



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

FOURTH SECTION

**CASE OF WRÓBLEWSKI v. POLAND**

*(Application no. 11748/03)*

JUDGMENT

STRASBOURG

4 March 2008

**FINAL**

*04/06/2008*

*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 Wróblewski v. Poland,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Stanislav Pavlovski,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

## PROCEDURE

1. The case originated in an application (no. 11748/03) 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 Adrian Wróblewski (“the applicant”), on 24 March 2003.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. 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 11 October 2006 the President of the Fourth Section of the Court decided to communicate the complaint concerning 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 1976 and lives in Toruń. As it appears from the documents submitted, he is currently detained in the Toruń Remand Centre.

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

6. On 29 August 2002 the applicant was detained and subsequently remanded in custody by the Chełmno District Court on charges of rape and murder by a detention order of 31 August 2002. The latter was upheld on 18 September 2002 by the Toruń Regional Court.

7. On several occasions, namely 25 November 2002, 25 February, 28 May, 29 September 2003 and 21 January 2004 the applicant's pre-trial detention was prolonged. The Toruń Regional Court relied in its decisions on the reasonable suspicion that the applicant had committed the offences and on the severity of the likely sentence. According to its reasoning, the applicant's detention was the only measure which could secure the proper conduct of the proceedings in view of the extensive body of evidence which was to be considered in the case. The court stressed that the evidence already collected in the case, including mechanoscopic and olfactory expert opinions, comparative hair analysis, testimonies of witnesses and an experimental reconstruction of the crime scene indicated a high probability that the applicant had committed the crimes. Moreover, a psychiatrist's examination and the observation of the applicant in a mental institution had been ordered by the court, as well as a genetic and chemical comparative analysis of available evidence. The court further added that the applicant had a previous criminal record.

8. The applicant submitted that his appeals against some of the above decisions were dismissed by the Gdańsk Court of Appeal on 18 December 2002, 18 March, 11 June 2003 and 25 February 2004.

9. On 19 May 2003 the Chełmno District Prosecutor lodged a bill of indictment against the applicant with the Toruń Regional Court. The prosecutor requested to have 14 experts and 56 witnesses summoned to testify.

10. On 10 July 2003 the first hearing in the applicant's case was scheduled for 20 August 2003; however the start of the trial had to be postponed, since the applicant's counsel had asked the court to relieve him of his duties. The newly *ex officio* appointed lawyer informed the court that he was not able to fulfil his duties, as he had earlier been appointed as counsel of the auxiliary prosecutors – the victim's parents. The Toruń Regional Bar immediately appointed another lawyer at the request of the court.

11. On 1 August 2003 the applicant's counsel requested that the composition of the court to hear the applicant's case be decided by the drawing of lots.

12. On 28 November 2003 the court scheduled the first hearings for 22 and 23 December 2003. On 3 December 2003 a supplementary drawing

of lots was necessary as one of the lay judges could not take part in the proceedings.

13. The first hearings before the Toruń Regional Court were held on 22 and 23 December 2003.

14. Between 3 March and 24 May 2004 the Toruń Regional Court held 14 hearings. On 24 May 2004 the applicant requested the withdrawal of the presiding judge. His motion was dismissed by the Toruń Regional Court on the same day.

15. Between 21 September and 23 November 2004 the Toruń Regional Court held 7 hearings. On 25 November 2004 the applicant's detention on remand was extended until 28 February 2005.

16. Between 10 January and 20 June 2005 the Toruń Regional Court held 10 hearings.

17. On 23 June 2005 the Toruń Regional Court found the applicant guilty as charged and sentenced him to 25 years' imprisonment. The judgment ran to 167 pages.

18. The applicant, the prosecutor, as well as the auxiliary prosecutors, appealed.

19. On 30 May 2006 the Gdańsk Court of Appeal quashed the judgment and remitted the case for re-examination to the Toruń Regional Court. The proceedings are still pending. The applicant is still in detention in respect of the charges against him.

