



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

FOURTH SECTION

**CASE OF RABAN v. POLAND**

*(Application no. 24254/03)*

JUDGMENT

STRASBOURG

8 January 2008

**FINAL**

*08/04/2008*

*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 Raban v. Poland,**

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović, *judges*,

and Fatoş Araci, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

## PROCEDURE

1. The case originated in an application (no. 24254/03) 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 Sławomir Raban (“the applicant”), on 10 July 2003.

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

3. On 6 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.

## THE FACTS

### I THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1962 and lives in Warszawa. He is currently serving a prison sentence in Włodawa Prison.

5. On 28 June 2001 the applicant was arrested on suspicion of several counts of extortion.

6. On 29 June 2001 the Lublin District Court remanded him 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 go into hiding (since he did not have any permanent place of residence). The court also stressed the severity of the anticipated sentence (up to eight years of imprisonment) and the fact that the applicant had a criminal record.

7. Later, several members of an organised crime group were detained and charged in connection with the investigation against the applicant.

8. Certain witnesses were granted special status. The prosecutor called, *inter alia*, two State's witnesses and several anonymous witnesses. Several confrontations between the suspects and witnesses took place. Several expert opinions were ordered, namely an expert opinion on ballistics, an expert opinion as to the identification number of a vehicle, and several psychiatric opinions regarding some of the suspects.

9. The applicant's appeal against the detention order, his subsequent appeals against decisions prolonging his detention and all his numerous applications for release and appeals against refusals to release him were all unsuccessful.

10. On 1 August 2001 the Lublin District Court decided that the applicant should be detained in connection with another set of criminal proceedings instituted against him by the District Prosecutor in Lublin (case no. IX 1K 765/02).

11. On 13 November 2001 the Lublin Regional Prosecutor decided to amend the charges against the applicant. He was suspected of several counts of extortion committed while acting in an organised criminal gang.

12. On 18 September 2001 the applicant's detention was extended until 27 December 2001. The court relied on a strong suspicion that the applicant had committed the offences in question, which was supported by evidence from witnesses and experts. Further, the court attached importance to the grave nature of those offences. Finally, it noted that the prolongation of the investigation was not attributable to the prosecuting authorities, but resulted from the fact that other suspects had been identified and arrested.

13. On 3 December 2001 the Lublin District Prosecutor lodged a bill of indictment with the Lublin District Court. The applicant was charged with several counts of extortion which had been committed while being a member of an organised crime group. There were twenty defendants in the case, all charged with numerous counts of extortion committed in an organised crime group.

14. On 5 March 2002 the trial court held the first hearing. It subsequently held fifty-six hearings in the first instance. On several occasions the Lublin District Court requested other courts to hear evidence from some of the witnesses.

15. On 31 July 2002 the Public Regional Hospital informed the court that from 16 to 17 July 2002 the applicant was in coma and was hospitalised

following a medicine overdose in a suicide attempt. Therefore, he could not attend the hearing on 16 July 2002.

16. On 2 July 2003 the court requested information from the health care unit of the detention centre concerning health of the applicant and of another co-accused.

17. On 4 November 2003 the court decided that the co-accused be released from detention.

18. On 26 November 2003 the court decided to release three other defendants from detention in view of the difficult situation of their families, especially their children.

19. On 3 December 2003 the Lublin Court of Appeal prolonged the applicant's detention until 11 May 2004. It observed that the fact that the trial had not been terminated could not be attributed to the authorities, given the volume of evidence and the fact that some hearings had had to be cancelled as the defendants' counsels or witnesses had not appeared. It further considered that the applicant had been charged with crimes for which he was liable to a sentence of imprisonment exceeding eight years, and that the circumstances of the case indicated that there was a reasonable risk that the applicant might obstruct the proceedings.

20. On 30 April 2004 the applicant was released from detention under police supervision. The court relied on the fact that almost all witnesses had been heard and thus the applicant ceased to pose a threat to the proper conduct of the proceedings. Moreover, the applicant had committed himself to staying in Lublin at a fixed address.

21. On 25 May 2004, on 27 June, on 6 December 2004, on 20 January and on 15 March 2005 the police informed the court that the applicant had failed to report to the police station as required by the court order and that he had not lived at the indicated address.

