



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

FOURTH SECTION

CASE OF HOŁOWCZAK v. POLAND

(Application no. 25413/04)

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 Hołowczak v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *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. 25413/04) 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 Tomasz Hołowczak (“the applicant”), on 15 June 2004.

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

3. On 8 March 2007 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**

4. The applicant was born in 1967 and lives in Czarne.

A. The applicant’s pre-trial detention

5. On 11 February 1998 the applicant was arrested by the police on suspicion of murder, involvement in drug trafficking and illegal possession of a firearm. On 13 February 1998 the Kołobrzeg District Court (*Sąd*

Rejonowy) remanded him in custody in view of the reasonable suspicion that he had committed the offences in question and having regard to their seriousness. It further considered that there was a risk that he would obstruct the proper conduct of the investigation and influence witnesses and other members of the criminal group to which he belonged.

6. In the course of the investigation, the applicant's detention was extended several times.

7. On 4 August 1998 the applicant was indicted before the Koszalin Regional Court (*Sąd Okręgowy*). As the bill of indictment did not meet the formal requirements a second bill of indictment was served on 22 August 1998. The bill of indictment comprised charges of murder, drug trafficking and illegal possession of a firearm and concerned four accused.

8. From 13 November 1998 until 2 January 1999 the applicant served a prison sentence imposed on him in other criminal proceedings.

9. From 17 February 1999 to 10 August 1999 the court held eight hearings during which it heard evidence from sixty-six witnesses, as the applicant and the co-accused asked for all the witnesses to be heard during the hearing and for their testimony not merely to be read from the investigation file.

10. The hearings scheduled for 10 September 1999 and 12 October 1999 were postponed due to the illness of a lay judge (*lawnik*) and the absence of one of the lawyers.

11. On 13 October 1999 the court decided to hear the case from the beginning because of the inability of the lay judge to continue to sit in the case. From 13 October 1999 to 13 January 2000 the court held thirteen hearings. In a number of hearings witnesses failed to appear.

12. On 13 January 2000 the court convicted the applicant as charged and sentenced him to life imprisonment and forfeiture of his civic rights. He appealed.

13. On 28 March 2001 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) quashed the judgment and remitted the case to the Kołobrzeg District Prosecutor (*Prokurator Rejonowy*) for further investigation.

14. On 14 October 2002 a new bill of indictment was lodged. It comprised the above-mentioned charges.

15. The Koszalin Regional Court proceedings were reopened on 10 December 2002.

16. On 28 April 2003 the Koszalin Regional Court extended the applicant's detention until 31 July 2003. It relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged, which was supported by evidence from witnesses and experts. The court further considered that the need to secure the proper conduct of the investigation justified holding him in custody. It referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant. It also relied on the risk that the applicant might tamper with

evidence. It referred to the attempt by the applicant and one of the co-defendants to influence the process of taking evidence.

17. From 14 January 2003 to 31 May 2004 the court held thirty-eight hearings and evidence from one hundred and forty-three witnesses was obtained. When witnesses failed to appear, the court imposed fines on them.

18. During the proceedings the applicant's detention was extended on several occasions. The court repeated the grounds given in the previous decisions.

19. It appears that in the course of the proceedings the applicant made unsuccessful applications for release and appealed, likewise unsuccessfully, against refusals to release him and against decisions extending his detention.

20. On 31 May 2004 the Regional Court convicted the applicant as charged and sentenced him to life imprisonment. He appealed. The applicant's detention was subsequently extended on several occasions.

21. On 1 July 2005 the Szczecin Court of Appeal upheld the judgment.

22. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*). On 6 November 2006 the Supreme Court dismissed the appeal.

B. The proceedings concerning a breach of the right to a trial within a reasonable time

23. On 31 March 2005 the applicant lodged a complaint with the Szczecin Court of Appeal under section 5 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").

24. The applicant sought a ruling declaring that the length of the proceedings before the Koszalin Regional Court had been excessive and an award of compensation in the amount of 10,000 Polish zlotys.

25. On 18 May 2005 the Court of Appeal dismissed his complaint. The court observed that even though the case had been pending for seven years, its length could not be considered unreasonable. It examined the course of the impugned proceedings and held that there were no delays for which the Regional Court could be held responsible. The hearings had been held on a regular basis and evidence from over 100 witnesses and several experts had been obtained. It referred to the case's extreme complexity, involving a large number of individuals and complicated evidentiary proceedings, as the main cause of the length of the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Pre-trial detention

26. The relevant domestic law and practice concerning the imposition of pre-trial detention (*tymczasowe aresztowanie*), the grounds for its extension, release from detention and rules governing other, “preventive measures” (*środki zapobiegawcze*) at the material time 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, §§ 42-45, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

B. Remedies against unreasonable length of the proceedings

27. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are stated in the Court’s decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V; *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII; and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

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

28. 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.”

