



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

FOURTH SECTION

CASE OF DROZDOVS v. POLAND

(Application no. 35367/05)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

This judgment may be subject to editorial revision.

In the case of Drozdovs v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Giovanni Bonello, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 35367/05) 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 Latvian national, Mr Igors Drozdovs (“the applicant”), on 14 September 2005.

2. The Polish 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 had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 16 January 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant’s pre-trial detention 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 applicant was born in 1965 and is presently detained in Gdańsk, Poland.

6. On 28 May 2001 the applicant was arrested by the police while crossing the Latvian-Polish border. On 29 May 2001 he was questioned by the police. On 30 May 2001 the applicant was heard by a prosecutor and was charged with robbery committed while acting in an organised criminal gang.

7. On 30 May 2001 the Gdańsk District Court decided to place the applicant in pre-trial detention in view of the reasonable suspicion that he had committed armed robberies as a member of an organised criminal gang.

8. On 17 August 2001 the Gdańsk Regional Court extended the applicant's detention relying, in addition to the grounds originally given, on the risk that the applicant would interfere with the course of the proceedings, since the leader of the organised gang had not yet been arrested.

9. On 13 November and 18 December 2001 the applicant's detention was extended by the same court. It based its decision on the risk that a severe sentence would be imposed, which made it probable that the applicant would interfere with the course of the proceedings. Moreover, the court relied on the complexity of the case, as it concerned organised crime.

10. Subsequently, the applicant's pre-trial detention was extended, *inter alia*, on 21 March 2002 and 19 March 2003. The Regional Court reiterated the original grounds given for detention and held that keeping the applicant in custody was necessary for securing the evidence. In the latter decision the court considered that although the investigation had been lengthy, it had been justified by the complexity of the case.

11. Afterwards, as the length of the applicant's detention had reached the statutory time-limit of two years laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), the Regional Court applied to the Gdańsk Court of Appeal (*Sąd Apelacyjny*) asking for the applicant's detention to be extended beyond that term. On 19 March, 27 June and 17 December 2003 the Gdańsk Court of Appeal allowed the application and extended his pre-trial detention. The Court of Appeal based its decisions on the reasonable suspicion that the applicant had committed serious offences and on the risk that he might interfere with the course of justice. The court further considered that the complexity of the case constituted an extraordinary circumstance justifying his continued detention. The court also referred to the fact that the applicant did not have a permanent place of residence in Poland.

12. In the meantime, on 16 June 2003, the applicant and 14 other co-accused were indicted before the Gdańsk Regional Court.

13. In 2004 the applicant's detention was extended by decisions of the Gdansk Court of Appeal given on 16 June and 28 December. The court reiterated the grounds given previously.

14. On 14 June and 22 November 2005 the applicant's detention was further extended. The court observed that the period of detention had been

excessive given the complexity of the case and the need to ensure the proper conduct of the final stages of the trial.

15. On 22 February 2006 the applicant's detention was further extended. The applicant's numerous applications for release and appeals against the decisions extending his detention were to no avail.

16. During the entire proceedings the applicant made numerous, unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions extending his detention.

17. On 30 May 2006 the Gdańsk Regional Court gave judgment. The court convicted the applicant and sentenced him to seven years' imprisonment. It appears that the applicant requested that the reasoned judgment be served on him with a view to lodging an appeal.

18. It appears that the proceedings are pending before the Court of Appeal. The applicant remains in detention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) are set out in the Court's judgments in the cases of *Gołek 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 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."

21. The Government contested that argument.

A. Admissibility

22. 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

23. The applicant's detention started on 28 May 2001, when he was arrested on suspicion of having committed robberies acting in an organised criminal gang. On 30 May 2006 the Gdańsk Regional Court convicted him as charged.

Accordingly, the period to be taken into consideration amounts to five years and two days.

2. The parties' submissions

24. The applicant submitted in general that he had been kept in detention pending trial for an unjustified period of time.

25. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by "relevant" and "sufficient" grounds. Those grounds were, in particular, the gravity of the charges against the applicant, who had been accused of membership of an organised criminal gang. They further underlined the complexity of the case, which had involved nineteen co-accused, against whom ninety charges had been laid.

The Government argued that the domestic authorities had shown due diligence, as required in cases against detained persons, and that the length of the applicant's detention was attributable to the exceptional complexity of the case.

3. The Court's assessment

(a) General principles

26. 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, have been set out 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

27. In their detention decisions the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the need to secure the proper conduct of the proceedings and (3) the unusual complexity of the proceedings.

The authorities assessed as high the risk that the applicant might hamper the proper course of the proceedings; however, they did not refer to any specific grounds to justify their opinion.

28. The applicant was charged with several counts of armed robbery committed as a member of an organised criminal group (see paragraph 7 above).

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).

29. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences warranted his initial detention. Also, the need to obtain a large volume of evidence and to determine the degree of the alleged responsibility of each of the defendants against whom numerous charges of serious offences had been laid, constituted valid grounds for the applicant's initial detention.

30. Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings often is, by the nature of things, high. In this connection, however, the Court notes that there is no appearance that the applicant made attempts to intimidate witnesses during the proceedings or tried to delay or disrupt the trial.

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

32. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts unlimited power to extend the measure.

33. The Court further notes that there is no specific indication that the authorities, at any point during the applicant's pre-trial detention, considered the possibility of imposing on him other preventive measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of the criminal proceedings.

In this context the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative means of 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. 33492/96, § 83, 21 December 2000).

34. 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

35. 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

36. The applicant claimed 91,000 euros (EUR) in respect of pecuniary and EUR 120,000 in respect of non-pecuniary damage.

37. The Government considered that these claims were excessive and as such should be rejected. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction.

38. 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 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 2,000 under this head.

B. Costs and expenses

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

C. Default interest

40. 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;
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 2,000 (two 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 22 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Giovanni Bonello
President