



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

FOURTH SECTION

CASE OF GÓRECKA v. POLAND

(Application no. 41230/04)

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 Górecka 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 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 41230/04) 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, Ms Barbara Górecka (“the applicant”), on 2 November 2004.

2. The applicant was represented by Mr A. Kasperkiewicz, a lawyer practising in Częstochowa. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 10 March 2006 the President of the Fourth Section decided to give notice of 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 FACTS

I THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1952 and lives in Częstochowa.

A. The first set of criminal proceedings (no. I K 106/03)

5. The applicant was arrested on 26 April 2001. On 28 April 2001 the Częstochowa District Court remanded her in custody on suspicion of fraud, forgery and making unlawful threats. It held that there was a risk that the applicant would attempt to influence the witnesses, given the significant differences between her statements and those of the victims and witnesses. Furthermore, the District Court relied on the severity of the anticipated penalty. Lastly, it found that other preventive measures would be insufficient to secure the proper conduct of the proceedings.

6. On 8 June 2001 the Częstochowa District Prosecutor ordered that the investigation in the applicant's case be conducted in conjunction with an investigation carried out by the Department of Organised Crime of the Katowice Regional Prosecutor's Office. That investigation concerned the operation in Częstochowa of an organised criminal group led by a certain M.M.

7. On 19 July 2001 the Częstochowa Regional Court prolonged the applicant's detention until 26 October 2001. It relied on the risk that the applicant would obstruct the investigation and on the severity of the anticipated penalty.

8. On 18 October 2001 the Regional Court ordered that the applicant be remanded in custody until 10 December 2001, having regard to the evidence obtained in the investigation. It found that there was a reasonable risk that the applicant would attempt to obstruct the proceedings, in particular by influencing witnesses, since she had not confessed. Furthermore, the Regional Court found that the prolongation of the applicant's detention was justified by the fact that the investigation concerned a significant number of suspects. Lastly, it found that there were no special circumstances, as specified in Article 259 of the Code of Criminal Procedure, that would justify her release. The applicant appealed against that decision.

9. On 14 November 2001 the Katowice Court of Appeal upheld the impugned decision. It held, however, that there were no grounds indicating that there was a risk that the applicant would obstruct the proceedings. It further pointed out that the Regional Court had erred in holding that such risk could flow from the fact that the applicant had not confessed, since such a view infringed the applicant's defence rights. On the other hand, the Court of Appeal found that the applicant's continued detention was justified under Article 258 § 2 of the Code of Criminal Procedure. That provision established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce her to obstruct the proceedings¹.

1. The Court of Appeal relied on the decision of the Supreme Court of 19 November 1996, no. IV KZ 119/96, published in OSP 1997 no. 4, item 74.

10. On 29 November 2001 the Regional Court prolonged the applicant's detention until 26 April 2002.

11. Since on 26 April 2002 the applicant's detention pending investigation had reached the statutory time-limit of one year, further prolongation of her detention was ordered by the Katowice Court of Appeal. On 17 April 2002 the Court of Appeal extended the applicant's detention until 10 June 2002. In addition to the grounds previously invoked, it had regard to the evidence given by the State's witnesses and the fact that not all of the accomplices had been arrested. The Court of Appeal also relied on the need to obtain further expert evidence and the complexity of the case.

12. On 22 May 2002 the Court of Appeal ruled that the applicant and some of her co-suspects be kept in custody until 10 December 2002. Taking into account the fact that they had acted in an organised criminal group and that some of the members of the group had incriminated them, the Court of Appeal found that the above factors gave substance to the risk that they might obstruct the proceedings. It also referred to the particular complexity of the case.

13. On 4 December 2002 the Court of Appeal ordered that the applicant and her 7 co-suspects be held in custody until 24 April 2003. It referred to the gravity of the charges and the number of suspects involved.

14. On 17 March 2003 the Katowice Regional Prosecutor laid additional charges against the applicant.

15. On 14 April 2003 the prosecution filed a bill of indictment with the Częstochowa District Court. The applicant was charged with leading an organised criminal group, aggravated assault, possessing a firearm without a licence, making unlawful threats, several forgeries and numerous property-related frauds. There were 11 defendants in the case. The prosecution asked the court to hear evidence from 145 witnesses.

