



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

FOURTH SECTION

CASE OF KONRAD v. POLAND

(Application no. 33374/05)

JUDGMENT

STRASBOURG

8 July 2008

FINAL

08/10/2008

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 Konrad 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. 33374/05) 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 German-Polish national, Mr Thomas Konrad (“the applicant”), on 16 August 2005.

2. The applicant was represented by Mr Andrzej Drania, a lawyer practising in Gdynia. 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 pre-trial detention exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 27 September 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**

5. The applicant was born in 1964 and lives in Berlin. He is currently detained in the Sztum Remand Centre.

A. Criminal proceedings against the applicant and his pre-trial detention

6. On 16 September 2004 the Gdańsk Regional Court (*Sąd Okręgowy*) issued a European Arrest Warrant against the applicant. He was suspected of being a member of an organised criminal group, taking hostages and depriving a third person of his liberty.

7. On 22 October 2004 the applicant was arrested in Berlin.

8. On 3 December 2004 the Berlin Court of Appeal (*Kammergericht*) ordered that the applicant be extradited to Poland.

9. On 13 December 2004 the applicant crossed the German-Polish border and was transported to the Gdańsk Detention Centre.

10. The applicant's detention was repeatedly extended, by several decisions of the Gdańsk Regional Court and the Gdańsk Court of Appeal (*Sąd Apelacyjny*). In their decisions the courts relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, on their serious nature and on the risk that the applicant could obstruct the proceedings.

11. Appeals by the applicant against the decisions to extend his detention were unsuccessful. The Gdańsk Court of Appeal dismissed them on 12 July 2006 and 10 January 2007 respectively.

12. On 14 June 2006 the Regional Prosecutor lodged a bill of indictment with the Gdańsk Regional Court. The applicant was charged with six offences, including setting up and leading an organised criminal group, aiding and abetting kidnap for ransom, kidnapping two persons and depriving them of liberty in a particularly cruel manner. The bill of indictment comprised forty-four charges against twenty defendants.

13. At a hearing held on 21 December 2006 the proceedings were severed and they were continued in respect of the applicant and another co-accused.

14. On 6 June 2007 the Gdańsk Court of Appeal extended the applicant's detention until 12 December 2007. It relied on the serious nature of the offences with which the applicant had been charged and stressed that their serious nature constituted sufficient grounds to assume that the applicant would obstruct the proceedings. In the court's view, the risk of obstruction did not have to be confirmed by any particular behaviour of the applicant. The court also held that the extension of the pre-trial detention for a period exceeding two years was justified by "the particularly complicated circumstances of the case" and "the need to carry on the investigation".

15. On 4 December 2007 the Gdańsk Court of Appeal extended the applicant's detention for a further three months, until 12 March 2008. The court reiterated the reasons given on the previous occasions and, relying on the fact that a European Arrest Warrant had been issued against the applicant, added that there had been a serious risk that the applicant might abscond. The court examined the course of the trial and found that the

reason the proceedings had not been terminated was the high complexity of the case, and that the Regional Court had conducted the proceedings with no delays.

16. The applicant appealed and, on 9 January 2008, the Gdańsk Court of Appeal upheld the challenged decision, holding that the anticipated severe sentence had at that time been of secondary importance and that the main reason justifying keeping the applicant in detention was the risk that he would obstruct the proceedings and tamper with evidence.

17. On 5 March 2008 the Gdańsk Court of Appeal again extended the applicant's detention until 12 June 2008. The court relied on the same reasons as on previous occasions. Following the applicant's appeal, on 29 April 2008 the Gdańsk Court of Appeal upheld the challenged decision.

18. The applicant remains in detention and the proceedings are pending before the first-instance court.

B. The applicant's complaint against alleged ill-treatment in detention

19. On 28 October 2005 the applicant requested the Kwidzyń District Prosecutor (*Prokurator Rejonowy*) to initiate criminal proceedings against police officers. The applicant asserted that he had been ill-treated and insulted in the Sztum Remand Centre.

