



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

FOURTH SECTION

CASE OF LYP v. POLAND

(Application no. 25135/04)

JUDGMENT

STRASBOURG

13 November 2007

FINAL

13/02/2008

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 Lyp v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr J. CASADEVALL, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 16 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 25135/04) 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 Piotr Lyp ("the applicant"), on 25 June 2004.

2. The applicant was represented by Mrs A. Naczyńska-Lyp, his wife. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 2 September 2005 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 1976 and lives in Rybnik.

5. On 24 October 2002 he was arrested and charged with armed robbery. On 26 October 2002 the Rybnik District Court remanded the applicant in custody on reasonable suspicion that he had committed armed robbery. The District Court had particular regard to evidence provided by an anonymous witness. It also held that the need to secure the proper conduct of the proceedings justified the applicant's detention, given the severity of the

anticipated penalty. It further considered that there was a reasonable risk that the applicant would interfere with the proceedings.

6. On 26 November 2002 the Gliwice Regional Court upheld the detention order.

7. On 14 January 2003 the Gliwice Regional Court prolonged the applicant's detention until 22 April 2003. It relied on the same grounds as originally invoked. It added that since new witnesses were being sought the investigation could not be completed within three months.

8. The applicant appealed against that decision. He submitted that the evidence in the case was insufficient to charge him with armed robbery and contested the Regional Court's finding that he would obstruct the proceedings.

9. On 19 February 2003 the Katowice Court of Appeal dismissed the applicant's appeal. It found that the circumstances of the case and the evidence gathered to date did not give substance to the risk that the applicant would obstruct the proceedings. However, it concurred with the Regional Court that the reasonable suspicion that the applicant had committed the offence in question and the severity of the anticipated penalty justified his detention.

10. In the meantime, on 6 February 2003 the applicant was additionally charged with incitement to armed robbery.

11. On 4 April 2003 the prosecution made a severance order with a view to expediting the proceedings, and thereafter one of the three suspects was to be tried separately.

12. On 7 April 2003 the prosecution filed a bill of indictment with the Gliwice Regional Court against the applicant and one of his accomplices. The applicant was charged with armed robbery and incitement to armed robbery.

13. On 15 April 2003 the Regional Court ordered that the applicant be held in custody until 22 October 2003. That decision was upheld on appeal on 14 May 2003.

14. On 18 June 2003 the applicant unsuccessfully requested the trial court to refer the case back to the prosecution with a view to supplementing the evidence.

15. On 14 October 2003 the Regional Court extended the applicant's detention until 22 January 2004. It found that there was a reasonable risk that the applicant would interfere with the proceedings, having regard to the nature of the charges and the severity of the anticipated penalty. On the same date the trial court released the applicant's co-accused under police supervision. It noted that the co-accused, unlike the applicant, had pleaded guilty and had made full statements. Thus, in the court's view, the co-accused's release was justified on account of the above considerations and the fact that there was no risk that he would obstruct the proceedings. That decision was upheld on appeal on 12 November 2003.

16. On 20 January 2004 the trial court ordered that the applicant be held in custody until 22 April 2004. In addition to the grounds previously invoked, it noted that the trial could not be terminated earlier due to the volume of evidence to be heard. On 11 February 2004 the Court of Appeal dismissed the applicant's appeal against the prolongation of his detention. It found that the applicant had been charged with offences which attracted a statutory maximum sentence of 15 years' imprisonment.

17. On 17 March 2004 the trial court prolonged the applicant's detention until 22 July 2004. It relied on the same grounds as given previously. In addition, it found that other preventive measures would not be sufficient to secure the proper conduct of the proceedings.

18. The trial court held some 11 hearings. Hearings scheduled for 30 July and 19 November 2003 were adjourned since the applicant had not been brought to court by the police.

19. At the last hearing the prosecutor requested the trial court to convict the applicant as charged and to sentence him to 7 years' imprisonment. On 26 May 2004 the Regional Court convicted the applicant of armed robbery and sentenced him to 8 years' imprisonment. The applicant appealed against that judgment.

20. He remained in detention pending his appeal.

21. On 16 December 2004 the Katowice Court of Appeal quashed the first-instance judgment and remitted the case. It found that the trial court had incorrectly assessed the evidence, in particular that adduced by the defence. Furthermore, the trial court had heard the anonymous witness without providing the applicant with an opportunity to put questions to him and to comment on his evidence, thus manifestly vitiating the rights of the defence. The Court of Appeal also had reservations about classifying the act committed by the applicant as armed robbery. It gave the Regional Court specific instructions concerning the evidence to be heard in the course of the retrial. Lastly, the Court of Appeal noted that in view of the applicant's lengthy detention, the Regional Court should fix the date of the hearing as soon as practicable.

22. On 23 March 2005 the Regional Court ordered that the applicant be kept in detention until 30 June 2005. On 15 June 2005 it prolonged his detention until 31 July 2005. During the retrial the Regional Court held about 12 hearings.

23. On 29 July 2005 the Regional Court convicted the applicant of robbery, and not of armed robbery as in its first judgment, and sentenced him to 5 years' imprisonment. The applicant and the prosecution appealed against this judgment.

24. It appears that the applicant was released on bail on 2 August 2005.

25. On 19 January 2006 the Katowice Court of Appeal upheld the Regional Court's judgment. On some later unspecified date the applicant began to serve his sentence.