16. On 23 April 2003 the Katowice Court of Appeal prolonged the applicant's detention until 31 December 2003. It noted that the period of her detention up to the first conviction had exceeded the statutory time-limit of 2 years (Article 263 § 3 of the Code of Criminal Procedure). However the length of the period had been justified, in the court's view, by the particular complexity of the case. It considered that since the applicant had been charged with leading an organised criminal group, her continued detention had been necessary in order to avoid the risk of obstruction of the proceedings. It noted that the applicant, as a leader of the organised criminal group, if released, could give instructions to its members during the proceedings. It also had regard to the number of charges. Furthermore, the Court of Appeal underlined the strong likelihood of a severe sentence of imprisonment being imposed on the applicant, having regard to Article 258 § 2 of the Code of Criminal Procedure.

17. On 13 August 2003 the Katowice Court of Appeal, on an application from the Częstochowa District Court, ordered that the applicant's case be examined by the Częstochowa Regional Court.

18. According to a medical report prepared in October 2004 the applicant could be held in custody. However, it was recommended that she undergo surgery. It appears that the applicant refused to do so.

19. During the trial the Court of Appeal prolonged the applicant's detention several times. The relevant decisions were given on 23 December 2003 (prolonging her detention until 30 June 2004), 9 June 2004 (ordering her continued detention until 30 December 2004), 10 November 2004 (extending that period until 30 June 2005) and 15 June 2005 (prolonging the applicant's detention until 31 October 2005). The Court of Appeal held that the grounds previously given for the applicant's continued detention were still valid. In its decision of 10 November 2004, the Court of Appeal found that the trial could not be concluded due to the illness of the applicant and two other defendants.

20. On 19 March 2005 the applicant suffered a cardiac arrest. She underwent surgery and was hospitalised from 19 to 22 March 2005 in a civil hospital in Częstochowa, and subsequently in the prison hospitals in Lubliniec and Wrocław. According to reports prepared by cardiologists (one of unspecified date and the other of 9 July 2005), the applicant could receive adequate treatment while in detention on remand.

21. The trial court held 69 hearings between 24 November 2003 and 24 October 2005.

22. During the investigation and the trial the applicant filed several unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging her detention.

23. On 24 October 2005 the Częstochowa Regional Court gave judgment. It convicted the applicant of 31 out of the 33 offences she had been charged with and sentenced her to seven years' imprisonment. On the same day the trial court ordered the applicant's release. She was released on 25 October 2005.

24. The applicant appealed against the first-instance judgment. On 22 November 2006 the Katowice Court of Appeal upheld the conviction in respect of certain charges and reduced the sentence of imprisonment to three and a half years. In respect of other charges it remitted the case for re-examination by the trial court.

B. The second set of criminal proceedings

25. On 26 April 2004 the Częstochowa District Prosecutor charged the applicant with incitement to murder and fraud. On the same day the Częstochowa District Court remanded her in custody on suspicion of

incitement to murder and fraud. It relied on evidence given by the applicant's co-suspect, a certain Z.K.

26. Subsequently, the Częstochowa Regional Court prolonged the applicant's detention on several occasions until 7 March 2005. The applicant maintained that the charges against her lacked a sufficiently strong basis since they were founded on unreliable evidence given by Z.K.

27. On 7 March 2005 the Częstochowa Regional Prosecutor decided to release the applicant. On 11 March 2005 the Regional Prosecutor discontinued the investigation against her.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. The relevant domestic law and practice regarding 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 *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

29. The applicant complained that the length of her detention on remand had been excessive. She 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.”

30. The Government, having regard to the Court's case-law concerning the length of pre-trial detention, refrained from taking a position on the admissibility of the complaint.

A. Admissibility

31. 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

32. The applicant's detention started on 26 April 2001, when she was arrested on suspicion of fraud, forgery and making unlawful threats. On 24 October 2005 the Częstochowa Regional Court convicted her of most of the charges and sentenced her to a term of imprisonment. On the same day the trial court ordered the applicant's release which was effected on 25 October 2005. Accordingly, the period to be taken into consideration amounts to 4 years, 5 months and 30 days.

2. The parties' submissions

(a) The applicant

33. The applicant argued that the length of her pre-trial detention had been unreasonable.

(b) The Government

34. The Government firstly presented some statistical data, indicating that in the years 2000-2005 the number of indictments and convictions in cases concerning organised crime increased both in absolute terms and in relation to other crimes. In 2004 there were 617 indictments in such cases and 220 persons were convicted. They argued that in organised crime cases the authorities were faced with particular problems relating to the taking and assessment of evidence and various logistical issues.

35. With reference to the present case, the Government submitted that the applicant's pre-trial detention had been justified by the strong likelihood that she had committed the offences with which she had been charged, the gravity of those offences and the severity of the anticipated penalty. Furthermore, her detention had been warranted by the risk that she would obstruct the proceedings and tamper with evidence, given the fact that she had been charged with leading an organised criminal group. Only the isolation of the members of the group could prevent them from coordinating their testimonies or influencing witnesses. They underlined that the length

of the applicant's detention should be assessed with reference to the fact that she and her co-defendants had acted in an organised criminal gang.

