



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

FOURTH SECTION

CASE OF TEODORSKI v. POLAND

(Application no. 7033/06)

JUDGMENT

STRASBOURG

22 January 2008

FINAL

22/04/2008

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 Teodorski 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,

Ján Šikuta, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 39840/05) against the Republic of Poland lodged with the Court on 6 February 2006 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by L. Teodorski (“the applicant”), represented by Ms M. Gąsiorowska, a lawyer practising in Warsaw.

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

3. On 6 June 2006 the President of the Fourth Section of the Court 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***a. First set of proceedings*

4. The applicant was born in 1974 and lives in Warsaw.

5. In 2001 the police conducted an operation to disband several organised criminal gangs that were acting in and around Warsaw, stealing luxury cars with a view to selling them in the countries of the former Soviet Union. There were about five such groups, cooperating closely with each

other and closely connected with Poland's most dangerous armed criminal groups: the Pruszków Mafia and the Wołomin Mafia.

6. The applicant was arrested on 20 March 2002 on suspicion of thefts, robberies, drunk driving and membership of an organised criminal group. He was remanded in custody by the decision of the Warsaw District Court of 21 March 2002.

7. At that time the Warsaw Regional Prosecutor was conducting an investigation in respect of more than fifty other members of the criminal gangs mentioned above. Forty-two of them were held in custody. The investigation was complex and time-consuming, given that the criminal gangs collaborated closely with many persons who were to be questioned by the prosecutors, for example, receivers of stolen goods, persons hiding stolen cars or persons tracking cars which were to be stolen, among others.

8. In addition, the prosecutor opened an investigation in respect of several police officers from Warsaw and surrounding towns on charges of corruption and helping the criminal groups' members to evade the law.

9. On 5 December 2002 a bill of indictment against the applicant and fifty-nine other co-accused (members of five cooperating criminal gangs) was lodged with the Warsaw District Court. The evidentiary material was presented in 99 case files. The applicant was charged with membership of a criminal gang, carrying out multiple robberies and thefts, committed with extreme brutality. The criminal gang, of which the applicant was a member, was known for its violence and ruthlessness and for illegal trafficking in firearms.

10. On 6 January 2003 the Warsaw District Court held the first hearing. The following hearings were held by the District Court on: 23, 30 May, 23, 24 June, 1, 4, 7, 8 July, 13, 18, 22, 25 August, 5, 12, 15, 19 September, 10, 20, 21, 23, 24, 31 October, 17 November, 5, 22 and 23 December 2003; 5, 26 January, 16, 17, 19, 20 February, 8, 9 March, 1, 9 April, 14, 18, 21, 25 May, 3, 7, 14, 23 June, 5 July, 10, 25, 31 August, 3, 6 September, 7, 8, 15 October, 2, 9 November, 7, 8, 10, 13 and 18 December 2004. In total, sixty hearings were held by the District Court.

11. During the trial the District Court examined a wide range of evidentiary material, ordered medical expert opinions on the accuseds' mental health and expert opinions in the field of dactyloscopy, conducted inquiries in the accuseds' respective neighbourhoods, inspections of the crime scenes and garages where the stolen cars had been hidden and assessments of the accuseds' assets. The proceedings involved taking evidence from a considerable number of witnesses and victims and from one key witness.

12. The applicant's pre-trial detention was prolonged several times by the District Court. The decisions were issued, *inter alia*, on 17 June, 13 December 2002, 25 May, 17 November 2003, 20 February, 22 June, 28 September and 18 December 2004. In its decisions the court underlined

that there was a strong likelihood that the applicant had committed the crimes, confirmed in particular by the testimonies of a key witness and a co-accused, and considered that there was a reasonable risk that the applicant would tamper with the evidence, given that he had had close connections with the other co-accused. There was a serious threat that the applicant would go into hiding after his release from custody, as he had been living in hiding before the investigation and was arrested following the arrest warrant issued by the police. The court also made reference to the activities previously carried out and gave a precise indication of the evidence that still had to be taken. Consequently, it decided that it was indispensable to separate the applicant from the other suspects, the witnesses and the evidence which had not yet been secured. The court also relied on the serious nature of the charges against the applicant and the severity of the penalty he faced. No special circumstances dictated the lifting of the detention.

13. The applicant unsuccessfully appealed against the above-mentioned decisions.

14. From 21 March to 29 July 2002 and from 27 January to 18 December 2004 the applicant served a prison sentence imposed on him in separate proceedings.

