



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

FOURTH SECTION

CASE OF ROZMARYNOWSKI v. POLAND

(Application no. 37149/02)

JUDGMENT

STRASBOURG

15 January 2008

FINAL

15/04/2008

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 Rozmarynowski v. Poland,

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Kristaq Traja,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 37149/02) 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 Rozmarynowski (“the applicant”), on 3 July 2001.

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

3. The applicant alleged that his detention on remand exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 5 September 2006 the President of the Fourth Section of the Court decided to communicate the complaint concerning the length of the applicant's pre-trial detention 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**

5. The applicant was born in 1975 and lives in Rawicz.

1. First set of criminal proceedings against the applicant and his detention on remand

6. On 28 April 1995 the applicant was arrested on suspicion of attempted robbery and threats to kill, committed in an organised criminal

group carrying out robberies, extorting money by threats and drug trafficking.

7. On 23 May 1995 the Poznań District Court remanded him in custody, relying on the reasonable suspicion that he had committed the offences in question. The subsequent decisions of the court of 27 May and 26 June 1995 further extending his detention (by the latter until 27 July 1995) were based on a reasonable suspicion that the applicant had committed the offences and on the severity of the likely sentence. It was 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.

8. The applicant was released from a detention centre on 25 July 1995 by the Poznań District Court's decision and assigned a probation officer with the obligation to report to the latter on a weekly basis. He failed however to do so. Following his release he went into hiding and the criminal investigation against him had to be suspended. Subsequently an arrest warrant was issued by the authorities.

2. Second set of criminal proceedings against the applicant and his detention on remand

9. On 15 January 1999 the applicant was again arrested on suspicion of drug trafficking and of leading a criminal group organised along military lines. Subsequently the criminal investigation was reopened and conducted jointly with the proceedings concerning offences allegedly committed by the applicant after his release in 1995.

10. By a decision of the Poznań District Court of 17 January 1999 he was detained on remand.

11. In the course of the investigation, the applicant's detention was prolonged on several occasions by the Poznań Regional Court's decisions of 5 May, 13 July, 20 December 1999, 12 July, 12 August 2000 and 9 July 2001, and by the Poznań Court of Appeal's decisions of 10 October 2000 and 4 October 2001. In all the afore-said decisions the authorities repeatedly relied on a strong suspicion that the applicant had committed the offences in question, which was supported by evidence from witnesses and experts. They attached importance to the grave nature of those offences and the likelihood of a severe sentence of imprisonment being imposed on the applicant. They further considered that the need to secure the proper conduct of a very complicated investigation, especially the need to verify evidence from suspects and witnesses and to obtain fresh evidence from experts, justified holding him in custody. The courts further stressed that there was a serious risk of the applicant going into hiding, in particular having regard to the fact that he had been sought pursuant to a wanted notice before his arrest.

12. The applicant unsuccessfully appealed against all these decisions, arguing that the charges against him were based on unreliable and contradictory evidence.

13. He further requested to have the preventive measure replaced by a more lenient one, but his motions were dismissed on 6 April 1999 by the Poznań Regional Prosecutor and on 13 October 1999 and 8 January 2001 by the Poznań Regional Court.

14. On 9 July 1999 the Poznań Regional Prosecutor lodged a bill of indictment with the Poznań Regional Court. The applicant was charged with leading an organised criminal group involved in drug trafficking, extortion of money, armed robberies, illegal possession of weapons and damaging cars. There were 11 defendants in the case, all charged with numerous offences committed in the said organised criminal group. Seven out of the eight charges concerned crimes committed after the applicant's release from detention on remand in 1995. The prosecutor requested that 50 witnesses be heard by the court.

15. The Poznań Regional Court held twenty one hearings between 19 November 1999 and 12 December 2000. Only one hearing – scheduled for 11 July 2000 – was cancelled due to the non-appearance of witnesses.

16. During a hearing held on 29 September 2000 the applicant was punished for contempt of court (using abusive and vulgar language). During the same hearing the applicant's lawyer declared that his client would not cooperate with him. Hence, the court decided to adjourn the hearing due to the applicant's conflict with his counsel.

