



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

FOURTH SECTION

CASE OF TOMECKI v. POLAND

(Application no. 47944/06)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Tomecki 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. 47944/06) 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 Mr M. Tomecki on 14 November 2006.

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

3. On 5 July 2007 the President of the Chamber to which the case has been allocated 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 1968 and lives in Raciborz. He is currently detained in the Racibórz Remand Centre.

5. On 15 December 2004 the applicant was arrested on suspicion of committing 11 crimes, including forming and running a criminal gang, and detained on remand pursuant to a decision given by the Gliwice District Court on charges of repeated robbery and membership of an organised gang. On 19 January 2005 the Katowice Regional Court dismissed the applicant’s appeal against the detention order, stating that the application of the most severe preventive measure was justified by the existence of strong evidence

of his guilt, in particular testimonies of co-suspects and witnesses. Furthermore, having regard to the fact that the applicant was domiciled in the Netherlands and had been arrested on the basis of a wanted notice, the court concluded that there was a justified fear that the applicant might go into hiding and obstruct the proper course of the proceedings. The court also stressed the severity of the anticipated sentence and the fact that the applicant had a previous criminal record.

6. On 15 February 2005 the Katowice Regional Prosecutor filed a bill of indictment against the applicant with the Katowice Regional Court. The applicant was charged with setting up a criminal gang and running its activity, several accounts of aggravated theft with the use of violence, attempted robbery with the use of violence and burglary committed following his relapse into crime. The prosecutor requested that 14 witnesses be heard and the testimonies of a further 8 witnesses be read out and 39 pieces of evidence be taken.

7. On 15 March 2005 the applicant's detention was prolonged for three months. The applicant's appeal was dismissed on 13 April 2005 by the Katowice Court of Appeal. The decision was based on strong suspicion that the applicant had committed the offences in question, which was supported by the evidence from witnesses. The courts attached importance to the grave nature of those offences and to the likelihood of a severe sentence of imprisonment being imposed on the applicant. They further considered that the need to secure the proper conduct of the proceedings, especially the need to verify evidence from suspects and witnesses and to obtain fresh evidence from witnesses, justified holding the applicant in custody.

8. On 19 July 2005 the Gliwice Regional Court dismissed the applicant's request for release, considering that he had previously tried to evade justice by absconding and that the evidence against him sufficiently supported the charges laid against him.

9. On 2 August 2005 the Wodzislaw Division of the Gliwice Regional Court refused to release the applicant, relying on the high likelihood that he had committed the offences with which he had been charged. The court referred to the evidence gathered so far in the proceedings and to the fact that one of the accused had acknowledged that he had committed the offences in question. It also noted that before his arrest the applicant, having absconded, had been sought pursuant to a wanted notice. The court further noted that he lived abroad, which made it likely that he would abscond again.

10. On 31 August 2006 the court extended the applicant's detention until 14 December 2006 relying on the fact that the applicant had tried to exert pressure upon two other accused and, if released, he could hinder the proper conduct of the proceedings. The decision was upheld on 27 September 2006.

11. On 21 November 2006 the Wodzislaw Division of the Gliwice Regional Court refused to release the applicant, essentially relying on the same grounds as in its refusal of 2 August 2005.

12. On 27 November 2006 one of the accused who had been released pending trial did not appear at the scheduled court hearing. Hence, the hearing could not be held. The court decided to request the Katowice Court of Appeal to extend the applicant's detention until 14 June 2007. On 13 December 2006 the motion was partly allowed and the applicant's detention prolonged until 31 March 2007. The court held that the prerequisites justifying the application of this preventive measure remained valid. It noted that the applicant faced serious charges and referred to the fact that he had attempted to influence the testimonies of the co-accused. Furthermore, the court stressed the fact that the applicant had in the past tried to evade justice by going into hiding. The court referred to the fact that the applicant had previously absconded and observed that the judicial proceedings were coming to an end and that only one witness had still to be heard.

13. Hearings in the case were held on 23 May, 24 June, 5 July, 6 July 2005, 22 August, 21 September, 28 November and 19 December 2005; 23 January, 27 March, 27 April, 5 June, 26 June, 6 August, 19 October and 27 November 2006, 12 January, 26 February, 5 March, 11 April and 16 May 2007. The Katowice Regional Court held in all 59 hearings in the case.

14. On 6 June 2007 the Regional Court gave judgment. The applicant was convicted as charged and sentenced to seven years' imprisonment. The period of his detention was counted towards the sentence.

15. The parties appealed. The applicant is being kept in detention pending appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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

17. 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.”

A. Admissibility

18. The Government submitted in the first place that the applicant had not exhausted the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention, in that he had failed to appeal against some of the decisions prolonging his detention or dismissing his motions for release.

19. The Court reiterates that it is well established in its case-law that an applicant must make normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Yaşa v. Turkey* judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 71).

20. In the present case the applicant lodged appeals against most of the decisions prolonging his detention, including the decisions taken in the final stage of the proceedings, when the length of the detention had reached its most critical point. The Court considers that the purpose of the remedies used by the applicant was to obtain a review of his detention pending trial. In the circumstances of the case these remedies constituted adequate and effective remedies within the meaning of Article 35 of the Convention as their aim was to obtain his release.

21. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in a previous case against Poland (see *Buta v. Poland*, no. 18368/02, 28 November 2006) and that the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

22. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court 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 15 December 2004, when he was arrested on suspicion of having committed eleven crimes. On 6 June 2007 the Katowice 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 (cf. *Kudła*, cited above, § 104).

