



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

FOURTH SECTION

CASE OF KURCZEWSKI v. POLAND

(Application no. 18157/04)

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 Kurczewski 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,

Lech Garlicki,

Ján Šikuta,

Päivi Hirvelä, *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. 18157/04) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Paweł Kurczewski (“the applicant”), on 7 May 2004.

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

3. On 4 May 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the excessive 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 1979 and lives in Gdańsk.

5. On 16 April 2002 the applicant was arrested on suspicion of having committed robbery.

6. On 17 April 2002 the Gdańsk District Court (*Sąd Rejonowy*) remanded him in custody until 16 July 2002 on reasonable suspicion that he had committed the offence in question. The court also considered that keeping the applicant in detention was justified by the existence of strong

and substantial evidence, in particular testimonies of a victim and witnesses. It also gave as a ground for detention the severity of the likely sentence. Further, the court considered that, given the risk that the applicant might tamper with evidence, in particular intimidate witnesses, keeping him in detention was necessary to secure the proper conduct of the investigation.

7. On 13 May 2002, following an appeal by the applicant, the Gdańsk Regional Court upheld that decision.

8. The applicant's further appeals against decisions extending his detention and all his subsequent, numerous applications for release and appeals against refusals to release him, were unsuccessful.

9. In the course of the investigation, the applicant's detention was extended on four occasions. The relevant decisions were given by the Gdańsk District Court on 15 July and 15 October 2002, and later on 15 January and 10 April 2003.

10. In all their detention decisions the authorities repeatedly relied on the original grounds given for the applicant's detention. They also attached importance to the need to extend the investigation in the light of new charges against the applicant, and to obtain fresh evidence, in particular evidence from experts.

11. On 25 March 2003 the applicant was indicted before the Gdańsk District Court. He was charged with robbery and illegal possession of firearms and ammunition. The bill of indictment concerned five defendants and, in all, twelve charges were brought against them. The prosecution asked the court to hear evidence from around forty witnesses. Further, the bill of indictment included fifty items of evidence to be produced at the hearing.

12. On 5 June 2003 the trial court held the first hearing. It subsequently scheduled sixteen hearings in the case. Four of them were cancelled for various reasons.

13. In particular, it appears that no hearing took place between 14 August 2003 and 15 January 2004. Hearings scheduled for 9 October and 11 December 2003 were cancelled due to, among other things, the failure to bring the co-accused to trial from prison, and the fact that a hearing scheduled for 6 November 2003 had to be cancelled because a trial judge was on mission.

14. During the court proceedings the court ordered several expert opinions.

15. In the meantime, the authorities further extended the applicant's detention pending trial on many occasions.

16. The relevant decisions were given on the following dates.

17. At a hearing on 9 October 2003 the Gdańsk District Court extended the applicant's detention until 15 January 2004. Subsequently, on 11 March 2004 it extended his detention until 15 April 2004. Since on 16 April 2004 the applicant's detention had reached the statutory time-limit

of two years laid down in Article 263§ 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), further extension of his detention was ordered by the Gdańsk Court of Appeal (*Sąd Apelacyjny*). On 23 March 2004 it extended his detention until 30 June 2004. The next decision was given by the Gdańsk Court of Appeal on 29 June 2004, when it extended his detention until 15 August 2004. In all those decisions the courts stated that the grounds originally given for the applicant's detention were still valid. They repeated the grounds previously given for his continued detention.

18. All the appeals and applications for release lodged by the applicant were to no avail.

19. On 28 July 2004 the Gdańsk District Court convicted the applicant as charged and sentenced him to four years' imprisonment.

20. The applicant appealed on 7 December 2004. His detention was subsequently extended on several occasions.

21. The appellate hearings scheduled for 12 October and 12 December 2005 and 2 February 2006 were cancelled for various reasons, such as illness or absence of defence lawyers, and the need to obtain evidence.

22. On 3 February 2006 the Gdańsk Regional Court (*Sąd Okręgowy*) quashed the applicant's detention order. He was released on the same date.

23. It appears that the first-instance judgment was upheld by the Gdańsk Regional Court on 11 July 2007.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The relevant domestic law and practice concerning the imposition of detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other, “preventive measures” (*środki zapobiegawcze*) are stated in the Court's judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

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

25. The applicant complained that the length of his pre-trial detention 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.”

26. The Government contested that argument.

A. Admissibility

27. 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

28. The applicant's detention started on 16 April 2002, when he was arrested on suspicion of having committed robbery. On 28 July 2004 the Gdańsk District Court convicted him as charged and sentenced him to four years' imprisonment (see paragraphs 5, 6 and 19 above). 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 (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).