29. The Government contested that argument.

A. Admissibility

30. The Court notes that the 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

31. The Court observes that the period of the applicant's detention to be considered under Article 5 § 1 started on 11 February 1998, when the applicant was arrested on suspicion of, *inter alia*, murder. On 13 January 2000 the Koszalin Regional Court sentenced the applicant to life imprisonment. As from that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (see *Kudła v. Poland* [GC], no. 30210/96, § 104). On 28 March 2001 the Gdańsk Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 31 May 2004, when the Regional Court sentenced the applicant to life imprisonment for murder (see paragraphs 5, 12, 13 and 20 above).

32. Moreover, between 13 November 1998 and 2 January 1999 the applicant served a prison sentence which had been imposed on him in other criminal proceedings (see paragraph 8 above). This term, 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.

Consequently, the period to be taken into consideration amounts to four years, eleven months and fourteen days.

2. The parties' submissions

(a) The applicant

33. The applicant submitted that the delays in the proceedings in his case, particularly the fact that the case had been remitted by the Gdańsk Regional Court to the Regional Court for re-examination, had resulted in the unreasonable length of his pre-trial detention. The applicant contended that being a detainee for such a long period meant that he was deprived of certain rights which were available to prisoners serving a prison sentence. The applicant argued that the pre-trial detention, initially justified by the domestic courts, had become unjustified with the lapse of time.

(b) The Government

34. The Government considered that the length of the applicant's pre-trial detention had satisfied the requirements of Article 5 § 3, in particular as his pre-trial detention had been duly justified. Throughout the entire period the authorities had given relevant and sufficient reasons for extending it. They also argued that the applicant's detention had served the purpose of ensuring the proper conduct of the investigation since there was a risk that he would obstruct the proceedings.

35. Furthermore, they justified the length of the applicant's detention by the particular complexity of the case, which stemmed from the number of defendants and offences, and the fact that new circumstances had come to light in the course of the investigation.

36. They further pointed out that the applicant's detention had been reviewed at regular intervals. On each occasion the decisions to extend it and the decisions on the applicant's appeals had been reasoned in a relevant and sufficient manner. They argued that the decisions prolonging pre-trial detention had not been taken automatically and that the measure had been applied only in respect of some of the co-accused.

37. With regard to the conduct of the domestic authorities, the Government submitted that the proceedings had been extremely complex. They contended that the proceedings in all instances had progressed at an acceptable pace. The courts had heard numerous witnesses and experts. Disciplinary measures were taken against witnesses who had failed to appear. Hearings had been scheduled at regular intervals and adjourned for objective reasons such as the illness of a lay judge. They also stressed that the applicant and the co-accused had asked for all the witnesses to be heard during the hearings. Lastly, they maintained that the authorities had shown adequate diligence in dealing with the applicant's case.

3. The Court's assessment

(a) General principles

38. 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, have been 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).

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

39. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the likelihood he had committed the offences with

which he had been charged, (2) the serious nature of those offences and the severity of the penalty to which he was liable and (3) the need to ensure the proper conduct of the proceedings in view of the risk that he might intimidate witnesses and members of the criminal group. As regards the latter, they relied on the fact that the applicant and his co-defendants had used delaying tactics in order to disrupt the taking of evidence (see paragraph 16 above).

40. The applicant was charged with drug trafficking, murder and illegal possession of a firearm committed in an organised criminal group (see paragraph 7 above).

In the Court's view, the fact that the case concerned a member of an organised criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

41. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences may initially have warranted his detention. It also considers that the authorities were faced with a difficult task in determining the facts and the degree of responsibility of each of the defendants. The Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the fact that in the course of the investigation new circumstances came to light, constituted relevant and sufficient grounds for the applicant's detention during the time necessary to terminate the investigation, to draft the bill of indictment and to hear evidence from the accused.

42. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to extend this measure. In this context, the Court would observe that by the date of his original first-instance conviction the applicant had already spent almost two years in pre-trial detention. Following the quashing of that conviction on appeal, he was kept in custody for a further three years and two months (see paragraphs 12, 13 and 28 above).

43. Moreover, the authorities relied heavily on the likelihood that a lengthy sentence would be imposed on the applicant given the serious nature of the offences at issue. 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 charges cannot by itself justify long periods of pre-trial detention (see, for instance, *Iliev v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001), which in this case amounted to over four years and seven months.