15. On 18 December 2004 the District Court imposed a sentence on fifty of the co-accused. The applicant was found guilty of the charges laid against him and sentenced to 7 years' imprisonment and a fine of 20 000 PLN. On the same date the court prolonged the applicant's detention until 17 March 2005.

16. On 16 March and 14 November 2005 the Warsaw District Court decided on the prolongation of the applicant's detention. The court found no grounds for quashing or changing the preventive measure and stressed that the further detention of the applicant was "essential".

17. On 6 June 2006 the case file, comprising 149 volumes, was transferred to the second-instance court.

18. The applicant was kept in custody by virtue of decisions issued by the Warsaw District Court on 8 May, 2 August and 7 November 2006.

19. On 22 November 2006 the appellate court quashed the judgment and remitted the case for re-examination.

20. The proceedings are pending before the Warsaw District Court.

b. Second set of proceedings

21. On 4 February 2004 the applicant was detained on remand by the Warsaw District Court on suspicion of robbery and theft. In its decision, upheld on 22 March 2004 by the Warsaw Regional Court, the court stated that the suspicion was reasonable and, in view of the fear of collusion, the

applicant's detention was necessary to secure the proper conduct of the investigation. It also attached importance to the likelihood of a severe sentence of imprisonment being imposed on the applicant.

22. On 3 March 2004 a bill of indictment against the applicant and other co-accused (members of five co-operating criminal gangs) was lodged with the Warsaw District Court. The applicant was accused of acting in an organised criminal gang and committing numerous robberies.

23. Hearings were held by the District Court on average every 2 weeks between 18 October 2004 and 23 March 2006.

24. The decisions on prolongation of the applicant's detention were given by the Warsaw District Court on 14 April, 12 July 2004, 24 January and 26 July 2005. The court found that in view of the progress in the proceedings and the fact that several members of the criminal gang had been arrested in the course of the proceedings, the applicant's release from custody would hinder their effectiveness. In view of the severity of the likely penalty and the fact that the applicant had been living in hiding before the investigation, there was also a serious threat that the applicant would abscond after his release.

25. On 20 January, 9 June and 7 November 2006 the Warsaw Court of Appeal prolonged the applicant's detention upon the District Court's motion.

26. The applicant lodged a considerable number of unsuccessful applications for release from detention or for commutation of the preventive measure to a less severe one, on the ground of his poor state of health or other reasons.

27. He also challenged, likewise unsuccessfully, the decisions of 20 January, 9 June and 7 November 2006 prolonging his detention.

28. On 31 January 2007 the Warsaw District Court found the applicant guilty of most of the charges and sentenced him to 5 years' imprisonment. The applicant appealed.

29. The proceedings are pending before the second-instance court and the applicant remains detained.

II. RELEVANT DOMESTIC LAW

30. The relevant domestic law concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other "preventive measures" (*środki zapobiegawcze*) is set out 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.

31. The judgment in *Bąk v. Poland*, no. 7870/04, §§ 38-40, 16 January 2007, addresses the issue of domestic practice in the area of pre-trial detention and organised crime in particular.

32. For the relevant domestic law and practice concerning the available remedies against excessive length of proceedings, see *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005-VIII; *Rybczyński v. Poland*, no. 3501/02, 3 October 2006; and *Białas v. Poland*, no. 69129/01, 10 October 2006.

THE LAW

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

33. The applicant complained that the length of his pre-trial detention was in breach of Article 5 § 3, which, in so far as relevant, provides:

“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.”

A. Admissibility

1. As to the first set of proceedings

34. 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.

2. As to the second set of proceedings

35. The Court notes that the applicant's detention lasted from 4 February 2004 to 31 January 2007, the date on which the first-instance court issued its judgment (see paragraph 28 above). During that time the applicant's detention coincided with his prison sentence imposed in separate criminal proceedings against him and lasted from 27 January to 18 December 2004 (see paragraph 14 above).

36. The Court further notes that on 18 December 2004 the applicant was sentenced by the first-instance judgment in the criminal proceedings against him described as the first set of proceedings above. The judgment was quashed on 22 November 2006 by the second-instance court (see paragraphs 15 - 22 above).

37. The Court reiterates that, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained “for the

purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence”, as specified in the latter provision, but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty “after conviction by a competent court” (see, for example, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39).