36. The Government asserted that 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. Furthermore, the applicant's case had been extremely complex. Lastly, they submitted that the authorities had displayed special diligence in the conduct of the proceedings.

3. *The Court's assessment*

(a) **General principles**

37. The Court recalls 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 were stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI; and *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**

38. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the severity of the penalty to which she was liable and the consequential risk that she might obstruct the proceedings, (2) the risk that the applicant might interfere with witnesses, given the fact that she had been charged with leading an organised criminal group, (3) the gravity of the charges and (4) the complexity of the case.

39. The applicant was charged, *inter alia*, with leading an organised criminal group (see paragraph 15 above). In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bqk v. Poland*, no. 7870/04, § 57, ECHR 2007-... (extracts)).

40. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences could initially warrant her 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.

41. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts were “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

42. 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. They relied in this respect on the Supreme Court's resolution and its construction of Article 258 § 2 of the Code of Criminal Procedure (see paragraphs 9 and 16 above). 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 re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see, for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). Having regard to the above, the Court cannot accept the position adopted by the judicial authorities in the present case, namely that the presumption referred to above would alone, after a certain lapse of time, justify the applicant's continued detention without the need to indicate concrete facts supporting the risk of obstruction of the proceedings.

43. Furthermore, the Court observes that the trial court convicted the applicant of most of the charges and sentenced her to seven years' imprisonment, while on appeal the conviction was upheld only in part and the sentence reduced to three and a half years' imprisonment. It cannot but note that the sentence imposed on the applicant by the Court of Appeal was in reality shorter than the period that she had spent in pre-trial detention (four years and nearly six months). That practice, i.e. of holding an accused in pre-trial detention for a period which practically corresponds or, as in the present case, is longer than the sentence subsequently imposed on him/her is, in the Court's view, questionable. In this respect, it recalls that continuation of detention cannot be used to anticipate a custodial sentence (*Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51 and *Kwiatek v. Poland*, no. 20204/02, § 43, 6 February 2007).

44. Moreover, the judicial authorities relied on the fact that the applicant had been charged with leading 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 her 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. 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.

45. While all those above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to prolong this measure. 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 observes that the applicant was held in custody for 4 years and nearly 6 months.

46. 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 members of an organised criminal group, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. The applicant also complained that in respect of the first set of criminal proceedings she had not been allowed any visits from her children for the first year of her detention on remand (until April 2002). In respect of the second set of criminal proceedings, the applicant further alleged that the charges against her had lacked any basis and that the prosecutor in charge of the investigation had commented on the case in the media, suggesting that she had been involved in murder.

49. As regards the complaint concerning the ban on visits, which falls to be examined under Article 8 of the Convention, the Court notes that the applicant submitted no evidence to substantiate it. Furthermore, this complaint was introduced outside the six-months' time-limit.

50. As regards the complaints concerning the second set of criminal proceedings, the Court notes that the charges against the applicant were dropped by the prosecution and the investigation was discontinued. Thus, the applicant cannot claim to be a victim of any violation in this respect. As regards the alleged dissemination in the media of comments incriminating the applicant, the Court observes that the applicant failed to adduce any evidence whatsoever to substantiate this complaint.

51. It follows that, regardless of other possible grounds of inadmissibility, all these complaints are 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

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 20,000 EUR in respect of non-pecuniary damage, referring to the alleged violation of Articles 5 § 3 and 6 § 1. She also claimed an unspecified amount in respect of pecuniary damage to cover her lost profits during her detention which she could have made if she had continued her professional activity as a real estate agent.

54. The Government submitted that there was no causal link between the alleged violation of Article 5 § 3 and the applicant's claim for pecuniary damage. In respect of the claim for non-pecuniary damage, they argued that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, should the Court find a violation of Article 5 § 3, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

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

56. In respect of the claim for non-pecuniary damage, the Court observes that it has found a violation of Article 5 § 3 on account of the excessive length of pre-trial detention in respect of the first set of criminal proceedings. The applicant did not allege a violation of Article 6 § 1 at the earlier stages of the proceedings before the Court and referred to this provision for the first time when submitting her claims for non-pecuniary damage. The Court considers that the applicant has suffered some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of Article 5 § 3 of the Convention. Considering the circumstances of the case, in particular the fact that the period of the applicant's pre-trial detention was longer than the sentence subsequently imposed on her, and making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head.

B. Costs and expenses

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

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 complaint concerning the excessive 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 3,000 (three 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 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President