Accordingly, the period to be taken into consideration amounts to two years, three months and thirteen days.

2. The parties' submissions

(a) The applicant

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

(b) The Government

30. The Government submitted that the applicant's detention was not unreasonably lengthy. They argued that there had been valid reasons for holding him in detention for the entire period in question. The domestic courts had on each occasion given relevant and sufficient reasons justifying the applicant's detention and had regularly reviewed it.

31. The applicant's detention had been justified by the strong suspicion that he had committed the offences with which he had been charged and the

fact that the seriousness of the charge against him attracted a heavy sentence. In this connection, the Government submitted that the applicant had been caught *in flagrante delicto* and charged with robbery committed in conspiracy with other co-accused. The domestic courts had also relied on the risk that the applicant might obstruct the proper conduct of the proceedings, in particular tamper with evidence.

32. The Government further justified the length of the applicant's detention by the complexity of the case, which stemmed from the number of defendants and the charges brought against them. This was also shown by the need to obtain expert evidence. They maintained that the authorities had displayed adequate diligence and dealt speedily with the applicant's case. They further argued that his detention had been based on the grounds specified in the Code of Criminal Procedure.

3. *The Court's assessment*

(a) General principles

33. 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*, cited above, § 110; and *McKay v. the United Kingdom*, cited above, §§ 41-44).

(b) Application of the above principles in the present case

34. The Court observes that, as the Government maintained, the applicant's detention was indeed reviewed by the courts at regular intervals. However, in their decisions extending the applicant's detention, they repeated the same grounds. In addition to the reasonable suspicion against the applicant, they relied principally on three grounds: (1) the serious nature of the offence with which he had been charged and the likely severity of the penalty, (2) the risk that the applicant might tamper with evidence and intimidate witnesses, and (3) the need to secure the proper conduct of the proceedings, in particular the need to obtain further evidence.

35. The Court accepts that the strong suspicion of the applicant having committed a serious offence could initially warrant his detention. Also the need to secure the proper conduct of the proceedings, in particular the need to collect further evidence, constituted valid grounds for the applicant's initial detention.

36. However, with the passage of time those grounds inevitably became less and less relevant. The Court must therefore establish whether the other grounds advanced by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of his liberty (see *Kudła*, cited above, § 111).

37. In this connection, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending. However, the Court has repeatedly held that the seriousness of the charges cannot by itself justify long periods of pre-trial detention (see, for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). A hypothetical sentence ranging from two to twelve years imprisonment must, with the passage of time, inevitably have called for reassessment of the need for the applicant's continued detention in the light of the evidence progressively obtained by the court. It is to be observed in this connection that the actual sentence imposed on the applicant, four years' imprisonment (see paragraph 19 above), was at the lower end of the applicable scale (see, *mutatis mutandis*, *Klamecki (no.2) v. Poland*, no. 31583/96, § 122).

38. As regards the risk of obstruction of the proceedings, the Court cannot agree that it constituted a valid ground for the entire length of the applicant's pre-trial detention. Firstly, it notes that the Gdańsk District Court, when originally remanding the applicant in custody, only referred, in general terms, to a risk that, if released, he might tamper with the evidence, and, in particular, intimidate witnesses. The courts did not provide any reasons for substantiating the existence of that risk and the Court cannot therefore accept that ground as a justification for holding the applicant in custody for the entire relevant period.

39. Nor is the Court persuaded by the Government's argument that the proceedings were of considerable complexity given the number of defendants and the volume of evidence to be taken. However, it appears that the authorities referred to the complexity of the case in a very general manner and failed to indicate how the nature of the case required the applicant's continued detention.

40. As to the Government's argument that the applicant was detained principally on charges of robbery committed together with four accomplices and had been apprehended *in flagrante delicto*, the Court notes that the defendants had not been formally charged with acting in an organised criminal group. In these circumstances, the Court does not consider that the instant case presented particular difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the perpetrators as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v Poland*, no. 17584/04, § 37, 4 May 2006).

41. Furthermore, there is no specific indication that during the entire period in question the authorities envisaged the possibility of imposing other preventive measures on the applicant, such as bail or police supervision.

In this context the Court would emphasise that other "preventive measures" to secure the proper conduct of criminal proceedings are expressly foreseen by Polish law and that under Article 5 § 3 the authorities,

when deciding whether a person should be released or detained, are obliged to consider alternative measures for ensuring his appearance at trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000, and *McKay*, § 41, cited above).

42. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” and “sufficient” to justify the applicant's being kept in detention for nearly two years and four months. In these circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence.

43. There has therefore been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. The applicant did not submit a claim for just satisfaction or costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

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