38. Consequently, the Court cannot take into account the period between 27 January and 18 December 2004 and the period between 19 December 2004 and 22 November 2006 for the purpose of assessing the reasonableness of the length of the detention under Article 5 § 3 of the Convention, as during those periods the applicant's detention on remand coincided with his detention after conviction in separate criminal proceedings. Such detention cannot be considered on the same footing as a detention under Article 5 § 1 (c), with which Article 5 § 3 is solely concerned, as it applies only to persons in custody awaiting their trial (see *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, pp. 23-24, § 9 and *Bqk v. Poland*, no. 7870/04, judgment of 16 January 2007, § 54).

39. The Court consequently finds that the period to be taken into consideration lasted from 22 November 2006 to 31 January 2007 and amounted to approximately 2 months.

40. In these circumstances, the Court considers that the length of the applicant's detention in this set of proceedings did not amount to an excessive time about which the applicant can validly complain of a violation of Article 5 § 3. Accordingly, this part of the application must be declared inadmissible as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. Submissions of the parties

41. The Government pointed out that the evidence obtained in the proceedings indicated that there was a strong likelihood that the applicant had committed the crimes in question. The charges brought against him concerned serious offences such as robbery and theft while acting as a member of a criminal gang. Thus, bearing in mind the severity of the charges and the scale of the criminal activity in question, the applicant's detention was justified, in the Government's opinion, by a genuine public-interest requirement which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty.

The Government further argued that the detention had been aimed at ensuring the proper conduct of the proceedings and had been justified by the risk of the applicant's obstructing the proceedings and tampering with the

evidence. This risk stemmed from the fact that the proceedings concerned an organised criminal gang of which the applicant was a member. On the date of applying the preventive measure the investigation had still been in progress, many investigatory measures had yet to be taken and additional evidence yet to be found and secured. The Government concluded that only the isolation of the members of the group from each other could prevent their colluding and coordinating their testimonies or exerting unlawful pressure on the witnesses or the suspects who were cooperating with the prosecution authorities.

42. The Government argued that the circumstances justifying the applicant's detention had remained valid throughout its duration. Moreover, in the course of the proceedings the prolongation of his detention had been justified by the need, which had arisen during the preparatory proceedings, to extend the personal and material scope of the investigation. New circumstances had come to light when other perpetrators had been detained and examined. It was necessary to examine the files of the relevant inquires, to obtain new pieces of evidence, expert opinions and documents, and to take further investigatory measures. A need had arisen to take evidence from further witnesses and persons involved in the activities of the criminal gang, and from police officers in the criminals' pay. Since not all these persons had been located and questioned, it was necessary to prevent contact between them and other members of the gang.

43. The Government also submitted that the courts had not applied the pre-trial detention measure automatically but had based their decisions on a careful consideration of each individual case. The courts had decided to release four co-defendants as soon as they had found that the reasons justifying their detention ceased to persist.

44. The Government drew attention to the high quality of the prosecutor's applications for the prolongation of the applicant's detention. In his applications the prosecutor had indicated in detail and in respect of each of the detainees what investigatory measures had to be taken and what evidence had been taken since the previous decision to prolong the detention.

45. As to the complexity of the case, the Government argued that it was extremely complex. The Government pointed out that both the prosecutor and the trial court had conducted extensive evidentiary proceedings, as was typical for proceedings in cases concerning organised crime. The case file of the investigation in the applicant's case contained 99 volumes. In the course of the judicial proceedings, a further 49 volumes were added. A huge number of investigatory measures were taken in respect of numerous suspects and dozens of stolen vehicles. The witnesses were questioned on at least 100 occasions and many expert opinions and reports were obtained (in the area of dactyloscopy, psychiatrists' opinions). Operations with the participation of key witnesses were carried out. Dozens of searches,

inspections, and procedures for the identification of individuals, including identity parades, and objects were carried out. The prosecution obtained voluminous documentary evidence from various sources. The first-instance court held 60 hearings and examined 59 co-accused. The judgment numbered 190 pages.

46. According to the Government, hearings had been held regularly during the proceedings and had been fixed at regular intervals. In their submission, the proceedings had been concluded with reasonable speed and without any undue delays.

47. The applicant did not address the issue of the complexity of the case. He stated, however, that the length of the proceedings had been excessive. He argued, in particular, that it had taken 6 months for the first-instance court to forward the files to the second-instance court. Moreover, 11 months had elapsed before the written grounds of the judgment were prepared.

