



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

FOURTH SECTION

CASE OF MARKOŃ v. POLAND

(Application no. 2697/06)

JUDGMENT

STRASBOURG

30 September 2008

FINAL

30/12/2008

This judgment may be subject to editorial revision.

In the case of Markoń 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 9 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 2697/06) 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 a Polish national, Mr Arkadiusz Markoń (“the applicant”), on 4 January 2006.

2. The applicant was represented by Mr Adam Tułodziecki, a lawyer practising in Gdańsk. 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 detention on remand had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 30 March 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was 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**

5. The applicant was born in 1975 and lives in Gdańsk. He is currently serving a prison sentence in Gdańsk Prison.

Criminal proceedings against the applicant and his detention on remand

1. *The applicant's detention*

6. On 6 May 2000 the Gdańsk District Court (*Sąd Rejonowy*) remanded the applicant in custody until 5 August 2000 in view of the reasonable suspicion that he had committed the offences with which he was charged and the risk that he would obstruct the investigation. The applicant was suspected of acting in an organised criminal group, illegal possession of weapons and several offences of armed robbery. The court considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings, given the risk that he might induce witnesses to give false testimony. The court also stressed the severity of the likely sentence and that the applicant had been wanted by the police since 1999.

7. The applicant's detention was repeatedly extended by decisions of the Gdańsk Regional Court (*Sąd Okręgowy*) and the Gdańsk Court of Appeal (*Sąd Apelacyjny*). Appeals and applications by the applicant for release and for the preventive measure to be varied were unsuccessful. 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 the complexity of the case.

8. Once the length of the applicant's detention had reached the statutory two-year maximum laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks Postępowania Karnego*), the first-instance court no longer had jurisdiction to extend it. Consequently, it was the Gdańsk Court of Appeal which issued further extensions. In its first extension decision, on 24 April 2002, the Gdańsk Court of Appeal relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and on the considerable complexity of the case. The court also held that the risk that the applicant and other co-accused would obstruct the investigation was justified. It did not however refer to any reasons justifying its allegations.

9. On 31 October 2002 the Gdańsk Regional Court gave judgment. The applicant was convicted as charged and sentenced to ten years' imprisonment.

10. The applicant and several other co-accused appealed. The applicant was kept in detention pending appeal for thirteen months.

11. On 1 December 2003 the Gdańsk Court of Appeal quashed the first-instance judgment and remitted the case for re-examination to the first-instance court.

12. On 16 December 2003 the Gdańsk Court of Appeal extended the applicant's detention until 30 March 2004. The applicant remained in detention until his further conviction.

13. On 10 April 2006 the Gdańsk Regional Court again convicted the applicant and sentenced him to ten years' imprisonment.

14. On an unspecified date the applicant appealed against this judgment.

15. On 20 November 2007 the Gdańsk Court of Appeal gave judgment apparently upholding the applicant's conviction.

2. The applicant's complaint under the 2004 Act

16. The applicant twice lodged a complaint that his right to a trial within a reasonable time had been breached under 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*) ("the 2004 Act").

17. On 16 March 2005 the Gdańsk Court of Appeal left the complaint unexamined because the applicant had failed to pay court fees. On 14 February 2006 the same court rejected the applicant's second complaint for a procedural mistake (the applicant had failed to specify the circumstances justifying his claim as required by section 6 of the 2004 Act).

3. The alleged censorship of the applicant's correspondence

18. The applicant produced an envelope in which he had received an application form from the Court. The envelope had been sealed with sticky tape but there was no "censored" stamp on it or any other mark that could mean that the applicant's correspondence had been interfered with.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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

20. 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.”

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 6 May 2000, when he was arrested on suspicion of having committed several offences of armed robbery, illegal possessions of arms and acting in an organised criminal group. On 31 October 2002 the Gdańsk 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 (see *Kudła v. Poland*, [GC], no. 30210/96, § 104).

On 1 December 2003 the Gdańsk Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 10 April 2006 when the applicant was again convicted.