44. Furthermore, the judicial authorities found that there was a danger that the applicant, if released, might induce witnesses to give false testimony. In cases such as the present one concerning organised criminal gangs, the risk that a detainee, if released, might bring pressure to bear on

witnesses or other co-accused or might otherwise obstruct the proceedings often is, by the nature of things, high. The Court notes in this connection that the applicant and an co-accused had attempted to disrupt the process of taking evidence (see paragraph 16 above). It agrees that the applicant's attempt to obstruct justice justified keeping him in custody in the initial stages of the proceedings. However, this ground gradually lost its relevance as the trial proceeded and the witnesses and co-accused were heard. Moreover, given the absence of any further attempt on the part of the applicant to induce witnesses or to obstruct the course of the proceedings in any other way, it is difficult to accept that a single attempt at collusion justified keeping him in custody for the entire period of almost five years.

45. 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).

46. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised criminal group, 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.

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

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

48. The applicant further complained that the length of criminal proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

49. The Government contested that argument.

A. Period to be taken into consideration

50. The period to be taken into consideration began on 13 February 1998 and ended on 6 November 2006. It thus lasted almost eight years and nine months at three levels of jurisdiction.

B. Reasonableness of the length of the proceedings

1. Arguments before the Court

51. The Government submitted that the length of the proceedings could be explained by the complexity of the case, the difficulties in obtaining evidence from numerous witnesses and the conduct of the applicant. In this connection, the Government pointed out that the applicant had requested that all the witnesses be heard. The Government submitted that the authorities had shown special diligence in conducting the applicant's highly complicated case. They noted that the hearings had been scheduled at regular intervals, that several hearings had been adjourned for reasons beyond the control of the courts and that the courts had applied disciplinary measures against witnesses who had failed to appear.

2. The Court's assessment

52. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities which in this instance call for an overall assessment (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Szeloch v. Poland*, no. 33079/96, § 101, 22 February 2001).

53. The Court considers that the subject matter of the case before the domestic courts was undoubtedly complex, as shown, *inter alia*, by the fact there were four accused and the case concerned an organised criminal group. Establishing the facts of the case necessitated submitting a substantial amount of evidence to the court and examining a large number of witnesses. It is to be noted in this connection that on 18 May 2005 the Szczecin Court of Appeal stressed that the case was particularly complex (see paragraph 25 above).

54. On the other hand, the Court cannot accept the Government's argument that the applicant was responsible for prolonging the proceedings by requesting that all the witnesses be heard during the hearings. In particular, even if the Court were to accept that the defendants, including the applicant, had contributed to certain delays during the trial by making use of their procedural rights, it considers that that factor could not justify the

length of the proceedings. In that connection, the Court emphasises that the Government did not refer to particular acts indicating that the applicant had obstructed the trial and did not give any details in respect of the applications and appeals to which they referred.

55. As to the conduct of the judicial authorities, the Court notes that the first hearing in the case was held only six months after the bill of indictment had been lodged with the Koszlin Regional Court. It is true that the proceedings were conducted speedily at the beginning of the judicial proceedings. However, the lay judge's illness prolonged the judicial proceedings significantly and the first-instance judgment was given on 13 January 2000. The Court further notes that the proceedings, in their investigative phase, after being remitted by the Gdańsk Court of Appeal to the Kołobrzeg District Prosecutor were conducted from March 2001 to 14 October 2002. After the bill of indictment had been filed with the court on the latter date, the first hearing was fixed for 14 January 2003. After the case had been remitted for further examination, the proceedings lasted more than four years at three instances.

56. The Court also notes that a number of hearings in the case were adjourned because either the co-accused or witnesses failed to comply with summonses (see paragraph 11 above). However, the domestic court made efforts to expedite the proceedings, in particular by imposing fines on absent witnesses (see paragraph 17 above).

57. The Court further observes that on 18 May 2005 the Szczecin Court of Appeal found, on a complaint by the applicant about the breach of his right to a trial within a reasonable time, that the length of the proceedings had not been excessive. The Court of Appeal analysed the entire period of the proceedings and found no undue delays caused by inactivity or improper actions on the part of the trial court.

58. Nevertheless, the Court must point out that the duty to administer justice expeditiously was incumbent in the first place on the domestic authorities, especially as during the whole of the trial the applicant remained in custody, even though for a short period he was serving a prison sentence at the same time. The Court has stressed on many occasions, in relation to Article 5 § 3, that in cases where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see *Abdoella v. the Netherlands*, judgment of 25 November 1992, Series A no. 248-A, pp. 16-17, § 24).

59. On the basis of the above considerations, and observing that the proceedings lasted eight years and nine months, the Court considers that the reasonable time requirement within the meaning of Article 6 § 1 of the Convention was exceeded.

60. There has therefore been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

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

63. The Government asked the Court to reject the claim as being exorbitant.

64. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 5,000 under this head.

B. Costs and expenses

65. The applicant did not make any claim in respect of costs and expenses.

C. Default interest

66. 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 application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *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 5,000 (five 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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