17. During a hearing held on 12 December 2000 the court decided to examine the applicant's case separately from that of the other co-accused. The court found that as the applicant's lawyer was in conflict with the applicant regarding the conduct of the defence and had to be replaced, it would adjourn the proceedings in his case while continuing the trial with respect to the other co-accused.

18. Following the severance of the applicant's case and the appointment of a new counsel, the Poznań Regional Court held hearings in the applicant's case on 10 January, 13 February, 7 and 17 March 2001, when the proceedings were finally closed.

19. On 2 April 2001 the Poznań Regional Court found the applicant guilty as charged and sentenced him to 9 years' imprisonment.

20. On 22 November 2001 the Poznań Court of Appeal dismissed the applicant's appeal. On 6 May 2003 the Supreme Court quashed the judgment and remitted the case to the appellate court for reconsideration. The court found that the “military character” of the group in which the applicant had participated was not sufficiently proved since the use of firearms had been isolated. At the same time, it prolonged the applicant's detention on remand.

21. On 17 June 2003 the Poznań Court of Appeal amended its previous judgment in that it acquitted the applicant of the charge of membership of a

criminal group of a military character and sentenced him to 8 years' imprisonment.

22. On 2 April 2004 the Supreme Court refused to entertain the applicant's cassation appeal as being manifestly ill-founded. No reasoning for this decision was given.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) 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, §§ 42-46, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

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

24. The applicant complained that the length of his detention on remand 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."

25. The Government contested that argument.

A. Admissibility

26. The Court notes that the applicant's pre-trial detention can be divided into two consecutive periods, the first lasting from 28 April 1995 until 25 July 1995 and the second from 15 January 1999. Since the applicant's two periods of detention were imposed in a single set of criminal proceedings both periods should be examined jointly.

27. The Court further 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

28. The applicant's first term of detention started on 28 April 1995. He was subsequently released on 25 July 1995.

29. The second term started on 15 January 1999, when he was again arrested on suspicion of drug trafficking and of leading a criminal group organized along military lines. On 2 April 2001 the Poznań Regional Court convicted him as charged.

30. 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 (*Kudła v. Poland*, cited above, § 104).

31. On 6 May 2003 the Supreme Court quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 17 June 2003 when the applicant was again convicted by the Poznań Court of Appeal.

Accordingly, the total period to be taken into consideration amounts to approximately 2 years and 7 months.

2. The parties' submissions

(a) The Government

32. 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 with reference to the fact that he had acted in an organised criminal group. The risk that the defendant might obstruct the proceedings or tamper with evidence was aggravated by the fact that he was charged along with 11 other co-defendants, all members of an organised criminal group. The domestic courts had considered it necessary to remand the applicant in custody until all relevant witnesses had been heard.

33. The Government further emphasised the serious nature of the charges and the number of defendants as well as the complexity of the case and the volume of evidence. The necessity of the applicant's continued detention was thoroughly examined by the courts which on each occasion had provided exhaustive reasons for their decisions.

34. Furthermore, the conduct of the proceedings had been significantly hindered by the unwarranted exercise of procedural rights by the defendants and their defence counsel, which contributed to their length.

35. Finally, the Government stressed that the applicant was initially arrested in 1995. He was subsequently released in June 1995 as allegedly he had to take care of his mother and grandmother. In fact, the applicant went

into hiding and the investigation in his case had to be suspended. This constituted an aggravating circumstance influencing the courts' decisions extending his detention on remand, as the risk of the applicant absconding was exceptionally high.

(b) The applicant

36. The applicant argued that the length of his detention had been unreasonable. He further alleged that the courts had failed to substantiate with adequate reasons the decisions extending his detention pending trial.

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 provisional 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, *Kudla*, cited above, § 110 *et seq.*, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, 6 October 2006 with further references).

38. According to the settled case-law of the Court, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is justified that the accused remains in detention must be assessed in each case according to its special features. Continued detention therefore can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudla*, cited above §§110-11, *W. v. Switzerland*, no. 14379/88, 26 January 1993).

39. It falls in the first place to the national judicial authorities to ensure that, in a given case, the detention pending trial of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *McKay*, cited above, § 43.).

40. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be

satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy*, no. 26772/95, § 153, 6 April 2000). The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, no. 21335/93 § 74, 18 December 1996, and *I.A. v. France*, no. 28213/95, § 102, 23 September 1998).