Accordingly, the period to be taken into consideration amounts to four years, ten months and four days.

2. The parties' submissions

(a) The applicant

24. The applicant's lawyer submitted in general terms that the applicant's application lodged with the Court was justified.

(b) The Government

25. The Government in their observations wished to refrain from making any comments as regards the applicant's complaint under Article 5 § 3 of the Convention.

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 were stated in a number of its previous judgments (see, among many other authorities, *Kudła*, cited above, § 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 relied principally on three grounds, in addition to the reasonable suspicion against the applicant, namely: (1) the serious nature of the offences with which he had been charged; (2) the heavy penalty to which he was liable; (3) the risk that the applicant might tamper with evidence.

28. The applicant had been charged with numerous offences of armed robbery and illegal possession of weapons committed in an organised criminal group (see paragraph 6 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 *Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

29. The Court accepts that the reasonable suspicion that the applicant had committed serious offences could initially warrant his detention. Also, the need 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 were laid, constituted valid grounds for the applicant's initial detention.

30. Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that he would obstruct the proceedings and tamper with evidence. In this connection, the Court accepts that 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, in the nature of things, high. However, it is to be noted that the domestic courts did not give any indications as to why they believed that the applicant, if released, might tamper with evidence and obstruct the proceedings. 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 reoffending, the gravity of the charges cannot by itself justify long periods of detention (see *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

31. While all those above factors could justify even a relatively long period of detention, they did not give the domestic courts unlimited power to extend this measure. In this context, the Court would observe that by the date of his original first-instance conviction the applicant had already spent almost two and a half years in pre-trial detention. Following the quashing of that conviction on appeal he was kept in custody for a further two years and over four months (see paragraphs 9-13 above).

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

33. In his observations the applicant's lawyer raised an additional complaint submitting that the applicant had been kept in detention without a valid detention order for twenty-one days, from 5 October 2001 until 25 October 2001. He failed however to produce any evidence to support these allegations.

34. In their comments to the applicant's just satisfaction claims the Government submitted that the detention had been valid throughout. They produced copies of the relevant decisions (which were already there in the case file) extending the detention for the period complained of by the applicant's lawyer.

35. The Court notes that the applicant's complaint under Article 5 § 1 of the Convention as regards the applicant's allegedly unlawful detention in October 2001 was submitted in the applicant's lawyer's observations of March 2008.

Accordingly, it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-compliance with the six-month time requirement.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF THE PROCEEDINGS.

36. The applicant complained that the criminal proceedings against him had been excessively long.

37. The Court notes that he twice lodged a complaint under the 2004 Act. On 16 March 2005 the Gdańsk Court of Appeal left the complaint unexamined because the applicant had failed to pay court fees. On

14 February 2006 the same court rejected the applicant's further claim because of a procedural mistake; the applicant had failed to specify the circumstances justifying his claim as required by section 6 of the "Kudła law".

38. The Court has already found that when a complaint under the 2004 Act has been rejected for a procedural mistake and it is still open to the applicant to lodge another complaint, the applicant is required to do so (see *Komorowska v. Poland* (dec.) 38226/06). In the present case the proceedings complained of were still pending for at least two and a half years after the applicant's second complaint under the 2004 Act had been rejected.

39. Accordingly, the Court considers that the applicant failed to exhaust domestic remedies in that he did not lodge a further complaint under section 5 of the 2004 Act after the rejection of his previous complaints by the domestic court for procedural mistakes. It follows that the complaint about the excessive length of the proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

40. The applicant complained about the monitoring of his correspondence with the Court.

41. The Court has examined this complaint as submitted by the applicant. However, having regard to all material in its possession, the Court finds that the applicant has failed to substantiate his complaints. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government considered the applicant's claims exorbitant. They asked the Court to rule that a finding of a violation would constitute in itself sufficient just satisfaction.

45. 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 1,500 under this head.

B. Costs and expenses

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

C. Default interest

47. 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 excessive length of the applicant's 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, to be converted into Polish zlotys at a 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 30 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President