



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

FOURTH SECTION

CASE OF BEREZA v. POLAND

(Application no. 38713/06)

JUDGMENT

STRASBOURG

1 April 2008

FINAL

01/07/2008

This judgment may be subject to editorial revision.

In the case of Bereza 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 11 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 38713/06) 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 Marcin Bereza (“the applicant”), on 18 September 2006.

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

3. The applicant alleged, in particular, that his detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 7 February 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

5. The applicant was born in 1972 and lives in Warsaw.

6. On 18 December 2003 the applicant was arrested on suspicion of murder, extortion, robbery and drug trafficking committed while acting as part of an organised criminal group.

7. On 23 December 2003 the Warsaw District Court remanded him in custody, relying on the reasonable suspicion that he had committed the offences in question. The court indicated that the evidence gathered in the

case, in particular the witnesses' testimonies, showed that there was a strong probability that the applicant had committed the crimes he was suspected of. It attached importance to the serious nature of those offences and the likelihood of a severe sentence of imprisonment being imposed on the applicant. It further considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings, given the risk that he might tamper with evidence, induce witnesses to give false testimony or go into hiding. In this connection the court stressed that an order for the applicant's arrest had been issued on 4 September 2000.

8. The applicant's appeal against the detention order, likewise his further appeals against some of the decisions extending his detention and all his subsequent applications for release and appeals against refusals to release him, were unsuccessful. In his applications and appeals, he argued that his lengthy detention violated the relevant provisions of the Code of Criminal Procedure.

9. In the course of the investigation, the applicant's detention was extended on several occasions, namely on 15 March 2004 (to 17 August 2004), 2 August 2004 (to 17 December 2004), 10 December 2004 (to 2 July 2005) and 7 June 2005 (to 31 October 2005). In all their detention decisions the authorities relied on the original grounds given for the applicant's detention. The courts stressed that due to the complexity of the case and the large volume of evidence the preparatory proceedings had still not been completed.

10. On 17 October 2005 a bill of indictment was lodged with the Warsaw Regional Court. There were 57 defendants in the case, all charged with numerous counts of attempted murder, extortion, robbery, drug trafficking, theft, illegal possession of firearms, battery and forgery committed in an organised criminal group. In the bill of indictment the prosecutor requested the court to hear evidence from 435 witnesses, including 5 key witnesses, and to take another 627 pieces of evidence listed therein.

11. During the court proceedings the authorities further extended the applicant's detention pending trial on several occasions, namely on 6 October 2005 (to 18 December 2005), 6 December 2005 (to 28 April 2006), 25 April 2006 (to 31 October 2006), 27 October 2006 (to 28 February 2007), 23 February 2007 (to 23 July 2007), 17 July 2007 (to 12 December 2007) and on 19 November 2007 (to 19 March 2008). The courts repeated the grounds previously given for the applicant's continued detention. They relied especially on the complexity of the case and the large number of co-accused.

12. On 3 April 2006 the trial court held the first hearing. It subsequently held some 85 hearings in the case. The proceedings before the Warsaw Regional Court are still pending.

13. On an unspecified date in September 2006 the applicant made a written request to the Warsaw Regional Court for the appointment of a new

lawyer on the ground that he did not “trust” G.R, his court-appointed defence counsel.

14. On 21 September 2006 G.R. informed the Head of Warsaw Regional Court that the applicant claimed to have lost trust in him as his defence counsel and asked the court to decide whether he should still represent the applicant. It transpires from the file that G.R. remained the applicant’s defence counsel.

15. On 4 March 2008 the applicant was released from Detention Centre.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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 May 2006.

THE LAW

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

17. The applicant complained that the length of his detention had been excessive. He relied on Article 5 § 3 of the Convention, which, in its relevant part, 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.”

18. The Government contested that argument.

A. Admissibility

19. 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

20. The applicant's detention started on 18 December 2003, when he was arrested on suspicion of murder, extortion, robbery and drug trafficking committed while acting as part of an organised criminal group, and terminated on 4 March 2008.

21. Accordingly, the period to be taken into consideration amounts to four years and three months.

2. The parties' submissions

(a) The applicant

22. The applicant argued that the length of his detention had been unreasonable.

(b) The Government

23. The Government submitted that the applicant's detention had been justified by the existence of substantial evidence of his guilt, the nature of the offences at issue and the severity of the likely penalty. They underlined that the length of the applicant's detention should be assessed with reference to the fact that he and his co-defendants had acted as an organised criminal group. The risk that the defendants might obstruct the proceedings or tamper with evidence had been aggravated by the fact that not all the members of the group had yet been arrested. Thus, the domestic courts had considered it necessary to detain the applicant and his co-defendants until all the relevant witnesses had been questioned.

24. The Government emphasised that the serious nature of the charges as well as the fact that there had been fifty-four defendants charged with numerous offences had required the authorities to take all necessary measures to secure the proper conduct of the trial. The necessity of the applicant's continued detention had been thoroughly examined by the courts, which on each occasion had given sufficient reasons for their decisions. The applicant's case had been extremely complex on account of the number of charges and defendants, and by reason of the volume of evidence.

25. The Government further submitted that numerous requests by the applicant (for example, for the dactylographic examination of his correspondence, permission to wear his own clothes during the hearings, permission to have a lamp in the detention centre, to have the minutes photocopied, to have certain recordings from Warsaw-Mokotów Detention Centre secured, for part of a book to be read out during a hearing, and to change his court-appointed defence lawyer) contributed to the length of the proceedings and – at the same time – the period of the applicant's detention.

26. Lastly, the Government maintained that the authorities had displayed the requisite diligence in dealing with the applicant's case.

