



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

FOURTH SECTION

CASE OF MIROSLAW JABŁOŃSKI v. POLAND

(Application no. 33985/05)

JUDGMENT

STRASBOURG

8 July 2008

FINAL

01/12/2008

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 Mirosław Jabłoński 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,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 33985/05) 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 Mirosław Jabłoński (“the applicant”), on 7 September 2005.

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

3. On 27 September 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Warsaw.

5. On 18 December 2003 the applicant was arrested by the police on suspicion of having committed assault causing death and dealing in stolen goods.

6. On 19 December 2003 the Warsaw District Court (*Sąd Rejonowy*) remanded him in custody. It relied on a reasonable suspicion that the applicant had committed the offences with which he had been charged and on the risk that he might induce witnesses to give false testimony. Further,

the court referred to the likelihood of a severe prison sentence being imposed on the applicant.

7. In the course of investigation, the applicant's detention was extended by the Ostrołęka Regional Court (*Sąd Okręgowy*) on 4 March 2004, 11 May 2004 and 10 December 2004. In its decisions, the court relied on the likelihood that the applicant had committed the offence while acting with numerous co-suspects in the ambit of the activities of an organised criminal group. Further, it referred to the need to obtain evidence, in particular: to take evidence from numerous witnesses and suspects and to confront a key witness with the injured persons.

8. On 29 September 2004 the applicant was convicted and sentenced to one year and four months' imprisonment by the Wyszaków District Court for failure to pay maintenance and threatening behaviour, charges which has been examined in separate sets of proceedings. The court offset the sentence against the period of pre-trial detention.

9. On 23 June 2005 the applicant and twenty three suspects were indicted before the Ostrołęka Regional Court. The bill of indictment against the applicant comprised charges of assault causing death and dealing in stolen goods, committed in the ambit of the activities of an organised criminal group. However, the applicant was not charged with being a member of such a group.

10. The applicant's detention was extended by the Ostrołęka Regional Court on 9 May 2005, 8 December 2005, 9 June 2006, 11 September 2006, 11 June 2007 and on 17 October 2007. The court repeated the grounds given in previous decisions. The court also stated that the reasons for the applicant's detention were still valid and relied on the likelihood that a severe prison sentence would be imposed on him.

11. The applicant appealed against decisions extending his detention. The appeals were dismissed on 1 July 2005, 20 January 2006, 11 July 2006 and 20 October 2006.

12. On 1 February 2006 the court ordered that the cases of 8 of the accused be dealt with in separate proceedings.

13. On 16 March 2006 and 23 March 2006 the cases of two of the co-accused were earmarked for separate proceedings.

14. In the meantime, on 9 September 2005, on 27 March 2006 and on 19 March 2007 the applicant lodged unsuccessful applications for release. The court stated that the reasons for his detention were still valid.

15. Between 13 March 2006 and 4 June 2007 seventy-one hearings took place.

16. On 11 June 2007 the Ostrołęka Regional Court convicted the applicant as charged and sentenced him to seven years' imprisonment. The applicant appealed.

17. The case is pending before the Warsaw Appellate Court (*Sąd Apelacyjny*).

18. The applicant failed to lodge a complaint about a breach of the right to a trial within a reasonable time with the domestic court, under section 5 of the Law of 17 June 2004 (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”).

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The relevant domestic law and practice concerning the imposition of detention during judicial proceedings (*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 during the proceedings 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 Government submitted that the applicant had not exhausted all the remedies provided for by Polish law in that he had failed to appeal against several of the decisions imposing or extending his detention. The applicant did not comment.

23. The Court observes that the applicant did not appeal against the first four decisions extending his pre-trial detention, taken several months after his arrest. However, during the judicial proceedings he lodged appeals against all decisions extending his pre-trial detention and he lodged three applications for release. The Court has already considered that those remedies, namely an appeal against a detention order and/or a request for release, whether submitted to the prosecutor or to the court, depending on

the stage of the proceedings, and an appeal against a decision to extend detention, serve the same purpose under Polish law. Their objective is to secure a review of the lawfulness of detention at any given time in the proceedings, at both the pre-trial and trial stages, and to obtain release if the circumstances of the case no longer justify continued detention (see *Iwańczuk v. Poland* (dec.), no. 25196/94, 9 November 2000, and *Wolf v. Poland*, nos. 15667/03 and 2929/04, § 78, 16 January 2007). It follows from the Court's case-law that the applicant is not required to appeal against each and every decision extending his detention (see, *a contrario*, *Bronk v. Poland* (dec.), no. 30848/03, 11 September 2007).

24. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

25. The applicant's detention started on 18 December 2003, when he was arrested on suspicion of having committed an assault causing death and dealing in stolen goods. On 11 June 2007 the Ostrołęka Regional Court convicted him as charged.

26. However, between 1 December 2004 and 1 April 2006 the applicant served a prison sentence which had been imposed on him in other criminal proceedings. 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.

Accordingly, the period to be taken into consideration amounts to two years, one month and twenty-four days.

2. The parties' submissions

(a) The applicant

27. The applicant submitted in general terms that his application lodged with the Court was justified. He argued that keeping him in pre-trial detention for such a lengthy period of time had infringed his human rights and the Convention.

(b) The Government

28. The Government argued that the length of the applicant's detention had not been excessive. They maintained that the applicant's detention had been justified by the existence of a serious suspicion that he had committed the offences in question and the serious nature of those crimes. Furthermore, the pre-trial detention had been justified in the light of the likelihood of a severe sentence of imprisonment being imposed on the applicant and the risk of obstructing the proceedings.

29. The courts had given relevant and sufficient reasons for holding the applicant in custody for the entire period in question and had diligently supervised whether there was still a need to keep him in custody. They noted that the decisions on extending the applicant's detention had not been taken routinely, but on an individual basis.

30. Lastly, the Government stressed that the proceedings against the applicant could be regarded as complex on account of the volume of evidence obtained in the investigation and subsequently examined at the trial. The proceedings had been conducted diligently. They mentioned that the court had undertaken immediate measures to discipline witnesses who failed to appear.

3. The Court's assessment

(a) General principles

31. 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 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 applicant, relied principally on two grounds, namely (1) the severity of the penalty to which he was liable; (2) the need to secure the proper conduct of the proceedings, particularly the risk that the applicant might tamper with evidence. As regards the latter, they did not, however, specify any concrete grounds justifying their opinion (see paragraphs 6 and 7 above).

33. The Court accepts that the reasonable suspicion that the applicant had committed the offences could initially have warranted his detention. Also, the need to secure the proper conduct of the proceedings, in particular

the process of obtaining evidence from witnesses, constituted a valid ground for the applicant's 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 severity of the anticipated sentence and the risk that the applicant would tamper with evidence – were “sufficient” and “relevant” (see, *Kudła* cited above, § 111).

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 absconding or re-offending, the gravity of the charges cannot by itself justify long periods of detention (see, for instance, *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006).

35. As regards the risk that the applicant would tamper with evidence, the Court is not persuaded that it constituted a valid ground for the entire length of his pre-trial detention. Firstly, it notes that the Warsaw District Court, when originally remanding the applicant in custody, made only a general reference to the risk that the applicant would tamper with evidence (see, in particular, the District Court's decision of 19 December 2003, in paragraph 6 above). Secondly, the Court notes that the relevant decisions did not contain any argument capable of showing that these fears were well-founded. 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 his influencing witnesses actually existed, the Court cannot accept that ground as a justification for holding the applicant in custody for the entire period in question.

36. The Court agrees with the Government that the criminal case against the applicant can be considered complex, regard being had to the nature of the charges and the scope of the evidence to be taken. The Court's attention has been drawn in particular to the significant number of witnesses and hearings (see paragraph 15 above). However, it appears that the authorities referred to the complexity of the case in a very general manner and failed to indicate how the nature of the case required the applicant's continued detention. The Court notes that the courts were faced with the particularly difficult task of trying a case involving an organised criminal group. However, it has to be noted that the applicant was not charged with being a member of such a group.

37. The Court notes that during the entire period in question the authorities failed to envisage the possibility of imposing other preventive measures on the applicant, such as bail or police supervision, expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

The Court would recall 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 the 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. 33492/6, § 83, 21 December 2000).

38. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” or “sufficient” to justify the applicant’s being kept in detention for two years, one month and twenty-four days. In these circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence.

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

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

40. The applicant further complained under Article 6 § 1 of the Convention that the length of the criminal proceedings had exceeded a “reasonable time” within the meaning of this provision.

41. 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...”

42. The Court observes that the applicant failed to avail himself of the remedy provided for by the 2004 Act, which the Court has found to be effective in respect of the length of judicial proceedings (see *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005, and *Charzyński v. Poland* (dec.), no. 15212/03, 1 March 2005).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

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

46. The Government considered that the sum claimed was exorbitant and irrelevant.

47. 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

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

C. Default interest

49. 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 pre-trial 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 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President