41. In sum, domestic courts are under an obligation to review the continued detention of persons pending trial with a view to ensuring release when circumstances no longer justify continued deprivation of liberty. For at least an initial period, the existence of reasonable suspicion may justify detention but there comes a moment when this no longer suffices. As the question whether or not a period of detention is reasonable cannot be assessed in the abstract but must be assessed in each case according to its special features, there is no fixed time-frame applicable to each case (see *McKay*, cited above, § 45, *Gładczak v. Poland*, no. 14255/02, §49, 31 May 2007).

(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 serious nature of the offences with which he had been charged; (2) the severity of the penalty to which he was liable; (3) the need to secure the proper conduct of the proceedings having in mind the risk that the applicant might tamper with evidence and influence or threaten witnesses; and (4) the risk that the applicant might abscond. In particular as regards the latter, they relied on the fact that the applicant had absconded after his release from detention in 1995 and subsequently was sought pursuant to an arrest warrant (see paragraph 8 above).

43. The applicant was charged with numerous counts of armed robbery, extortion, illegal possession of weapons and drug smuggling committed together with other persons. Thus it was a classic example of organised crime, by definition presenting more difficulties for the investigation authorities and, later, for the courts in determining the facts and the degree of responsibility of each member of the 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 *Bqk v. Poland*, no. 7870/04, § § 56 and 57, 16 January 2007).

44. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Moreover, the need to secure the proper conduct of the proceedings, in particular the process of obtaining voluminous evidence from witnesses certainly constituted valid grounds for the applicant's initial detention.

45. However with the lapse of time these grounds no longer suffice to justify the extended periods of detention awaiting trial. Hence the courts must provide more valid reasons to justify prolonged deprivation of liberty.

46. The Court notes that the judicial authorities relied heavily on the likelihood that a severe sentence would be imposed on the applicant given the serious nature of the offences at issue. 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).

47. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal 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 prolongations of the detention (see, *Celejewski v. Poland*, 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 11 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 other accused. Moreover, the Court considers that in cases such as the present concerning an organised criminal group, 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 (see, *Gładczak*, cited above, § 55).

48. The Court further noted that the applicant was initially arrested as early as 1995. It cannot be overlooked that he was subsequently released from detention in July 1995 to enable him to take care of his mother and grandmother. However, he absconded and the investigation had to be suspended. Subsequently he had been sought pursuant to a wanted notice (see paragraph 8 above). This constituted an aggravating circumstance supporting the courts' decisions extending the applicant's detention on remand, as the risk of his absconding again was exceptionally high. Further, the Court notes that seven out of the eight charges against the applicant concerned crimes committed after his release from detention on remand in 1995 (see paragraph 14 above). The domestic courts cannot be reproached for harbouring grave concerns that the applicant would, if released again, go into hiding and engage in further serious criminal activity.

49. 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.

50. It therefore remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings. In this connection, 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 course of the proceedings was swift and their length reasonable. The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings. 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 judges' efforts 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.

For these reasons, the Court considers that the domestic authorities handled the applicant's case with relative expedition.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. Lastly, the applicant complained under Article 6 § 1 of the Convention about the excessive length and unfairness of the proceedings terminated on 2 April 2004.

53. His complaint about the alleged unfairness of the proceedings is clearly of a fourth-instance nature. Nothing in the case file suggests any appearance of a violation of the Convention, in particular there is no indication that the courts' assessment of the evidence was arbitrary or that they reached conclusions which were manifestly unreasonable. The applicant was not prevented in any way from presenting his arguments to the courts and had the benefit of adversarial proceedings in compliance with the requirements of the Convention.

54. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

55. As regards the alleged undue length of the proceedings, the Court has already ruled that a civil action for damages brought under section 16 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act") read together with Article 417 of the Civil Code was an effective remedy in respect of persons who, on 17 September 2004, when the 2004 Act entered into force, could still lodge such an action within a prescribed time-limit (see *Krasuski v. Poland*, no. 61444/00, 14 June 2005). As the final judgment in the present case was given on 2 April 2004, the applicant could have filed an action for damages

with a domestic court until 2 April 2007. However, he did not avail himself of this remedy.

56. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for the applicant's failure to exhaust domestic remedies.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 15 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President