



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

FOURTH SECTION

CASE OF PIOTROWSKI v. POLAND

(Application no. 45217/06)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Piotrowski 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,
Ledi Bianku, *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. 45217/06) 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 Tomasz Piotrowski (“the applicant”), on 23 October 2006.

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

3. On 29 May 2007 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, Mr Tomasz Piotrowski, is a Polish national who was born in 1966 and lives in Łódź.

Criminal proceedings against the applicant and his detention on remand

5. On 30 April 2003 the applicant was arrested on suspicion of aiding and abetting robbery committed by an organised criminal group. On that

day the Łódź District Court (*Sąd Rejonowy*) remanded him in custody. It relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged. The court also considered that there was a risk that he might obstruct the proceedings since evidence given by him was contradictory to the material gathered by the prosecution. It referred to the likelihood of a severe prison sentence being imposed on the applicant and the need to secure the proper conduct of the proceedings.

6. On 18 July 2003 the Łódź Regional Court (*Sąd Okręgowy*) extended the applicant's detention until 30 September 2003. It relied on the likelihood of a severe prison sentence being imposed on the applicant and the complexity of the case. It also stressed that his detention was justified by the need to obtain further evidence, in particular to obtain expert reports, to take evidence from witnesses and to arrest all members of the criminal group.

7. On 26 September 2003 the Łódź Regional Court extended the applicant's detention until 17 February 2004. It relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged. It referred to the complexity of the case and the need to obtain further evidence, in particular to obtain expert reports and take evidence from witnesses. It further considered that the need to secure the proper conduct of the proceedings justified holding him in custody.

8. The applicant's detention was subsequently extended by the Łódź Regional Court on 23 January 2004. The court repeated the grounds given in its previous decisions.

9. On 9 March 2004 a bill of indictment was lodged with the Łódź Regional Court. The bill of indictment comprised eighty-three charges brought against seventeen defendants. The applicant was charged with several counts of aiding and abetting robbery committed by members of an organised criminal group.

10. On 16 March and 1 December 2004 the Łódź Regional Court extended the applicant's detention. The court relied on the grounds stated in the previous decisions.

11. On 26 April 2005 the Łódź Court of Appeal (*Sąd Apelacyjny*) extended the applicant's detention until 31 August 2005. On 10 August the court ordered that the term should be extended further, until 31 December 2005. On 29 December 2005 it ordered that the applicant be kept in custody until 31 March 2006. The next decision was given on 22 March 2006; it extended the applicant's detention until 30 June 2006.

12. The court relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged. It also referred to the likelihood of a severe prison sentence being imposed on him and to the complexity of the case.

13. On 28 June 2006 the Łódź Court of Appeal extended the applicant's detention until 31 August 2006. The court repeated the grounds given in the previous decisions.

14. In the course of the investigation and the court proceedings the applicant made numerous, but unsuccessful, applications for release and appealed, likewise unsuccessfully, against refusals to release him and against decisions extending his detention.

15. Between 25 October 2004 and 16 August 2006 the court held seventy-six hearings.

16. On 23 August 2006 the Łódź Regional Court convicted the applicant as charged and sentenced him to five years' imprisonment and a fine. He appealed. The applicant's detention was subsequently extended on two occasions.

17. On 20 December 2007 the applicant was released from detention.

18. The proceedings are currently pending before the court of second instance.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The relevant domestic law and practice concerning the imposition of detention on remand (*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

20. The applicant complained that the length of his 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."

21. The Government contested that argument.

A. Admissibility

22. 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

23. The applicant's detention started on 30 April 2003, when he was arrested on suspicion of aiding and abetting robbery. On 23 August 2006 the Regional Court convicted him as charged.

From that date on 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 v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

24. Accordingly, the period to be taken into consideration amounts to 3 years, 3 months and 24 days.

2. The parties' submissions

(a) The applicant

25. The applicant argued that the length of his detention had been unreasonable. Furthermore, he stressed that he had not been accused of being a member of an organised criminal group.

(b) The Government

26. The Government first presented some statistical data, indicating that in the years 2000-2005 the number of indictments and convictions in cases concerning organised crime had increased both in absolute terms and in relation to other crimes. In 2004 there were 617 indictments in such cases and 220 persons were convicted. They argued that in organised crime cases the authorities were faced with particular problems relating to the taking and assessment of evidence and various logistical issues.

27. With reference to the present case, the Government submitted that the applicant's detention had not been unreasonably lengthy. They argued that there had been valid reasons for holding him in detention for the entire period in question. They stressed that the applicant's detention had been justified by the strong suspicion that he had committed the offences with which he had been charged and the fact that the seriousness of the charge against him attracted a heavy sentence. They further argued that the

applicant's detention had been warranted by the risk that he would obstruct the proper conduct of the proceedings, in particular by tampering with evidence.

28. Lastly, the Government justified the length of the applicant's detention by the complexity of the case, which stemmed from the number of defendants, the charges brought against them and the fact that the applicant had committed the crime in the ambit of the activities of an organised criminal group. The Government maintained that the authorities had displayed adequate diligence and dealt speedily with the applicant's case.

3. *The Court's assessment*

(a) General principles

29. The Court reiterates 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 judgements (see, among many other authorities, *Kudla*, cited above, § 110 et seq.; 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

30. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the need to secure the proper conduct of the proceedings, (2) the severity of the penalty to which he was liable; and (3) the complexity of the case (see paragraphs 5, 6, 7, 8 and 12 above).

31. The applicant was charged with numerous counts of aiding and abetting robbery committed by members of an organised criminal group (see paragraph 9 above). However, the applicant himself was not charged with being a member of such a group.

32. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to obtain voluminous evidence constituted valid grounds for the applicant's initial detention.

33. 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 assessment of the risk of absconding or reoffending, the seriousness of the charges cannot by itself justify long periods of detention (see, for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

34. As regards the risk of interfering with witnesses or obstructing the proceedings by other unlawful means, the Court cannot accept that it constituted relevant and sufficient grounds for the entire period in question. Firstly, it notes that the judicial authorities appeared to presume such risks on the basis of the likelihood of a severe penalty being imposed on the applicant and on the nature of the offences in question (see, in particular, the District Court's decision of 30 April 2003, in paragraph 5 above). It notes however that the relevant decisions did not put forward any argument capable of showing that these fears were well-founded. The Court considers that such a generally formulated risk flowing from the nature of the offences with which the applicant was charged may possibly be accepted as the basis for his detention at the initial stages of the proceedings. Nevertheless, in the absence of any other factor capable of showing that the risk of interfering with witnesses actually existed, the Court cannot accept that ground as a justification for holding the applicant in custody for the entire period in question.

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 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 65,000 euros (EUR) in respect of pecuniary and EUR 100,000 in respect of non-pecuniary damage.

38. The Government maintained that the claimed sum was exorbitant and highly speculative.

39. 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 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

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

C. Default interest

41. 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*
 - (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, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (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 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President