22. On 20 May 2005 the Lublin District Court gave judgment. The applicant was convicted as charged and sentenced to six years' imprisonment (case no. IX K 2252/01). The applicant appealed on 20 January 2006.

23. According to the applicant the appellate court remitted the case for re-examination. However, he did not submit the date or the copy of the relevant judgment.

24. On 9 December 2005 the applicant was also found guilty of the offences he had been charged with in another set of criminal proceedings conducted by the Lublin District Court (case file no. IX K 756/02). The applicant was sentenced to 3 year's imprisonment.

25. The applicant is presently serving a prison sentence imposed by the judgment of the Płońsk District Court of 3 September 2004 (case file no. II K 282/03). It appears that the judgment has become final.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

26. The relevant domestic law and practice concerning the imposition of pre-trial detention (*tymczasowe aresztowanie*), the grounds for its extension, 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 *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-45, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 2-23, 4 August 2006.

## THE LAW

### ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

27. The applicant complained that the length of his pre-trial detention had been excessive. He relied on Article 5 § 3 of the Convention the relevant part of which 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.”

28. The Government contested that argument.

#### A. Admissibility

29. 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

30. The applicant's detention began on 28 June 2001, when he was arrested on suspicion of having committed several counts of extortion. On 30 April 2004 the applicant was released from detention.

31. On 20 May 2005 the Lublin District Court convicted him as charged. Apparently, that judgment was later quashed and the case was remitted.

32. However, as from 3 September 2004 the applicant has been serving a prison sentence which had been imposed on him in other criminal proceedings. 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*, cited above, § 104).

Accordingly, the period to be taken into consideration amounts to two years and ten months.

## *2. The parties' submissions*

33. 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.

34. 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 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 in the light of the fact that he had acted in an organised criminal group. The risk that the defendants might obstruct the proceedings or tamper with evidence had been aggravated by the fact that they had been closely linked as members of a criminal gang. Only the isolation of the members of the group could prevent them from coordinating their testimonies or influencing witnesses. Thus, the domestic courts had considered it necessary to detain the applicant and other co-defendants until all relevant witnesses had been questioned.

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. 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.

36. The applicant argued that the length of his detention had been unreasonable.

## *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. The Court observes that the judicial authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the serious nature of the charges against him, (2) the severity of the penalty to which he was liable and (3) the risk of obstruction of the proceedings. The domestic courts also referred to the obstructive behaviour of the defendants and their counsel which were aimed at delaying trial. Lastly, they had regard to the complexity of the case owing to the nature of the charges, the number of defendants and volume of evidence to be heard.

39. The Court notes that the applicant was charged with several counts of extortion which he had committed in relapse into crime and acting in an organised criminal group. 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 *Bak v. Poland*, no. 7870/04, § 57, ECHR 2007-... (extracts)).

40. The Court accepts that the reasonable suspicion that the applicant had committed the serious offences he was charged with could initially warrant his detention. In addition, it considers that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants, who had been charged with acting in an organised crime group. 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 detention at the early stages of the trial.

41. However, with the passage of time those grounds inevitably became less and less relevant. The Court must then establish whether the other grounds adduced by the judicial authorities 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. 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).

43. Furthermore, 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*, no. 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 concerning organised crime groups, 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 connection the Court notes that the applicant attempted to commit suicide and that the domestic courts took into consideration the defendants' health and family situation when taking decision on the continuation of their detention (see paragraphs 15-18 above).

44. The Court observes that the applicant was released from detention and placed under police supervision as soon as the authorities were persuaded that such a preventive measure would suffice (see paragraph 20 above). The Court also notes that the applicant failed to respect the conditions of his release (see paragraph 21 above).

45. 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.

46. It therefore remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings required under Article 5 § 3 (see, *Mc Kay*, cited above, § 44). 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, the hearings in the applicant's case were held regularly and at short intervals. The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings. The length of the investigation and of the trial was justified by the exceptional complexity of the case. It should not be overlooked that, while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the efforts of the judges to clarify fully the facts in issue, to provide both the defence and the prosecution with all necessary facilities for putting forward their evidence and stating their case and to give

judgment only after careful reflection on whether the offences were in fact committed and on the sentence to be imposed.

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

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.

Done in English, and notified in writing on 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Nicolas Bratza  
President