## **2. Second set of criminal proceedings against the applicant**

20. On 16 May 2002 the applicant was sentenced to 4 years and 6 months' imprisonment for double rape.

21. On 5 February 2003 the Regional Court upheld the first-instance judgment.

22. As it transpires from the Government's submissions, which were not contested by the applicant, he was serving the sentence imposed between 10 June 2003 and 9 February 2004, as well as between 29 February 2004 and 9 September 2007.

## **3. Third and fourth sets of criminal proceedings against the applicant**

23. As it further transpires from the Government's submissions, which were not contested either by the applicant, between 9 and 29 February 2004 he was serving a term of imprisonment imposed on 17 May 1996 by the Nowe Miasto Lubawskie District Court in another set of criminal proceedings.

24. Moreover, during the period between 21 May 2003 and 10 June 2003 the applicant was serving a term of imprisonment imposed by the Grudziądz District Court on 11 April 2001 for drunk driving.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

25. 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 described 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

26. 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.”

27. The Government contested that argument.

#### A. Admissibility

28. The Court notes that the application 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*

29. The applicant’s detention started on 29 August 2002, when he was arrested on suspicion of rape and murder. On 23 June 2005 the Toruń Regional Court convicted him as charged.

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* [GC], no. 30210/96, § 104, ECHR 2000-XI).

On 30 May 2006 the Gdańsk Court of Appeal quashed the applicant’s conviction. Following that date his detention was again covered by Article 5 § 3. The applicant is currently detained in the Toruń Remand Centre awaiting trial.

30. However, between 21 May 2003 and 9 September 2007 the applicant served three prison sentences which had been imposed on him in three other sets of criminal proceedings. These terms, being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant’s pre-trial detention for the purposes of Article 5 § 3.

Accordingly, the period to be considered amounts at present to 14 months.

## *2. The parties’ submissions*

### **(a) The Government**

31. The Government argued that the applicant’s detention was in conformity with the reasonable time requirement of Article 5 § 3 of the Convention. It was duly justified by the gravity of the charges brought against him and the existence of substantial evidence pointing to his guilt. The Government also stressed that the case was very complex. They further submitted that, since the applicant had simultaneously been serving prison sentences imposed in three other sets of criminal proceedings (as of 21 May 2003), an earlier release from detention in the present case would not have resulted in his being released.

### **(b) The applicant**

32. The applicant disagreed and submitted that the length of his detention was excessive.

## *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*, cited above, § 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**

34. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the severity of the penalty to which he was liable; (2) his previous convictions; and (3) detention was the only measure which could secure the proper conduct of the proceedings in view of the extensive body of evidence to be considered in the case.

35. The Court accepts that the reasonable suspicion against the applicant of having committed a serious offence could initially warrant his detention.

36. 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 cited by the judicial authorities continue to justify the deprivation of liberty.

37. In view of the evidentiary proceedings, the courts considered it necessary to extend the applicant's pre-trial detention, in order to prevent him obstructing the proceedings. According to the authorities, the likelihood of a severe sentence being imposed on him created a presumption that he might tamper with evidence, in particular by influencing witnesses' testimonies. The courts further stressed that the evidence already collected in the case indicated a high probability that the applicant had committed the crimes he had been charged with. Moreover, the court had to order the applicant's psychiatric observation in a mental institution (see paragraph 7 above).

38. Accordingly, the Court considers that in the particular circumstances of the case and in view of its above findings as to the total length of the applicant's detention, the domestic courts gave relevant and sufficient reasons for the applicant's detention.

39. It remains for the Court to ascertain whether the authorities, in dealing with the applicant's case, displayed the diligence required under Article 5 § 3 (see *Mc Kay*, cited above, § 44). In this regard, it would observe that the proceedings were of considerable complexity, regard being had to the extensive body of evidence, including mechanoscopic and olfactory expert opinions, comparative hair analysis, and an experimental reconstruction of the crime scene (see paragraphs 7 and 9 above). Nevertheless, the hearings in the applicant's case were held regularly and in short intervals. The course of the proceedings was swift and their length reasonable (see paragraphs 14, 15 and 16 above). The Court therefore concludes that the national authorities displayed 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.

40. In the circumstances, the Court finds that the authorities acted with all due diligence in handling the applicant's case.

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

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* 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 4 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President