Accordingly, the period to be taken into consideration amounts to 2 years, 5 months and 21 days.

2. The parties' submissions

(a) The applicant

24. The applicant argued that the length of his detention had been unreasonable, in particular in view of the fact that it had been prolonged beyond the statutory 2-year period. In his opinion, the courts had not given sufficient and relevant reasons for the exceptional extension of his detention beyond this time-limit. There had been no reasons to believe that he would obstruct the proceedings or avoid justice.

(b) The Government

25. The Government firstly presented some statistical data, indicating that in the years 2000-2005 the number of indictments and convictions in cases concerning organised crime 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 with various logistical issues.

26. The Government submitted that the applicant's pre-trial detention had been justified by the existence of substantial evidence of his guilt, the nature of the offences with which he had been charged and the severity of the anticipated penalty. They underlined that the length of the applicant's detention should be assessed in the light of the fact that he had acted in an organised criminal group. The risk that the defendants might obstruct the proceedings or tamper with evidence had been aggravated by the fact that

they had been closely linked as members of a criminal gang and that the applicant had previously gone into hiding. Only the isolation of the members of the group could prevent them from coordinating their testimonies or influencing witnesses. Thus, the domestic courts had considered it necessary to detain the applicant until all relevant witnesses had been questioned.

27. The Government asserted that 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. Furthermore, the applicant's case had been extremely complex. Lastly, they submitted that the authorities had displayed special diligence in the conduct of the proceedings.

3. The Court's assessment

(a) General principles

28. 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

29. The Court observes that the present case concerned a serious crime, namely membership and leadership of a criminal gang, robberies and theft committed with use of violence. Thus it was a classic example of organised crime, by definition presenting more difficulties for the investigation authorities and, later, for the courts in determining the facts and the degree of responsibility of each member of the group. It is obvious that in cases of this kind, continuous control and limitation of the defendants' contact among themselves and with other persons may be essential to avoid their absconding, tampering with evidence and, most importantly of all, influencing, or even threatening, witnesses. Accordingly, longer periods of detention than in other cases may be reasonable.

30. In the Court's view, the fact that the case concerned a member of a such 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 observes that in their decision to remand the applicant in custody the judicial authorities relied on the following principal grounds: the reasonable suspicion against the applicant, the serious nature of the offences with which he had been charged, the severity of the penalty to

which he was liable, the risk of his influencing the testimonies of witnesses and of the co-accused or obstructing the proceedings by other means and the need to obtain extensive evidence (see paragraphs 5, 8, 10 and 14 above). Furthermore, the Government stated that the particular complexity of the case, as it concerned organised crime, additionally justified the applicant's detention.

32. The suspicion that the applicant had committed serious offences was confirmed in particular by the testimonies of the witnesses and the co-accused and initially warranted his detention. Therefore, the only question which remains is whether and when the continuation of his detention ceased to be warranted by "relevant" and "sufficient" reasons.

33. The Court considers that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants who had been charged with acting as part of an organised criminal gang. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the existence of a general risk flowing from the organised nature of the applicant's alleged criminal activities, constituted relevant and sufficient grounds for prolonging his detention during the time necessary to complete the investigation, to draw up the bill of indictment and to hear evidence from the accused.

34. The Court notes that the judicial authorities also relied on the likelihood that a severe sentence might be imposed on the applicant, given the serious nature of the offences at issue. In this connection, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending. It acknowledges that in view of the seriousness of the accusations against the applicant, the authorities could justifiably have considered that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilykov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). In the circumstances of the present case, the Court finds that the severity of the anticipated penalty alone, or in conjunction with the other grounds relied on by the authorities, cannot constitute a "relevant and sufficient ground" for holding the applicant in detention for a considerably long period.

35. As regards the risk of pressure being brought to bear on witnesses or of the obstruction of the proceedings by other unlawful means, the Court notes that at the initial stages of the proceedings the judicial authorities appeared to presume that such risks existed on the ground that the applicant had been a member of an organised criminal group. The subsequent decisions to prolong the applicant's detention pending trial underlined the fact that these fears were well-founded, since the applicant had attempted to exert pressure upon the accused (see paragraphs 11 and 13 above). The Court also observes that the risk of absconding in the applicant's case was

particularly high, since he had no permanent address in Poland and his residence was in the Netherlands. Accordingly, the Court accepts that, in the special circumstances of the case, the risk flowing from the nature of the applicant's criminal activities actually existed and justified holding him in custody for the relevant period.

36. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire relevant period.

37. The Court lastly observes that the proceedings were of considerable complexity, regard being had to the number of defendants, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. Nevertheless, the hearings in the applicant's case were held regularly and at short intervals (see paragraph 15 above). The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings. The length of the investigation and of the trial was justified by the exceptional complexity of the case.

38. Having regard to the foregoing, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

39. The applicant further complained that he was arrested and detained on remand despite his innocence and that the evidence against him relied on by the prosecuting authorities was insufficient. He argued that the evidence against him was fabricated by the prosecuting authorities and that, as a result, his detention was unlawful and arbitrary. He relied on Article 5 § 1 of the Convention.

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

40. The Court reiterates that the reasonableness of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c). Having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A

no. 182, p. 16, § 32). However, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at a later stage of the process of criminal investigation (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27 § 55).

41. In the light of the documents in the file, there is no indication that there was no reasonable suspicion against the applicant which provided grounds for his detention or that the authorities did not have at their disposal evidence in support of the imposition of detention.

42. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

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 no violation of Article 5 § 3 of the Convention.

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