3. *The Court's assessment*

(a) General principles

27. The Court notes 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, ECHR 2006-..., with further references).

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

28. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the likelihood that the crimes in question had been committed by the applicant, (2) the serious nature of the offences with which he had been charged, (3) the severity of the penalty to which he was liable, (4) the need to secure the proper conduct of the proceedings and the risk that the applicant might tamper with evidence. As regards the latter, they relied on the fact that the applicant might attempt to influence witnesses and other co-accused given the fact that he was a member of an organised criminal group.

29. The applicant was charged with numerous counts of attempted murder, armed robbery, extortion, illegal possession of weapons, inflicting grievous bodily harm, drug smuggling, handling stolen goods and car theft committed as part of an organised criminal group.

30. In the Court's view, the fact that the case concerned a member of such a 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).

31. The Court accepts that the reasonable suspicion that the applicant had committed the serious offences could initially warrant his detention. In addition, it notes 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 need to obtain voluminous evidence from many sources, coupled with the fact that in the course of the investigation new suspects had been identified, constituted relevant and sufficient grounds for the applicant's initial detention.

32. Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element

in the assessment of the risk of an accused absconding or reoffending, the seriousness of the charges cannot in itself justify long periods of detention (see, for instance, *Ilijkov v. Bulgaria*, n° 33977/96, §§ 80-81, 26 July 2001).

33. In addition, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal group. In this regard, the Court reiterates that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings (see *Górski v. Poland*, no 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent extensions of the detention (see *Celejewski*, cited above, § 37). It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. Moreover, the Court considers that in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused, or might otherwise obstruct the proceedings, is in the nature of things often particularly high. Indeed, in this context the Court notes that some members of the organised criminal group have not yet been arrested.

34. While all the above factors could justify even a relatively long period of detention, they do not give the domestic courts unlimited powers to extend this measure. Even if the particular circumstances of the case required detention to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify this (see *Wolf v. Poland*, no 15667/03 and 2929/04, § 90, 16 January 2007). In this connection, the Court observes that the applicant has been held in custody for four years and two months.

35. 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 do not justify the overall period of the applicant's detention.

36. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

38. The applicant further complained under Article 6 about the fact that he was not present before the court when it decided on appeals against decisions on the extension of his detention. In the Court's view this complaint falls to be examined under Article 5 § 4 of the Convention, which reads as follows:

“4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

39. The Court reiterates that by virtue of Article 5 § 4, an arrested or detained person is entitled to bring proceedings for the review by a court of the procedural and substantive conditions, which are essential for the “lawfulness”, in the sense of Article 5 § 1, of his or her deprivation of liberty (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 154-B, p. 34, § 65). Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation (see *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22), it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, p. 13, §§ 30–31, and *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47). In particular, in the proceedings in which an appeal against detention order is being examined, “equality of arms” between the parties, the prosecutor and the detained person must be ensured (*Wloch v. Poland*, no. 27785/95, §§ 129-135, ECHR 2000-XI).

40. Turning to the circumstances of the instant case, the Court firstly notes that it cannot examine events complained of by the applicant which took place before 18 February 2006, that is, more than six months before the date on which this complaint was submitted to the Court (see *Depa v. Poland*, no. 32324/00, § 46, 12 December 2006).

41. The procedure for the extension of the applicant’s pre-trial detention during the period under consideration was based on Article 249 § 5 of the Code of Criminal Procedure, which requires the domestic courts to inform the lawyer of a detained person of the date and time of court sessions at which a decision is to be taken concerning extension of pre-trial detention, or an appeal against a decision to impose or to extend pre-trial detention is to be considered.

42. The Court notes that it appears from the applicant’s submissions that on at least one occasion the decision to extend the applicant’s detention was given at a public hearing at which the applicant was present and was legally represented. He was therefore able to personally support his application for release.

43. As regards the remaining sessions at which his detention was prolonged the Court notes that the applicant’s legal-aid lawyer was duly informed about the hearings before the Regional Court and he actively participated in them. In this connection the Court reiterates that in cases where characteristics pertaining to the applicant’s personality and level of maturity and reliability are of importance in deciding on his dangerousness, Article 5 § 4 requires an oral hearing in the context of an adversarial

procedure involving legal representation (see *Waite v. the United Kingdom*, no. 53236/99, § 59, 10 December 2002). The Court considers, however, that in the present case the questions of assessment of the applicant's character or mental state did not arise. His personal attendance at all of the sessions at which his detention on remand had been prolonged was therefore not required, and the presence of his lawyers ensured respect for equality of arms in those proceedings (see *Depa*, cited above, § 48).

44. In view of the above, the Court is of the opinion that the proceedings in which the extension of his detention was examined satisfied the requirements of Article 5 § 4 (see *Telecki v. Poland*, (dec.), no. 56552/00, 3 July 2003, and *Celejewski*, cited above, § 47).

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

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

46. The applicant also complained that the legal assistance he received during the proceedings had been inadequate. The Court considers that this complaint falls to be examined under Article 6 § 1 read in conjunction with Article 6 § 3 (c) of the Convention.

47. 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 ...”

The Court notes that the criminal proceedings against the applicant are still pending (see paragraph 12 above). The Court is consequently not in a position to examine the overall fairness of the proceedings. It cannot speculate either on what the Regional Court will decide or on what the outcome of any appeal might be since that remedy would be available to the applicant if he were to consider that his trial had ultimately infringed the rights on which he relied before the Court.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 100,500 Polish zlotys (PLN) in respect of pecuniary damage and 50,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government found those figures exorbitant.

52. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant has suffered non-pecuniary damage by reason of the length of his detention, 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 1,000 under this head.

B. Costs and expenses

53. The applicant submitted no claim for costs and expenses.

C. Default interest

54. 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 length of the applicant's 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 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into the 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 1 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President