



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

FOURTH SECTION

CASE OF DZITKOWSKI v. POLAND

(Application no. 35833/03)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

27/02/2008

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 Dzitkowski 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 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 35833/03) 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 Zygmunt Dzitkowski (“the applicant”), on 22 October 2003.

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

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant's 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. Subsequently, on 8 June 2006 the Court decided to communicate the complaint concerning the alleged censorship of the applicant's correspondence.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1943 and lives in Sopot.

A. Criminal proceedings against the applicant and his detention on remand

5. The applicant was arrested on 24 October 2000 on suspicion of armed robbery. On the same day the Gdańsk District Court remanded the applicant in custody in view of the reasonable suspicion that he had committed armed robbery. That suspicion was supported by evidence obtained in the course of the investigation. The District Court further held that there was a reasonable risk that the applicant would obstruct the investigation and go into hiding. It also had regard to the severity of the anticipated penalty.

6. Later, several other persons were detained and charged in connection with the same investigation conducted by the Department of Organised Crime of the Gdańsk Regional Prosecutor's Office.

7. On 9 January 2001 the Gdańsk Regional Court prolonged the applicant's detention until 31 March 2001. It found that the grounds previously relied on were still valid. In addition, it held that the prolongation of his detention was justified by the need to obtain evidence, including expert reports, from many sources.

8. On 15 March 2001 the Gdańsk Regional Court extended the applicant's detention until 31 May 2001. In addition to the grounds previously invoked, it considered that there was a reasonable risk that the applicant would induce the witnesses to give false testimonies.

9. On 15 May 2001 the prosecution filed a bill of indictment with the Gdańsk Regional Court. The applicant was charged with one count of armed robbery which had been committed in an organised armed criminal group. The bill of indictment listed 118 charges brought against 19 defendants, who were all detained on remand. The case file comprised 114 volumes. The prosecution asked the court to hear evidence from 366 witnesses.

10. On 17 May 2001 the Gdańsk Regional Court ordered that the applicant be detained until 31 October 2001, finding that it was necessary in order to prevent him – and his other 12 detained co-defendants – from evading justice or tampering with evidence. It also referred to the complexity of the case stemming from the number of defendants and the number of witnesses to be heard.

11. On 16 October 2001 the Gdańsk Regional Court prolonged the applicant's detention until 31 March 2002, considering that the grounds originally given for remanding him in custody were still valid. In respect of

the danger of pressure being brought to bear on witnesses, the Regional Court held, having regard to evidence given by a witness R.G., that some of the defendants had attempted to induce witnesses to give false testimonies.

12. The trial began on 28 December 2001. However, as of April 2002 the reading out of the bill of indictment by the prosecution had still not been concluded. Initially, the trial court held three hearings per month.

13. During the hearing held on 30 January 2002 the trial court ordered the removal of the applicant and some other defendants from the court room because of their disruptive behaviour.

14. Further prolongation of the applicant's detention were ordered by the Gdańsk Regional Court on 27 March 2002 (up to 30 September 2002) and on 26 September 2002 (up to 24 October 2002). In both those decisions, the Regional Court considered that the applicant's detention was the only measure which could prevent him from interfering with the proceedings.

15. It appears that the applicant refused to participate in the hearing held on 16 September 2002.

16. Since on 24 October 2002 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, further prolongations of the applicant's detention were ordered by the Gdańsk Court of Appeal. The relevant decisions were given on 2 October 2002 (extending his detention until 31 December 2002), 18 December 2002 (prolonging that period until 30 June 2003), 25 June 2003 (extending his detention up to 31 December 2003) and 17 December 2003 (ordering his continued detention until 30 June 2004). In all those decisions the Court of Appeal considered that the original grounds given for the applicant's detention were still valid. It stressed that his detention was the only measure which could secure the proper conduct of the proceedings in that particularly complex case, given the nature of the charges, the number of defendants and the connections between them. In addition, it referred to the volume of evidence to be heard.

17. In its decision of 2 October 2002 prolonging the applicant's detention, the Court of Appeal considered that holding him in custody was necessary at least until he had been heard.

18. On 15 January 2003 the applicant and 17 of his co-defendants unsuccessfully challenged the judges and lay members of the trial court.

