



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

FOURTH SECTION

CASE OF WEDEKIND v. POLAND

(Application no. 26110/04)

JUDGMENT

STRASBOURG

23 October 2007

FINAL

23/01/2008

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 Wedekind 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 2 October 2007,

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

PROCEDURE

1. The case originated in an application (n° 26110/04) 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 a Polish national, Mr Krzysztof Wedekind (“the applicant”), on 30 June 2004.

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

3. On 30 November 2006 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 1971 and lives in Tychy.

5. On 17 January 2001 the applicant was arrested on suspicion of drug trafficking committed as part of an organised crime group.

6. On 19 January 2001 the Katowice District Court remanded the applicant in custody, relying on the reasonable suspicion that he had committed the offence in question. It also considered 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 or induce

witnesses to give false testimony. The court also stressed the severity of the anticipated sentence.

7. The applicant's appeal against the detention order, likewise his further appeals against some of the decisions extending his detention and his subsequent applications for release and appeals against refusals to release him, were unsuccessful. In his applications and appeals he relied, *inter alia*, on his personal circumstances, in particular a difficult family situation in that a family break-up was imminent. He also argued that his confessions to offences of which he was suspected had not been taken into consideration.

8. In the course of the investigation, the applicant's detention was extended on several occasions, namely on an unknown date, on 16 July 2001 (to 17 October 2001), 12 October 2001 (to 31 December 2001), 28 December 2001 (to 30 April 2002), 17 April 2002 (to 31 July 2002), an unknown subsequent date, and 25 September 2002 (to 30 November 2002). In all their detention decisions the authorities repeatedly relied on a strong suspicion, supported by evidence from witnesses, that the applicant had committed the offences in question. They attached importance to the seriousness of those offences and to the likelihood of a severe prison sentence being imposed on the applicant. These facts gave rise to the courts' assumption that the applicant, if released, might obstruct the proper course of the proceedings, especially given the fact that some of the suspects were still at large.

9. On 22 November 2002 the Regional Prosecutor lodged a bill of indictment with the Katowice Regional Court. The applicant was charged with drug trafficking and membership of an organised crime group. There were 15 defendants in the case, all charged with numerous counts of drug trafficking committed as an organised crime group.

10. On 6 August 2003 the case was transferred to the Bielsko-Biała Regional Court since all judges from the Katowice Regional Court had been excluded from examination of the case.

11. On 13 November 2003 the trial court held the first hearing. It subsequently held 28 hearings in the case, at regular intervals.

12. During the court proceedings the courts further extended the applicant's pre-trial detention, namely on 27 November 2002 (to 17 January 2003), two unknown subsequent dates, 17 December 2003 (to 31 August 2004) and 23 June 2004 (to 31 December 2004). The courts repeated the grounds previously given for the applicant's continued detention. They relied especially on the complexity of the case and the large number of co-accused.

13. Between 22 January 2004 and 24 March 2004 the applicant was serving a term of imprisonment imposed by the Warsaw Regional Court in a different criminal case.

14. On 16 December 2004 the Bielsko-Biała Regional Court gave judgment. The applicant was convicted as charged and sentenced to five years and six months' imprisonment and to a fine.

15. The applicant appealed. He was kept in detention pending appeal for a period of one year and one month.

16. On 26 January 2006 the Katowice Court of Appeal heard the applicant's appeal. It reduced the sentence passed by the first-instance court to five years and left the remainder of the judgment unchanged. The applicant did not lodge a cassation appeal. The judgment is final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other “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

18. The applicant complained that the length of his pre-trial detention 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.”

19. The Government contested that argument.

A. Admissibility

20. 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

21. The applicant's detention started on 17 January 2001, when he was arrested on suspicion of drug trafficking and membership of an organised crime group. On 16 December 2004 the Bielsko-Biała Regional Court convicted him as charged.

From that date he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a) and, consequently, that period of his detention falls outside the scope of Article 5 § 3 (see. *Kudła v. Poland* (GC), no. 30210/96, § 110 et seq., ECHR 2000-XI, cited below, § 104).

22. However, between 22 January 2004 and 24 March 2004 the applicant was serving a prison sentence which had been imposed on him in other criminal proceedings. This term, being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's pre-trial detention for the purposes of Article 5 § 3.

Accordingly, the period to be taken into consideration amounts to three years and nine months.

