



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

FOURTH SECTION

CASE OF KORZEB v. POLAND

(Application no. 39586/03)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Korzeb 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,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 39586/03) 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 two Polish nationals, Mr Dominik Korzeb and Mr Marcin Korzeb (“the applicants”), on 2 December 2003.

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

3. The applicants alleged that their detention on remand exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention in that they were detained for nearly two years and seven months and over two years and eight months respectively.

4. On 19 September 2006 the Court declared the application partly inadmissible and decided to communicate the complaint under Article 5 § 3 of the Convention concerning the length of the applicants’ detention on remand 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

5. The applicants, Mr Dominik Korzeb and Mr Marcin Korzeb, are brothers. They were born in 1979 and 1981 respectively and live in Ostrów Mazowiecka.

6. The first applicant, Dominik Korzeb, was arrested on 17 July 2001 on suspicion of having raped a minor, broken into a shop in a State school, and caused damage to State property. On 23 July 2001 the Ostrowia Mazowiecka District Court (*Sąd Rejonowy*) remanded him in custody.

7. That decision was justified by a reasonable risk that he would abscond, especially since he had already gone into hiding and had been sought under a “wanted” notice. The court also relied on a serious risk that the applicant would attempt to induce witnesses to give false testimony or obstruct the proper conduct of the proceedings.

8. The other applicant, Marcin Korzeb, was arrested on 20 June 2001 on suspicion of having been an accomplice to the offences allegedly committed by his brother and two other persons. On 22 July 2001 the Ostrów Mazowiecka District Court remanded him in custody.

9. In the course of the investigation, the applicants’ pre-trial detention was extended on several occasions by virtue of decisions of the Ostrołęka Regional Court (*Sąd Okręgowy*) of 9 August and 22 October 2001, and of 23 January 2002. In all their detention decisions the authorities repeatedly relied on the original grounds given for the applicants’ detention.

10. The applicants’ appeals against the decisions extending their detention and all their subsequent numerous applications for release and appeals against refusals to release them were unsuccessful. In their applications and appeals, they argued that the charge against them had been based on unreliable and contradictory evidence. They also relied on their personal circumstances, in particular the need to care for their elderly mother who had twice attempted to commit suicide since the applicants’ detention.

11. On 4 April 2002 the Ostrów Mazowiecka District Prosecutor (*Prokurator Rejonowy*) lodged a bill of indictment with the Ostrołęka Regional Court. The applicants were charged with rape, criminal damage to State property and burglary.

12. On 26 June 2002 the case of a co-defendant, who had meanwhile been apprehended, was joined to the applicants’ case.

13. From 20 May to 9 June 2003 the first applicant, Dominik Korzeb, was serving a prison sentence imposed on him in unrelated criminal proceedings.

14. During the court proceedings the authorities further extended the applicants' detention by decisions of the Ostrołęka Regional Court of 24 April and 23 July 2002, a further decision of an unspecified date, 19 December 2002, another decision of an unspecified date, and lastly, its decision of 29 May 2003. In the latter decision the court extended Dominik Korzeb's detention until 16 July 2003 and Marcin Korzeb's detention until 19 June 2003. The court reiterated the grounds previously given for the applicants' continued detention. In addition, the court justified the measure in question by the need to obtain a psychiatric report on Marcin Korzeb and to apprehend one further suspect who was still at large.

15. On 20 June and 17 July 2003, respectively, the length of the applicants' detention on remand reached the statutory two-year time-limit laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*). From that time on, the detention of Dominik Korzeb was extended by decisions of the Warsaw Court of Appeal of 1 August 2003 (upheld by the same court on 16 September 2003) and 3 October 2003 (upheld on 12 November 2003). Likewise, the detention of Marcin Korzeb was extended by virtue of decisions of the Warsaw Court of Appeal of 13 June 2003 (upheld by the same court on 29 July 2003) and 16 September 2003 (upheld on 24 October 2003).

