the same grounds for their decisions.

27. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by “relevant” and “sufficient” grounds. These grounds were, in particular, the gravity of the charges against the applicant who had been accused of membership of an organised criminal gang. Moreover, there was a high risk of the applicant attempting to influence the victims, particularly since two other co-accused had been convicted of having threatened the victims. The Government also submitted that the applicant had absconded in the past and that there was a serious risk that he would go into hiding again. They further underlined the complexity of the case which had involved 12 co-accused and concerned multiple offences of rape and false imprisonment of 5 victims, some of whom were minors.

The Government argued that the domestic authorities had shown due diligence, as required in cases against detained persons, and that the length of the applicant's detention was attributable to the exceptional complexity of the case.

3. *The Court's assessment*

(a) **General principles**

28. Under Article 5 § 3 of the Convention, 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.

29. 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 v. Poland* [GC], no. 30210/96, § 110 *et seq.*, ECHR 2000-XI).

30. The responsibility 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 demand 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, *Weinsztal v. Poland*, no. 43748/98, judgment of 30 May 2006, § 50).

31. 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 with the lapse of time this no longer suffices and 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.

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 v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

(b) Application of the above principles in the present case

32. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the serious nature of the offences with which he had been charged; (2) the severity of the penalty to which he was liable; (3) the need to secure the proper conduct of the proceedings, in particular, the risk that the applicant might go into hiding. As regards the latter, they relied on the fact that the applicant had been in hiding before his arrest in 1999 and that a warrant had been issued for his arrest. Furthermore, the courts referred to the complexity of the case as a justification for the need to keep the applicant in detention.

33. The applicant was charged with and convicted of two counts of repeated group rape with aggravated cruelty and false imprisonment committed while acting in an organised criminal gang (see paragraphs 6 and 17 above).

In the Court's view, the fact that the case concerned a member of a criminal gang should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

34. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to determine the degree of the alleged responsibility of each of the defendants constituted a valid ground for the applicant's initial detention.

35. The Court observes that throughout the entire relevant period the judicial authorities based their finding that there existed a risk of the applicant avoiding the trial on the fact that he had went into hiding before his arrest. The Court agrees that this factor justified keeping him in custody in the initial stages of the proceedings. However, the Court considers that that ground gradually lost its force and relevance as the proceedings progressed (see *Czajka v. Poland*, no. 15067/02, § 46, 13 February 2007).

36. It is to be noted that the judicial authorities had presumed the risk of pressure being exerted on witnesses or obstruction of the proceedings, basing themselves on the serious nature of the offences and the fact that the applicant had been charged with being a member of an organised criminal gang. The Court acknowledges that in view of the seriousness of the accusations against the applicant, the authorities could justifiably have considered that such an initial risk was established. Regard being had to the fact that the applicant had been charged with group rape with aggravated cruelty and false imprisonment, the particular vulnerability of the victims, some of whom were minors, must be seen as relevant. The Court notes in this connection the Government's assertion that two of the co-accused had been convicted of threatening the victims and their families in order to force them to withdraw the charges. Accordingly, the risk of pressure being brought to bear on witnesses or other co-accused can reasonably be considered to have been high, as found by the domestic courts.

Nevertheless, with the passage of time and given the authorities' failure to advance any new grounds for prolonging the applicant's detention on remand, the grounds relied on became less relevant and cannot justify the entire period of over 3 years during which the most serious preventive measure against the applicant had been imposed.

37. The Court finally 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. 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).

38. The Court would further observe that following the applicant's conviction he was released on bail on 20 February 2003 at a time when his appeal to the Wrocław Court of Appeal was still pending (see paragraph 18 above). It has not been explained by the Government why this measure should not have been considered at an earlier stage. Indeed, it does not transpire from the case file that, when prolonging the applicant's detention,

the domestic courts gave any careful consideration to measures other than detention that would have secured that applicant's appearance at his trial.

39. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” and “sufficient” to justify the applicant's being kept in detention for 3 years and 11 days.

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

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

40. The applicant complained under Article 6 § 1 of the Convention that the length of the proceedings in his case had exceeded a “reasonable time” within the meaning of this provision.

41. 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...”

42. The Court observes that after the entry into force, on 17 September 2004, of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”) it was open to the applicant to lodge a complaint about the unreasonable length of the proceedings with the relevant domestic court.

However, the applicant, despite having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under the 2004 Act, has chosen not to avail himself of this remedy.

43. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 399,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

47. The Government argued that the applicant's claims were exorbitant and as such should be rejected. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. Moreover, the Court considers that in the circumstances of the case, the above finding of violation of Article 5 § 3 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.

B. Costs and expenses

49. The applicant did not claim reimbursement of any costs and expenses incurred before the domestic courts or before the Court.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the unreasonable length of the applicant's 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* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President