19. In its decision of 25 June 2003 extending the applicant's detention, the Court of Appeal observed that the trial could not have been terminated due to obstructiveness on the part of the defendants who filed numerous requests challenging the trial court. It further considered that although the applicant and other defendants were free to make use of their procedural rights, the abuse of those rights had undoubtedly led to delays in the trial. It also noted that the trial court had taken various procedural steps in order to accelerate the proceedings.

20. In its decision of 29 January 2004 dismissing the applicant's appeal against the decision of 17 December 2003 prolonging his detention, the Court of Appeal held that Article 258 § 2 of the Code of Criminal Procedure established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings¹. It added that the risk of tampering with witnesses which existed in the present case did not have to be supported by any concrete facts, but resulted from the above presumption.

21. In the course of the proceedings the applicant made numerous, unsuccessful applications for release, including on the ground that his detention entailed harsh consequences for his family. He appealed, likewise unsuccessfully, against refusals to release him and decisions extending his detention.

22. The applicant's detention on remand ended on 30 June 2004 when the last order prolonging his detention expired. The applicant was released on 31 August 2004 after having served a sentence of imprisonment that had been imposed on him in another set of proceedings.

23. On 21 March 2005 the Gdańsk Regional Court made a severance order with a view to expediting the proceedings, and thereafter four defendants, who in the meantime had been released, were to be tried separately.

24. By June 2005 the trial court had held some 135 hearings of the 162 which had been scheduled. It heard more than 400 witnesses.

25. After 20 June 2005 no hearing was held due to the serious illness of the judge rapporteur. On 21 September 2005 the President of the Criminal Section IV of the Gdańsk Regional Court assigned a new judge rapporteur. Consequently, the trial had to commence *de novo*.

26. On 24 November 2005 the trial court made a further severance order and split the case into eleven separate cases.

27. It appears that the proceedings are still pending before the first-instance court.

B. The alleged censorship of the applicant's correspondence with the Court

28. The applicant's letter to the Court of 10 April 2006 bears a stamp "censored day year" (*cenzurowano dnia r.*) and no signature. The envelope in which that letter was sent bears a stamp confirming that the applicant's letter was received for dispatch by the administration of the Gdańsk Detention Centre on 9 April 2006. However, according to the postage stamp the letter was posted only on 13 April 2006. The envelope

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.

also bears a note written in pencil: “D.[etention] on R.[emand] the Sopot District Prosecutor Ds” (*T.A. Prok. Rej. Sopot Ds.*) and another illegible note also written in pencil. It also appears that the envelope was cut open and subsequently resealed with an adhesive tape.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. 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.

30. The relevant domestic law concerning the censorship of prisoners' correspondence is set out in the Court's judgment in the case of *Michtha v. Poland*, no. 13425/02, §§ 33-39, 4 May 2006.

THE LAW

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

31. 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.”

32. The Government contested that argument.

A. Admissibility

33. 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

34. The applicant's detention started on 24 October 2000, when he was arrested on suspicion of armed robbery. That period came to an end on 30 June 2004 when the last order prolonging his detention on remand expired. It appears that the trial is pending.

35. However, between 8 November 2001 and 23 November 2001, between 8 January 2002 and 28 January 2002, and between 23 March 2003 and 31 August 2004 the applicant served prison sentences which had been imposed on him in other criminal proceedings. The overall period during which the applicant served prison sentence comes to 1 year, 6 months and 15 days. This term, as 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 2 years, 1 month and 22 days.

2. The parties' submissions

(a) The applicant

36. The applicant asked the Court to continue the examination of his case, but did not make any specific submissions.

(b) The Government

37. 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.

38. With reference to the present case, 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 offence with which he had been charged 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 in an organised criminal gang. The risk that the defendants might obstruct the proceedings or tamper with evidence was aggravated by the fact they had been members of a tightly-knit organised criminal group. Thus, the domestic courts had

considered it necessary to remand the applicant and his co-defendants in custody until all relevant witnesses had been heard.

39. 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 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.

40. Furthermore, the Government maintained that the defendants, including the applicant, had borne the main responsibility for the length of the trial by lodging numerous ill-founded applications and appeals. Lastly, they maintained that the authorities had displayed the requisite diligence in dealing with the applicant's case.

3. *The Court's assessment*

(a) **General principles**

41. 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 judgements (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**

42. 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 he was liable and the consequential risk that he might obstruct the trial by influencing witnesses, (2) the nature of the charges against him, (3) the risk that the applicant might go into hiding and (4) the complexity of the case related to the number of defendants and volume of evidence to be heard. The domestic courts also referred to the obstructive behaviour of the defendants aimed at delaying the trial.