48. The applicant alleged that the length of his detention had been unreasonable.

2. Principles established under the Court's case-law

49. 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).

3. Application of the principles to the circumstances of the present case

(a) Period to be taken into consideration

50. The Court considers that the applicant's detention lasted from 20 March 2002 until 18 December 2004, the date on which the first-instance judgment was given and from 22 November 2006, the date on which the judgment was quashed by the appellate court, up to the present. During that time the applicant's detention coincided with his prison sentence imposed in separate criminal proceedings against him and lasting from 20 March to 29 July 2002 and from 27 January to 18 December 2004. As of 31 January 2007 the applicant's detention coincided with his detention after conviction in the second set of criminal proceedings described above (see paragraphs 21 -29).

51. Having regard to its established case-law, as reiterated in paragraphs 37 and 38 above, the Court cannot take into account the periods between

20 March and 29 July 2002, between 27 January and 18 December 2004 and after 31 January 2007 for the purpose of assessing the reasonableness of the length of the detention under Article 5 § 3 of the Convention.

52. The Court consequently finds that the period to be taken into consideration lasted from 29 July 2002 to 26 January 2004 and from 22 November 2006 to 31 January 2007 and amounted to approximately 1 year and 8 months.

(b) Reasonableness of the length of detention

53. The Court notes that detention pending trial was imposed on the applicant in view of the severity of the charges against him, the fact that he had been a member of a criminal gang and the resulting risk that he would obstruct the proceedings. Thus, it was a classic example of a case relating to organised crime, by definition presenting more difficulties for the investigating authorities and, later, for the courts in determining the facts and the degree of responsibility of each member of the gang. It is obvious that in cases of this kind, continuous control and limitation of the defendants' contact with each other and with other persons may be essential to avoid their absconding, tampering with evidence and, most importantly of all, influencing, or even threatening, witnesses. Accordingly, longer periods of detention than in other cases may be reasonable (see *Bqk*, cited above, § 56).

54. The Court observes that in their decisions to remand the applicant in custody the judicial authorities relied on the following principal grounds: the reasonable suspicion against the applicant, the serious nature of the offences with which he had been charged, the risk of his influencing the testimonies of the witnesses and of the co-accused and the need to obtain extensive evidence (see paragraph 12 above). Furthermore, the Government stated that the particular complexity of the case, since it concerned organised crime, was an additional justification for the applicant's detention.

55. The suspicion that the applicant may have committed the offences was confirmed in particular by the testimonies of a key witness and a co-accused. The Court recalls that the domestic courts, in particular the trial courts, are better placed to examine all the circumstances of the case and take all the necessary decisions, including those in respect of pre-trial detention. The Court may intervene only in situations where the rights and liberties guaranteed under the Convention have been infringed.

Therefore, the only question which remains is whether and when the continuation of his detention ceased to be warranted by "relevant" and "sufficient" reasons.

56. The Court 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. In these circumstances, the Court also accepts that the difficulties in obtaining evidence deriving from the fact that, at the same time, the prosecutor was conducting an investigation in respect of more than fifty other members of several closely cooperating criminal gangs and police officers in their pay, constituted relevant and sufficient grounds for prolonging the applicant's detention for the time necessary to complete the investigation, draw up the bill of indictment and hear evidence from the witnesses and the accused.

57. It must be noted that the domestic courts, in ordering the prolongation of the applicant's pre-trial detention, referred to the continuing need for that measure and did not merely rely on the grounds previously given (see paragraphs 12 and 37 above).

58. 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 period in issue.

59. It remains for the Court to ascertain whether the authorities, in dealing with the applicant's case, displayed diligence required under Article 5 § 3 (see, *McKay*, cited above, § 44). In this regard, it would observe that the proceedings were of a considerable complexity, regard being had to the number of defendants, the need to separate them during the extensive evidentiary proceedings and to implement special measures on account of the connections between the criminal gangs. Nevertheless, the hearings in the applicant's case were held regularly and at short intervals. The first-instance court held 60 hearings and examined 59 co-accused. The witnesses gave evidence on at least 100 occasions and a considerable number of other investigatory measures were taken.

60. 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.

For these reasons, it considers that the domestic authorities cannot be criticised for a failure to observe "special diligence" in the handling of the applicant's case.

61. There has, accordingly, been no violation of Article 5 § 3 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaints under Article 5 § 3 of the Convention with respect to the first set of proceedings admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention with respect to the first set of proceedings.

Done in English, and notified in writing on 22 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President