20. On 21 December 2005 the Kwidzyń District Prosecutor discontinued the investigation, finding that no offence had been committed.

21. The applicant did not appeal against that decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. 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

23. The applicant complained that the length of his pre-trial 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.”

24. The Government contested that argument.

A. Admissibility

25. 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

26. The applicant's detention started on 13 December 2004, that is on the date when he crossed the German-Polish border and was detained in the Polish detention centre, and has not yet ended.

Accordingly, the period to be taken into consideration, so far, amounts to almost three years and six months.

2. The parties' submissions

(a) The Government

27. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. They submitted that the detention had been duly justified and that during the entire period the authorities had given relevant and sufficient reasons for extending it. The Government further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case, directed against twenty co-accused, in which the charges comprised forty-four offences in total.

(b) The applicant

28. The applicant submitted in general terms that his application lodged with the Court was justified. He argued that the courts extending his detention constantly reiterated the same reasons and that keeping him in pre-trial detention for such a lengthy period of time violated the provisions of the Convention.

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 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

30. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant and the fact that he was a member of an organised criminal group, relied principally on four grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he was liable, (3) the need to secure the proper conduct of the proceedings and (4) the risk that the applicant might tamper with evidence or go into hiding. As regards the latter, they relied on the fact that in the course of the proceedings a European Arrest Warrant had been issued against the applicant.

31. The applicant was charged with numerous counts of kidnapping, setting up and leading an organised criminal group.

32. 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).

33. In this regard, the Court considers 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. It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task and that there is often in the nature of things a high risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or otherwise obstruct the proceedings.

34. The Court further 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, to determine the degree of alleged responsibility of each of the defendants, who had acted in a criminal group and against whom numerous charges of serious offences had been laid, and the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the applicant's initial detention. The Court would note however that since 21 December 2006, that is since the date on which the case was severed, the proceedings have been continued against the applicant and one co-defendant (see paragraph 13 above). Therefore, from that date onwards the argument about numerous co-accused and the high complexity of the case can no longer be justified.

35. Moreover, the authorities relied heavily on the likelihood that a severe sentence might have been imposed on the applicant given the serious nature of the offences at issue. In this respect, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. 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 *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006).

36. All the factors considered above could justify a relatively longer period of pre-trial detention. However, they do not give the authorities unlimited power to extend this preventive measure. Firstly, with the passage of time, the initial grounds for pre-trial detention become less and less relevant and the domestic courts should rely on other "relevant" and "sufficient" grounds to justify the deprivation of liberty (see, among many other authorities, *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2979, § 102; *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV). Secondly, even if, due to the particular circumstances of the case, detention is extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be required to justify this.

37. In the circumstances of the present case, the Court finds that with the passage of time, the severity of the anticipated penalty, alone or in conjunction with other grounds relied on by the authorities, cannot be accepted as sufficient justification for holding the applicant in detention for the very long period of nearly three years and five months.

38. Finally, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative measures to ensure 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. 33492/96, § 83, 21 December 2000).

39. In the present case the Court notes that there is no express indication that during the entire period of the applicant’s pre-trial detention the authorities envisaged any other guarantees of his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

40. The Court concludes, even taking into account the particular difficulty in dealing with a case concerning an organised criminal group, that the grounds given by the domestic authorities were not “sufficient” and “relevant” to justify the applicant’s being kept in detention for, so far, almost three years and six months.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. Lastly, the applicant complained, relying on Article 3 of the Convention, that he had been ill-treated in the detention centre. The applicant had complained to the Kwidzyń District Prosecutor, but had failed to appeal against the prosecutor’s decision discontinuing the investigation.

42. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

45. The Government asked the Court to hold that finding a violation would in itself constitute sufficient just satisfaction.

46. The Court 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

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

C. Default interest

48. 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 unreasonable length of 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 Polish zlotys at the rate applicable at the date of the 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