



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

FOURTH SECTION

CASE OF ROCHALA v. POLAND

(Application no. 14613/02)

JUDGMENT

STRASBOURG

29 January 2008

FINAL

29/04/2008

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 Rochala 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 Pavlovschi,

Lech Garlicki,

Ljiljana Mijović, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 14613/02) 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 Dariusz Rochala (“the applicant”), on 15 March 2001.

2. The applicant was represented by Mr S. Sikora, a lawyer practising in Bielsko-Biała. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 14 February 2006 the President of the Fourth Section 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**

4. The applicant was born in 1965 and lives in Bielsko-Biała.

5. On 31 August 1998 the applicant was arrested on suspicion of attempted murder, causing bodily harm and possession of a firearm and ammunition without a licence.

6. On 2 September 1998 the applicant was questioned and confronted with the victim. During the confrontation the applicant was hit on the head

by the victim. He alleges that the police officers did not react to this incident. However, it appears from the record of the confrontation that an ambulance was called and the applicant was taken to hospital where he was treated.

7. Later on the applicant was also confronted with the victim's partner, who had been in the apartment where the attempted murder had taken place. Both the victim and his partner recognised the applicant as one of the assailants.

8. On 3 September 1998 the Cieszyn District Court remanded the applicant in custody, relying on the reasonable suspicion that he had committed the offences in question. It also considered that keeping the applicant in detention was necessary to ensure the proper conduct of the proceedings, given the risk that he might tamper with evidence or try to influence witnesses to give false testimonies. The court also stressed the severity of the anticipated sentence.

9. On 5 September 1998 the applicant requested that the detention order be lifted and less severe preventive measures be applied.

10. On 18 September 1998 the Bielsko-Biała Regional Court dismissed the applicant's request, stating that detention was the only preventive measure that could ensure the proper conduct of the proceedings.

11. On 21 October 1998 the Bielsko-Biała Regional Court referred the applicant for psychiatric observation.

12. In the course of the investigation, the applicant's detention was extended on 15 June and 18 November 1999. In all their detention decisions the authorities relied on the original grounds given for the applicant's detention, and underlined that the grounds for his pre-trial detention were still valid.

13. On 26 January 1999 the applicant was questioned by the prosecutor.

14. On 8 February 1999 the Cieszyn district prosecutor lodged a bill of indictment with the Bielsko-Biała Regional Court. The applicant was charged with attempted murder, causing bodily harm and possession of a firearm and ammunition without a licence.

15. On 26 May 1999 the trial court held the first hearing, during which the applicant and the co-accused were heard. It subsequently held eight hearings in the case.

16. During the court proceedings the authorities further extended the applicant's detention. The court repeated the grounds previously given for the applicant's continued detention.

17. On 28 February 2000 the Regional Court held the last hearing and gave judgment (the applicant was present). The applicant was convicted as charged and sentenced to fifteen years' imprisonment and ten years' deprivation of his civil rights.

18. On 15 July 2000 the applicant's counsel lodged an appeal with the Katowice Court of Appeal, while the applicant himself appealed on 20 July

2000. They maintained in particular that the Bielsko-Biała Regional Court had gone beyond the proper margin of discretion in the assessment of evidence and had reached wrong conclusions as to the facts. They requested that the first-instance judgment be rectified or quashed.

19. On 11 October 2000 the Katowice Court of Appeal decided not to allow the applicant to participate in the hearing because the Bielsko-Biała Regional Court had received information that the applicant intended to escape.

20. On 23 November 2000 an appellate hearing was held before the Katowice Court of Appeal. On the same day the court delivered a judgment. It found that there had been procedural shortcomings in the proceedings before the court of first instance, as one of the lay judges had not been present at one of the hearings and the hearing in question had not been repeated. Consequently, the Court of Appeal quashed the judgment of the first-instance court and remitted the case to the Regional Court for reconsideration.

21. On 23 January 2001 the Bielsko-Biała Regional Court extended the applicant's detention on the grounds that the evidence gathered in the course of the proceedings indicated that the applicant had committed the offences with which he had been charged and, taking into consideration the judgment of the first-instance court, the imposition of a severe sentence remained likely.