26. During the trial and the retrial the applicant filed a number of unsuccessful applications for release on bail.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. 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

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

“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.”

29. The Government contested that argument.

A. Admissibility

30. 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*

31. The applicant's detention started on 24 October 2002, when he was arrested on suspicion of armed robbery. On 26 May 2004 the Gliwice Regional Court convicted him of armed robbery and sentenced him to 8 years' imprisonment. As 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 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

On 16 December 2004 the Katowice Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 29 July 2005 when the applicant was convicted of robbery.

32. Accordingly, the period to be taken into consideration amounts to 2 years, 2 months and 14 days.

2. The parties' submissions

(a) The applicant

33. The applicant argued that the length of his detention was clearly unreasonable. He submitted that the courts had justified his detention by repeatedly relying on the same grounds: the reasonable suspicion that he had committed the offences with which he had been charged, the severity of the anticipated penalty and the risk of obstruction of the proceedings. As regards the latter, the applicant averred that the authorities had not specified any concrete grounds justifying that risk. Moreover, one of the main prosecution witnesses (M.S.) had been in custody during the relevant time. The applicant also argued that the courts had not taken into account that he had had an unblemished reputation. Lastly, he submitted that there had been delays in the proceedings and that hearings had been held infrequently.

(b) The Government

34. The Government submitted that the applicant's detention had been duly justified over the entire period. They emphasised that, apart from the reasonable suspicion that he had committed the offences, the applicant's detention had been justified by the severity of the anticipated penalty. Furthermore, there had been a risk that the applicant would tamper with evidence or influence witnesses, having regard to the fact that his accomplices had not been identified for a long time. In addition, they relied on the fact that one of the co-accused had been released in the course of the trial. The Government further stressed that the applicant had been charged with armed robbery of a company which had been co-owned by his father. This circumstance substantiated the risk that the applicant would influence witnesses.

35. 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. They finally submitted that the authorities had displayed due diligence in the conduct of

the proceedings. In addition, certain procedural motions filed by the applicant's lawyers had caused delays in the trial.

3. *The Court's assessment*

(a) General principles

36. 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, *Kudla*, cited above, § 110 *et seq*; 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

37. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the severity of the penalty to which he was liable, (2) the risk that the applicant might obstruct the proceedings and (3) the nature of the offences with which he had been charged.

38. The Court accepts that the reasonable suspicion against the applicant of having committed armed robbery could initially warrant his detention. However, with the passage of time, that ground became less and less relevant. The Court must then establish whether the other grounds adduced by the courts were “relevant” and “sufficient” (see, *Kudla* cited above, § 111).

39. The Court notes that the judicial authorities continuously relied on the likelihood that a heavy sentence might be imposed on the applicant given the nature of the offence with which he had been charged. 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 charge against the applicant the authorities could justifiably consider that such a risk existed. 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).

40. In this respect, the Court further observes that the possibility that the applicant could be sentenced to a maximum 15-year term of imprisonment required, with the passage of time, to be reassessed in the light of the evidence that was gradually obtained by the court. In the event, the legal classification of the applicant's offence was altered and the actual sentence imposed on the applicant, 5 years' imprisonment (see paragraph 23 above), was considerably lighter than the original estimate.

41. As regards the risk that the applicant might obstruct the proceedings, the Court notes that the authorities did not indicate any concrete circumstance capable of showing that the anticipated risk went beyond a merely theoretical possibility. The Court is not, therefore, persuaded by that argument, especially as it appears that there was no indication that at any earlier stage of the proceedings the applicant tampered with evidence or made any attempt to induce witnesses to perjure themselves. In this respect the Court cannot but note that the Court of Appeal in its decision of 19 February 2003 held that there had been no substance to the risk that the applicant would obstruct the proceedings. Nevertheless, the courts continued to invoke that risk without specifying any concrete grounds justifying their view.

42. The Court further observes that the applicant was detained on a charge of armed robbery committed together with two accomplices. The defendants had not been formally charged with acting in an organised criminal group. In these circumstances, the Court is not persuaded that the instant case presented particular difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the perpetrators as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, cited above, § 37 and *Kwiatek v. Poland*, no. 20204/02, § 46, 6 February 2007).

43. Having regard to the foregoing, 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.

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

II. 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 50,000 Polish zlotys (PLN) (approximately EUR 13,000) in respect of non-pecuniary damage.

47. The Government submitted that the applicant's claim was exorbitant. Having regard to the circumstances of the case, they argued that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, the

Government 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.

48. 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 in respect of non-pecuniary damage.

B. Costs and expenses

49. The applicant submitted that the amount of PLN 50,000 referred to under the head of non-pecuniary damage covered also his claim for costs and expenses in respect of his lawyer's fees in the domestic proceedings. He estimated the amount of these fees at PLN 22,000 (approximately EUR 5,700) and produced copies of the relevant invoices.

50. The Government submitted that the Convention did not guarantee the reimbursement of costs and expenses incurred by the applicant in the domestic proceedings.

51. 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. The Court notes that part of the lawyer's fees claimed concerned the applicant's defence against the criminal charges in the domestic proceedings. This part of the fees does not constitute expenses necessarily incurred in trying to prevent the violation found in the present case from occurring (see *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 25, 28 May 2002). In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 for costs and expenses in the domestic proceedings.

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 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 2,000 (two 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 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 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 13 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Josep CASADEVALL
President