43. The Court notes that the applicant was charged with armed robbery committed in an organised armed criminal gang (see paragraph 9 above). When assessing compliance with Article 5 § 3 of the Convention, it will take into account the fact that the present case concerned a person charged with being a member of a criminal gang (*Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

44. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offence may initially have warranted his detention. However, with the passage of time that ground inevitably became less and less relevant. It must then establish whether the other grounds advanced by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of liberty.

45. The Court notes that the judicial authorities relied on the likelihood that a severe sentence would be imposed on the applicant given the serious nature of the offences at issue. According to them, that likelihood created a presumption that the applicant would obstruct the proceedings. 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). 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 any concrete facts supporting the risk of obstruction of the proceedings (see *Szydlowski v. Poland*, no. 1326/04, § 55; *Malikowski v. Poland*, no. 15154/03, § 54 and *Osiński v. Poland*, no. 13732/02, § 53, all judgments delivered on 16 October 2007).

46. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of 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 his 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. In these circumstances, the Court considers that the need to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-defendants, constituted relevant and sufficient grounds for the applicant's detention during the period necessary to terminate the investigation, to draw up the bill of indictment and to hear evidence from the accused. 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 otherwise obstruct the proceedings, is by the nature of things often particularly high. In this

respect, the Court notes that the applicant and his co-defendants by their obstructive behaviour, tried to delay the trial (see paragraphs 13, 15 and 19 above).

47. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire relevant period, that is 2 years, 1 month and 22 days.

48. It therefore remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings. In this regard, the Court observes that the proceedings were of considerable complexity, regard being had to the number of defendants, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. Nevertheless, hearings in the applicant's case were held regularly and at fairly short intervals. Furthermore, the Court cannot overlook the fact that the obstructiveness on the part of the defendants, including the applicant (see paragraphs 13, 15 and 19 above) had a negative impact on the progress of the trial. For these reasons, the Court considers that the domestic authorities handled the applicant's case with relative expedition.

49. Having regard to the foregoing, the Court finds that there has been no violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 8 AND 34 OF THE CONVENTION

50. The Court raised of its own motion a complaint under Articles 8 and 34 of the Convention concerning the interference with the applicant's correspondence. Article 8, in its relevant part, reads:

"1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 34 provides:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. Admissibility

51. 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

52. The Government submitted that there had been no interference with the applicant's right to respect for his correspondence. In their view there was no indication that the correspondence had been censored or that the contents of the letter had been checked. The applicant's letter to the Court bore a stamp "censored", however without any signature, date or the name of the authority which might have stamped it. Thus, the Government had serious doubts whether the applicant's letter had indeed been censored by the authorities. The Government further submitted that the applicant had been in no way hindered in the exercise of his right of petition to the Court, therefore, the facts of the case disclosed no breach of Article 34 of the Convention.

The Court's assessment

(a) Existence of an interference

53. The Court notes that the authorities marked the applicant's letter to the Court with the "censored" stamp (see paragraph 28 above). It also appears that the envelope in which that letter was sent had been cut open and subsequently resealed with adhesive tape.

54. The Court considers that marking the applicant's letter with the "censored" stamp indicates that there was a reasonable likelihood that the letter had been opened and their contents read. The Court has held on many occasions that as long as the Polish authorities continue the practice of marking detainees' letters with the "censored" stamp, the Court has no alternative but to presume that those letters have been opened and their contents read (see *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003; *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005 and *Micha*, cited above, § 58). It follows that there was an "interference" with the applicant's right to respect for his correspondence under Article 8.

(b) Whether the interference was "in accordance with the law"

55. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court notes that the

interference took place in April 2006 when the applicant had been detained on remand in the Gdańsk Detention Centre.

56. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained on remand should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the European Court of Human Rights contained in Article 103 of the same Code, which expressly relates to convicted persons, was also applicable to detained persons (see *Michta*, cited above, § 61 and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, censorship of the applicant's letter to the Court was contrary to the domestic law. It follows that the interference in the present case was not “in accordance with the law” as required under Article 8 of the Convention.

57. Accordingly, there has been a breach of Article 8 in that respect. Having regard to this finding, the Court does not consider it necessary to examine this complaint under Article 34 of the Convention (see, *Pisk-Piskowski*, cited above, § 29).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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.”

59. The applicant did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there is no need to examine the complaint under Article 34 of the Convention.

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President