22. On 30 January 2001 the applicant appealed against this decision. He alleged in particular that basing the decision on the fact that he had been sentenced by the first-instance court to fifteen years' imprisonment after this judgment had been quashed constituted a breach of his right to be presumed innocent.

23. On 14 February 2001 the Katowice Court of Appeal upheld the contested decision. The Court of Appeal in its reasoned grounds stated that the first-instance court judgment had been quashed due to procedural shortcomings and that there were no reasons to change the preventive measure.

24. On 20 May 2002 the Bielsko-Biała Regional Court found the applicant guilty on all charges and sentenced him to fifteen years' imprisonment and ten years' deprivation of his civil rights. It counted the applicant's detention from 31 August 1998 to 20 May 2002 towards the sentence.

25. On 18 July 2002 the applicant's lawyer lodged an appeal with the Katowice Court of Appeal. He argued that the Bielsko-Biała Regional Court had overstepped the margin of discretion in the assessment of evidence and had reached wrong conclusions.

26. The Katowice Court of Appeal extended the applicant's detention on 11 September and 11 December 2002. The applicant's counsel appealed unsuccessfully against those decisions.

27. On 30 January 2003 a hearing was held at the Katowice Court of Appeal, at which the applicant was present. The court gave a judgment amending the judgment of the court of first instance and sentenced the applicant to eight years and six months' imprisonment for causing grievous bodily harm to the victim.

28. On 1 July 2003 the applicant's lawyer filed a cassation appeal against the judgment of the court of appeal with the Supreme Court. He argued that the court had disregarded the evidence submitted by the applicant and had erroneously and arbitrarily interpreted the facts. He alleged numerous procedural shortcomings and infringements of substantive law on the part of the court. He requested the court to quash the judgment and refer it to the Katowice Court of Appeal for reconsideration.

29. On 7 November 2003 the Katowice appellate prosecutor submitted a reply to the cassation appeal of the applicant's counsel. The Prosecutor General also lodged a cassation appeal against the judgment in question, arguing that the applicant should have been convicted of attempted murder and not merely of causing grievous bodily harm.

30. On 6 January 2004 a cassation hearing was held at the Supreme Court. The applicant did not appear at the hearing, even though he had been duly informed. The court dismissed the applicant's cassation appeal, finding it manifestly ill-founded. The court allowed the Prosecutor General's cassation appeal and quashed the judgment of the Court of Appeal in the part sentencing the applicant to eight years' and six months' imprisonment for causing grievous bodily harm to the victim. The Supreme Court agreed with the Prosecutor General that the Katowice Court of Appeal had disregarded certain facts, reached arbitrary conclusions on the basis of those facts and failed to substantiate its decision properly. The case was referred for reconsideration to the court of appeal. The court further decided to extend the applicant's detention for another three months.

31. On 24 March 2004 the Katowice Court of Appeal extended the applicant's detention until 6 July 2004.

32. On 22 April 2004 an appeal hearing was held, the applicant being present. The Court of Appeal upheld the judgment of the Bielsko-Biała Regional Court of 20 May 2002 and counted the applicant's detention from 31 August 1998 to 22 April 2004 towards the sentence.

33. On 28 July 2004 the applicant's counsel lodged a cassation appeal against the judgment of 22 April 2004.

34. On 16 February 2005 the Supreme Court dismissed the applicant's cassation appeal, finding it manifestly ill-founded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

35. The relevant domestic law and practice concerning the imposition of pre-trial 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

36. 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.”

37. The Government contested that argument.

A. Admissibility

38. 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

39. The applicant's detention started on 31 August 1998, when he was arrested on suspicion of attempted murder, causing bodily harm and possession of a firearm and ammunition without a licence. On 28 February 2000 the Bielsko-Biała Regional Court convicted him as charged.

40. 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 (see *Kudła*, cited above, § 104).

41. On 23 November 2000 the Katowice Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 20 May 2002 when the applicant was again convicted.

In this connection the Court notes that on 6 January 2004 the Supreme Court quashed the judgment of the Court of Appeal. However, the judgment of the first-instance court convicting the applicant remained valid. Consequently, during this period the applicant was still detained “after conviction by a competent court”.

Accordingly, the period to be taken into consideration amounts to three years.