2. The parties' submissions

(a) The applicant

23. The applicant argued that an excessive period of detention, such as the period in the present case, was in itself incompatible with Article 5 § 3 of the Convention, given the principle of the presumption of innocence. He maintained that however strong the suspicion against him had been, it would have sufficed as a basis for holding him in custody only in the early stages of the proceedings.

24. As regards the risk of collusion and tampering with evidence, the applicant argued that it had not been based on any reliable facts and that, with the passage of time, it had become irrelevant from the point of view of the proper conduct of the trial. He strongly contested the opinion of the Court of Appeal that the risk of absconding or tampering with evidence did not have to be supported by concrete facts, but resulted from the presumption established in Article 258 § 2 of the Code of Criminal Procedure. The applicant emphasised that the courts had not given sufficient and relevant reasons for his continued detention.

(b) The Government

25. 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 at issue and the severity of the anticipated penalty. They underlined that the length of the applicant's detention should be

assessed with reference to the fact that he and his co-defendants had acted as an organised crime group. The risk that the defendants might obstruct the proceedings or tamper with evidence had been aggravated by the fact that not all the members of the group had yet been captured. Thus, the domestic courts had considered it necessary to detain the applicant and his co-defendants until all relevant witnesses had been heard.

26. The Government emphasised that the serious nature of the charges as well as the fact that there had been nineteen defendants charged with numerous offences had required the authorities to take all necessary measures to secure the proper conduct of the trial. 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. The applicant's case had been extremely complex on account of the number of charges and defendants, and by reason of the volume of evidence.

27. Lastly, the Government maintained that the authorities had displayed the requisite diligence in dealing with the applicant's case.

3. *The Court's assessment*

(a) General principles

28. The Court reiterates that the general principles regarding the right “to trial within a reasonable time or to release pending trial”, as guaranteed by Article 5 § 3 of the Convention have been stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland*, and *McKay v. the United Kingdom* [GC], n°. 543/03, §§ 41-44, ECHR 2006-... with further references).

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

29. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the complexity of the case owing to the number of defendants and volume of evidence to be heard, (3) the severity of the penalty to which he was liable and (4) the need to secure the proper conduct of the proceedings. As regards the latter, they relied on the fact that the applicant might interfere with witnesses and other co-accused given the fact that he was a member of an organised crime group.

30. The applicant was charged with numerous counts of drug trafficking committed as part of an organised crime group (see paragraph 9 above). In the Court's view, the fact that the case concerned a member of such a crime group should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, n°. 7870/04, § 57, 16 January 2007).

31. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences could initially warrant his detention. In addition, it notes that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants. 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 initial detention.

32. Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the gravity of the charges cannot of itself justify long periods of detention (see for instance, *Ilijkov v. Bulgaria*, n° 33977/96, §§ 80-81, 26 July 2001).

33. In addition, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised crime group. 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*, n° 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent extensions 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. Moreover, the Court considers that in cases such as the present one concerning organised crime groups, 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 in the nature of things often particularly high. Indeed, in this context the Court notes that some members of the organised crime group have not yet been captured.

34. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts unlimited powers to extend this measure. Even if the particular circumstances of the case required detention to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify this (see *Wolf v. Poland*, n° 15667/03 and 2929/04, § 90, 16 January 2007). In this respect, the Court observes that the applicant was held in custody for three years and nine months.

35. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised crime group, the Court concludes that the grounds given by the domestic authorities do not justify the overall period of the applicant's detention.

36. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence. However, the Court cannot but note that even though the applicant was indicted in November 2002, it took the trial court exactly one year to hold the first hearing (see paragraphs 9 and 11 above). The Government have failed to provide an explanation for the trial court's inactivity during this period. That delay should be considered significant and it cannot therefore be said that the authorities displayed "special diligence" in the conduct of the criminal proceedings against the applicant.

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

II. OTHER ALLEGED VIOLATION OF THE CONVENTION

38. The applicant also complained under Article 3 about the conditions in the Bielsko-Biala Detention Centre, where he had been detained from 17 January 2001 to 16 December 2004. In addition, he complained of allegedly inadequate health care in the said detention centre. The applicant further complained under Article 6 about being placed behind bars during hearings and alleged that it had impaired his contact with his lawyer. He also alleged that meetings with his lawyer had been too short to prepare his defence.

39. As regards the above complaints, the Court notes that the applicant failed to raise them before any relevant domestic authority.

40. It follows that these complaints 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

41. 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

42. The applicant claimed 380,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

43. The Government did not comment.

44. The Court 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 basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

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

C. Default interest

46. 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 complaint concerning the unreasonable length of 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 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 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President