16. Subsequently, as a result of amendments to the Code of Criminal Procedure and the death of a judge sitting in the case, the Ostrołęka Regional Court was no longer competent to deal with the applicants' case. Consequently, on 20 November 2003 the case was referred to the Ostrowia Mazowiecka District Court and the trial commenced *de novo*.

17. On 16 December 2003 the Warsaw Court of Appeal (*Sąd Apelacyjny*) delivered a decision upholding the preventive measure in respect of both applicants. Their pre-trial detention was considered to be justified by the fact that the reasons initially relied on were still valid and that the proceedings were pending before a newly composed court. This decision was upheld by the same court on 26 January 2004.

18. On 2 February 2004 the first hearing was held before the Ostrowia Mazowiecka District Court. It was followed by hearings on 19 February and 4 March 2004.

19. On 4 March 2004 the Ostrowia Mazowiecka District Court convicted the applicants as charged and sentenced each of them to six years' imprisonment.

20. The applicants appealed. They were kept in detention pending the outcome of their appeal.

21. On 3 June 2004 the Ostrołęka Regional Court upheld the first-instance judgment.

22. The applicants failed to lodge a cassation appeal (*kasacja*) with the Supreme Court (*Sąd Najwyższy*).

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. 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 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

24. The applicants complained that the length of their detention on remand had been excessive. They relied on Article 5 § 3 of the Convention, the relevant part of which 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.”

25. The Government contested that argument.

A. Admissibility

26. 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

27. The detention of the first applicant, Dominik Korzeb, started on 17 July 2001 when he was arrested on suspicion of having committed rape, criminal damage to State property and burglary. From 20 May to 9 June 2003 the applicant was serving a prison sentence imposed in a separate criminal case. The detention of the other applicant, Marcin Korzeb, started on 20 June 2001 when he was arrested on suspicion of having been

an accomplice to the offences allegedly committed by his brother and two other persons.

On 4 March 2004 the Ostrowia Mazowiecka District Court convicted the applicants as charged and sentenced each of them to six years' imprisonment. As from that date they were detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and, consequently, that period of their detention falls outside the scope of Article 5 § 3 (see *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

On 3 June 2004 the Ostrołęka Regional Court upheld the first-instance judgment and no cassation appeal was lodged with the Supreme Court.

28. Accordingly, the period to be taken into consideration amounts to two years, six months and twenty-eight days with regard to the first applicant, Dominik Korzeb, and two years, eight months and fourteen days with respect to the other applicant, Marcin Korzeb.

2. The parties' submissions

(a) The applicants

29. The applicants submitted that the length of their pre-trial detention had been excessive and that the measure had not been sufficiently justified by the authorities.

They argued that they had been wrongly considered as fugitives merely because of their absence from their usual place of residence for a short time when they had been on summer holiday. The applicants also denied that they had attempted to induce witnesses to give false testimony and stressed that during their trial no witness had been charged with perjury in connection with providing the defendants with an alibi. Moreover, there had been no justification for keeping them in detention merely because of the difficulties in arresting a co-suspect and for continuing to apply the measure after all the witnesses had been examined and the pre-trial investigation closed and after the trial had reached an advanced stage. Finally, the inactivity of the Ostrołęka Regional Court from 5 April 2002 to 20 November 2003, before the case was transferred to the Ostrowia Mazowiecka District Court, had unnecessarily extended their detention.

(b) The Government

30. The Government considered that the applicants' pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by "relevant" and "sufficient" grounds, in particular, the existence of a reasonable suspicion throughout the entire period of the applicants' pre-trial detention that they had committed the offences they had been charged with. Moreover, the Government considered that the applicants' protracted detention pending

trial was justified by a genuine public interest requirement, namely the fact that the applicants had been charged with serious offences and were facing a lengthy prison sentence. The Government also emphasised that the authorities had relied on the serious risk that the applicants would abscond, particularly since they had gone into hiding immediately after they had committed the offences and had been sought pursuant to a “wanted” notice. Finally, the Government noted that the applicants’ pre-trial detention was justified by the risk that they would obstruct the proceedings and tamper with evidence, especially in view of the facts that the victim was a minor, a number of witnesses had been coerced into providing the defendants with false alibis, there were as many as four suspects in the case and that the identity and whereabouts of one of them had remained unknown until the final stage of the investigation.