2. The parties' submissions

(a) The applicant

42. The applicant argued that the length of his detention was unreasonable.

(b) The Government

43. The Government submitted that the applicant's detention had been duly justified over the entire period. They emphasised that, apart from the reasonable suspicion that he had committed the offences, the applicant's detention had been justified by the severity of the anticipated penalty. Furthermore, there had been a risk that the applicant would tamper with evidence or influence witnesses.

44. The Government asserted that the need for the applicant's continued detention had been thoroughly examined by the courts, which on each occasion had given sufficient reasons for their decisions. They finally submitted that the authorities had displayed due diligence in the conduct of the proceedings. In addition, the various procedural steps taken by the applicant's lawyers had caused delays in the trial.

3. The Court's assessment

(a) General principles

45. 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

46. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three 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, and (3) the need to ensure the proper conduct of the proceedings.

47. The Court accepts that the reasonable suspicion against the applicant of attempted murder could initially warrant his detention. However, with the passage of time, that ground became less and less relevant. The Court must then establish whether the other grounds adduced by the courts were “relevant” and “sufficient” (see *Kudła*, cited above, § 111).

48. The Court notes that the judicial authorities continuously relied on the likelihood that a heavy sentence might be imposed on the applicant, given the nature of the offence with which he had been charged. 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 reoffending. It acknowledges that in view of the seriousness of the charge against the applicant the authorities could justifiably consider that such a risk existed. However, the Court has repeatedly held that the seriousness 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).

49. As regards the risk that the applicant might obstruct the proceedings, the Court notes that the authorities did not indicate any specific grounds justifying the opinion that the anticipated risk went beyond a mere theoretical possibility. The Court is not, therefore, persuaded by that argument, especially as it appears that there was no indication that at any earlier stage of the proceedings the applicant had tampered with evidence or made any attempt to induce witnesses to perjure themselves.

50. The Court further observes that the applicant was detained on a charge of attempted murder and causing bodily harm, committed with one accomplice. The defendants had not been charged with acting in an organised criminal group. In these circumstances, the Court is not persuaded 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*, cited above, § 37, and *Kwiatek v. Poland*, no. 20204/02, § 46, 6 February 2007).

51. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

52. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The applicant also complained under Article 3 about the fact that he had been attacked by a witness during the confrontation and that the police had failed to react to the incident (see paragraph 6 above).

Article 3 reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

54. The Court notes that the applicant failed to raise this complaint before any relevant domestic authority.

55. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

56. The applicant further complained under Article 6 § 1 of the Convention that the length of the proceedings in his case had exceeded a 'reasonable time' within the meaning of this provision.

57. However, pursuant to Article 35 § 1 of the Convention:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...”

58. As regards the complaint of the unreasonable length of the proceedings, the Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic courts.

59. It further observes that, under section 18 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”), it was open to an applicant whose case was pending before the Court to lodge, within six months of 17 September 2004, a complaint about unreasonable length of proceedings with the relevant domestic court, provided that his application to the Court had been lodged in the course of the impugned proceedings and had not yet been declared admissible. The applicant in the present case satisfied these requirements.

60. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03,

ECHR 2005-V). However, the applicant has not availed himself of this remedy.

61. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 3 OF THE CONVENTION

62. Finally, the applicant complained under Article 6 § 3 of the Convention about the fact that he could not defend himself in person during the hearing before the Katowice Court Appeal held on 23 November 2000 (see paragraphs 19-20 above).

63. The Court observes that at the hearing in question the judgment of the first instance court was in fact quashed. The applicant was present at the appeal hearing held on 30 January 2003 (see paragraph 27 above) and at the appeal hearing held on 22 April 2004 (see paragraph 32 above).

64. In these circumstances, any possible prejudice caused to the applicant by his non-appearance at the hearing of 23 November 2000 was remedied by the future course of the proceedings in his case.

It follows that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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.”

A. Damage

66. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

67. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant also claimed EUR 2,000 for legal costs. He did not submit any documents in support of his claim.

69. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court observes that the applicant failed to produce any documents in support of his claim. In those circumstances, the Court makes no award under this head (see *Adamiak v. Poland*, no. 20758/03, § 49, 19 December 2006).

C. Default interest

70. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the unreasonable length of detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President