



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

FOURTH SECTION

CASE OF CHOUMAKOV v. POLAND

(Application no. 33868/05)

JUDGMENT

STRASBOURG

29 July 2008

FINAL

29/10/2008

This judgment may be subject to editorial revision.

In the case of Choumakov 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,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 33868/05) 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 Russian national, Mr Oleg Choumakov (“the applicant”), on 7 September 2005.

2. The Polish Government were represented by their Agent, Mr J. Wołasiwicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his detention on remand exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 16 November 2006 the President of the Fourth Section 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 was decided to examine the merits of the application at the same time as its admissibility. The Government of the Russian Federation did not exercise their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1971 and is currently detained in the Gdańsk Detention Centre.

6. On 29 May 2003 the applicant was arrested by the police on suspicion of having committed a robbery and the murder of a taxi driver.

7. On 30 May 2003 the Braniewo District Court (*Sąd Rejonowy*) decided to detain the applicant on remand. The court relied on a reasonable suspicion that the applicant had committed the offences and the high probability that a heavy sentence would be imposed on him. The court further considered that there was a risk that the applicant might interfere with the course of proceedings and bring pressure to bear on witnesses.

8. On 26 August and 25 November 2003 and 23 January 2004 the Elbląg Regional Court prolonged the detention on remand of the applicant and his co-accused. The court found that the grounds previously invoked were still valid and that only the applicant's detention would secure the proper conduct of the investigation.

9. On 16 March 2004 the applicant was indicted before the Elbląg Regional Court.

10. Subsequently, his pre-trial detention was prolonged by the same court on 26 March and 6 July 2004. The court, in addition to the grounds invoked previously, found that the applicant did not have a permanent place of residence in Poland; therefore, there was a risk that he might go into hiding.

11. At the hearings held on 18 November 2004 and 25 March 2005 the applicant's detention on remand was further prolonged. The court briefly stated that the grounds previously given for his detention were still relevant and that there were no grounds favouring his release.

12. Subsequently, 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 made applications to the Gdańsk Court of Appeal asking for the applicant's detention to be prolonged beyond that term.

13. On 19 May 2005 the Gdańsk Court of Appeal (*Sąd Apelacyjny*) granted the request and prolonged the applicant's detention. The court particularly relied on the complexity of the proceedings which had made it impossible for the court to finish the trial.

14. On 30 June 2005 the Elbląg Regional Court convicted the applicant and his co-accused and sentenced them to 25 years' imprisonment. The applicant lodged an appeal against the judgment.

15. On 21 December 2005 the Gdańsk Court of Appeal quashed the impugned judgment and remitted the case. On the same day, the appeal court prolonged the applicant's detention on remand.

16. On 7 March 2006 his pre-trial detention was further prolonged. The court admitted that the applicant had been detained for a rather lengthy period. However, it did not contravene the requirements of Articles 5 and 6 of the Convention as the grounds for keeping the applicant in detention remained relevant and the courts had been diligent in examining the case.

17. Subsequently, the applicant's detention was prolonged at the hearing held on 22 September 2006. The trial court reiterated the grounds given previously: the reasonable suspicion against the applicant, the probability that a severe sentence would be imposed on him and the risk that he might try to influence witnesses or otherwise interfere with the proper course of the proceedings.

18. At the hearing held on 28 December 2006 the court prolonged the applicant's detention, finding that it had been necessary to secure the proper conduct of the proceedings given the risk that a severe sentence would be imposed on both of the accused.

19. The applicant lodged appeals against almost every one of the decisions prolonging his detention on remand but they were dismissed by the Gdańsk Court of Appeal.

20. On 30 April 2007 the Elbląg Regional Court convicted the applicant as charged and sentenced him to 25 years' imprisonment. The applicant lodged an appeal.

21. On 28 December 2007 the Gdańsk Court of Appeal allowed the appeal and quashed the impugned judgment. It remitted the case to the Elbląg Regional Court. The court further prolonged the applicant's detention until 28 June 2008. In addition to the grounds invoked previously, the court found that the applicant and the second co-accused had made an attempt to contact each other illegally and to exchange information about the trial which justified the finding that he might interfere with the proper course of the proceedings. Moreover, the court established that the co-accused had contacted the witnesses through other persons.

22. The applicant's appeal against that decision was dismissed by the Gdańsk Court of Appeal on 15 January 2008.

23. The applicant remains in detention pending trial.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. 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).

25. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* (no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V) and *Ratajczyk v. Poland* (no. 11215/02 (dec.), ECHR 2005-VIII) and the judgment in the case of *Krasuski v. Poland* (no. 61444/00, §§ 34-46, ECHR 2005-V).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

26. 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.”