Furthermore, the Government argued that the domestic authorities had shown due diligence, as required in cases against detained persons. Even though the case was not of a complex nature, the process of obtaining evidence had been particularly difficult due to the defendants’ numerous motions for evidence to be taken and the need to obtain extensive psychological reports on the defendants and the victim. The Government submitted that not all of the defendants had been apprehended at the same time, which had caused some delays in the pre-trial proceedings. Subsequently, one co-defendant had escaped while the trial was pending. The Government did not comment on the period when the trial was pending before the Ostrołęka Regional Court; however they noted that after the case had been transferred to the Ostrowia Mazowiecka District Court, the trial was concluded within less than four months.

3. The Court’s assessment

(a) General principles

31. 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

32. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicants, relied principally on two grounds, namely (1) the severity of the penalty to which they were liable, and (2) the need to secure the proper conduct of the proceedings in the light

of the risk that the applicants might attempt to induce witnesses to give false testimony or abscond. As regards the latter, the authorities alleged that the defendants had intimidated witnesses into providing the defendants with false alibis. The authorities also relied on the fact that the applicants and their co-defendants had gone into hiding immediately after they had committed the offences alleged against them.

33. The Court accepts that a reasonable suspicion against the applicants of having committed the offences could initially warrant their detention. Also, the severity of the sentence likely to be imposed constituted a valid ground for the applicants' initial detention.

34. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts – namely, the risk of the applicants' going into hiding and the risk that they would tamper with evidence – were “relevant” and “sufficient” (see *Kudła*, cited above, § 111).

35. As regards the risk that the applicants would go into hiding, the Court notes that it transpires from the material submitted that only the first applicant, Dominik Korzeb, was sought by the police under a “wanted” notice. The second applicant, Marcin Korzeb, was arrested soon after the alleged offences were committed. Moreover, the Court is not convinced that the fact that one of the applicants' co-defendants remained a fugitive throughout almost the entire period of the investigation and that he absconded while undergoing psychiatric observation, constituted a valid reason to fear that the applicants would also go into hiding. Finally, the Court recalls that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative means of guaranteeing his appearance at the trial (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). However, in the instant case no consideration was ever given by the authorities to applying alternative measures to avoid the risk that the applicants would abscond.

36. Furthermore, the Court observes that the risk that the applicants would tamper with the evidence was not sufficiently justified by the authorities when deciding to extend the applicants' pre-trial detention. The Government's submission that the applicants had in fact induced several witnesses to give false testimony is not supported by any of the documents submitted and, in the Court's opinion, cannot for that reason be relied upon.

37. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” and “sufficient” to justify the applicants' detention for over two and a half years.

38. Although the above finding would normally absolve the Court from assessing whether or not the proceedings were conducted with the diligence required under Article 5 § 3 (see *McKay*, cited above, § 44), in the present case the Court cannot but note that the investigation lasted ten months and that the case was pending for a further nineteen months before the Ostrołęka

Regional Court. The Government noted that when the case was referred to the Ostrowia Mazowiecka District Court, it was tried and concluded within less than four months. That being said, the Government, although conceding that the case was not complex, failed to adduce any reasons for the long period of inactivity of the Ostrołęka Regional Court prior to the referral of the case to the District Case.

In the circumstances, the Court finds that the authorities failed to act with all due diligence in handling the applicants' case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicants claimed 50,000 euro (EUR) in respect of pecuniary and non-pecuniary damage.

42. The Government did not make any comment on the claim.

43. The Court does not discern any causal link between the violation found and any pecuniary damage alleged; it therefore rejects this claim. Moreover, the Court considers that in the circumstances of the case, the above finding of violation of Article 5 § 3 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicants.

B. Costs and expenses

44. The applicants did not make a claim for any costs and expenses incurred.

C. Default interest

45. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention in respect of both applicants;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the applicants' alleged non-pecuniary damage;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President