27. The Government contested that argument.

A. Admissibility

28. 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

29. The applicant's detention started on 29 May 2003, when he was arrested on suspicion of having committed a murder and a robbery. On 30 June 2005 the Elbląg 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).

On 21 December 2005 the Gdańsk Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. The period to be taken into consideration ended on 30 April 2007 when the applicant was again convicted by the trial court. However, on 28 December 2007, the Gdańsk Court of Appeal again quashed the Regional Court's judgment. The applicant remains in pre-trial detention.

30. Accordingly, the applicant's detention has so far lasted almost four years.

2. *The parties' submissions*

31. The applicant submitted that he had been kept in detention pending trial for an unjustified period of time. He claimed that the trial and appellate courts had failed to display the required degree of diligence and had been responsible for the protracted length of the proceedings. The applicant also maintained that the procedure for prolongation of his detention had been automatic and that the courts had repeated the same grounds for their decisions. Moreover, the authorities failed to justify their assessment that the applicant would interfere with the proper course of the proceedings. The applicant submitted that he was innocent and that before his arrest he had been legally residing in Poland. Finally, the applicant complained that the domestic authorities had failed to consider alternative means to secure his appearance at the trial.

32. 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. These grounds were, in particular, the gravity of the charges against the applicant, who had been accused of committing murder and robbery. Moreover, there was a high risk that the applicant might obstruct the proceedings and abscond, as he did not have a permanent address in Poland. The Government also submitted that the proceedings had been particularly complex as they concerned a grave crime allegedly committed by two co-accused.

The Government argued that the domestic authorities had shown due diligence, as required in cases against detained persons.

3. *The Court's assessment*

(a) **General principles**

33. 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, have been 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**

34. 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 severity of the penalty to which he was liable; and (3) the need to secure the proper conduct of the proceedings, given the risk that the applicant might tamper with evidence or otherwise obstruct the

proceedings. As regards the latter, the authorities failed to specify any concrete grounds justifying their opinion, except for the most recent decision prolonging the applicant's detention, of 28 December 2007, in which the court stated that the co-defendants had attempted to contact each other and the witnesses illegally (see paragraph 21 above). Finally, the authorities considered as high the risk that the applicant might go into hiding as he had no permanent place of residence in Poland.

35. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, 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.

36. However, with the passage of time, those grounds became less and less relevant. Moreover, even though the applicant was detained on charges of homicide and robbery, there is no indication that he was a member of an organised criminal gang. It does not appear that his case presented particular difficulties for the investigative authorities or for the courts to determine the facts and mount a case against the applicant, and his alleged accomplice, as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, cited above, § 37, and *Malik v. Poland*, no. 57477/00, § 49, 4 April 2006).

37. As regards the risk of the applicant's going into hiding, the Court observes that the judicial authorities based their findings on the fact that the applicant, a Russian national, had not had a permanent residence in Poland. The applicant maintained that prior to his arrest he had been residing legally in Poland and, from the facts of the case it appears that he had been renting a flat in Elbląg. Moreover, throughout the entire relevant period the courts repeatedly invoked the risk of the applicant's perverting the course of justice without giving any justification for their assessment. Only in December 2007 did the court rely for a first time on an alleged attempt on the part of the applicant to contact the co-defendant and witnesses illegally. It is difficult to accept that this single incident in 2007 could justify the conclusion that the risk of his tampering with evidence or going into hiding persisted during the entire period that he spent in custody (see *Harazin v. Poland*, no. 38227/02, § 42, 10 January 2006, and *Duda v. Poland*, no. 67016/01, § 41, 19 December 2006).

38. 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 on remand (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

39. The Court further notes that there is no specific indication that during the period of the applicant's pre-trial detention the authorities envisaged 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 measures of ensuring his appearance at 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 *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

40. Having regard to the foregoing, 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

41. In his submissions of 16 July 2007 the applicant raised a complaint under Article 6 § 1 of the Convention that the length of the proceedings in his case had exceeded a “reasonable time” within the meaning of this provision.

42. 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...”

43. The Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic court and that they are still pending before the Gdańsk Court of Appeal.

It is thus open to the applicant to lodge a complaint about the unreasonable length of the proceedings with the relevant domestic court in accordance with the general provisions of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*).

44. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its

continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

However, in the present case there is no indication that the applicant availed himself of this remedy.

45. It follows that this part of the application 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

46. 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

47. The applicant claimed 32,488 euros (EUR) in respect of pecuniary damage and EUR 240,000 in respect of non-pecuniary damage.

48. 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.

49. 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 awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

51. 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 the applicant's 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 1,500 (one thousand five hundred 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 29 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Giovanni Bonello
President