



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

FOURTH SECTION

CASE OF DUBLAS v. POLAND

(Application no. 48247/06)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Dublas 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 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 48247/06) 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 Grzegorz Dublas (“the applicant”), on 10 November 2006.

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

3. The applicant alleged, *inter alia*, that the length of his pre-trial detention and of criminal proceedings against him had exceeded a “reasonable time” within the meaning of Articles 5 § 3 and 6 § 1 of the Convention.

4. On 30 August 2007 the President of the Fourth Section decided to communicate the complaints concerning the length of the applicant’s pre-trial detention and of his criminal proceedings to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Pruszcz Gdański.

6. On 8 June 2004 he was arrested by the police.

7. On 9 June 2004 the Gdańsk District Court (*Sąd Rejonowy*) decided to place the applicant in pre-trial detention as there were reasonable grounds for suspecting that he had been dealing in drugs. The court also cited the risk that the applicant would go into hiding, in view of the likelihood of a heavy sentence.

8. On 2 September and 4 November 2004 the applicant's detention was extended. In addition to the two grounds given previously, the District Court cited the need to ensure the proper conduct of the investigation.

9. On 26 October 2004 the applicant was indicted before the Gdańsk District Court. His pre-trial detention was subsequently extended.

10. 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 District Court made a series of applications to the Gdańsk Court of Appeal (*Sąd Apelacyjny*) for the applicant's detention to be extended beyond that term. On 18 May and 17 August 2006 the Gdańsk Court of Appeal granted the applications and extended his detention, citing the reasonable suspicion against the applicant and the length of the sentence that was likely to be imposed. The Court also considered that the District Court could not be held responsible for not having completed the trial as there had been objective procedural difficulties in hearing all the witnesses.

11. The first hearing was held on 21 January 2005. Subsequently, hearings were held at regular intervals.

12. The applicant's applications for release from detention and his appeals against the decisions extending the preventive measure were dismissed.

13. On 17 October 2006 the Gdańsk Court of Appeal extended the applicant's detention until 20 November 2006. It cited the reasonable suspicion against the applicant and found that detention was necessary to secure the proper conduct of the proceedings given the likelihood of a heavy sentence.

14. The applicant's detention on remand was not extended beyond that date and on 20 November 2006 he was released.

15. On 4 August 2006 the applicant lodged a complaint under section 5 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) (“the 2004 Act”). On 3 November 2006 the Gdańsk Regional Court dismissed the complaint, finding that the trial had been conducted speedily and with no periods of inactivity.

16. The proceedings are still pending before the trial court.

II. RELEVANT DOMESTIC LAW

17. The relevant domestic law and practice concerning pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension and release from detention, and the rules governing other “preventive measures” (*środki zapobiegawcze*) are set out 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).

18. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings 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 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

19. 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.”

20. The Government contested that argument.

A. Admissibility

21. 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

22. The applicant's detention started on 8 June 2004 when he was arrested on suspicion of drug dealing. On 20 November 2006 the applicant was released from his pre-trial detention.

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

2. The parties' submissions

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

24. 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 and the risk of his tampering with evidence and obstructing the proper conduct of the proceedings. 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 complexity of the case, in which there were four defendants.

3. The Court's assessment

(a) General principles

25. 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

26. In their detention decisions, the authorities cited the reasonable suspicion against the applicant and the length of the sentence he faced. In addition the court referred on several occasions to the complexity of the proceedings and the need to ensure their proper conduct.

27. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially have justified his detention. However, even though the applicant was detained on charges of drug-trafficking and the proceedings concerned four co-accused, there is no indication that he was a member of an organised criminal group. It does not appear, therefore, that there were any special features to his case – such as a link to organised crime – that would have made it difficult for the investigating authorities or the courts to determine the facts and mount a case (see *Celejewski*, cited above, § 37, and *Malik v. Poland*, no. 57477/00, § 49, 4 April 2006).

28. According to the authorities, the likelihood of a heavy sentence being imposed on the applicant created a presumption that he would obstruct the proceedings. However, the Court would reiterate that, while the length 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 pre-trial detention (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

29. The domestic courts considered that the prolonged detention of the applicant was necessary to secure the proper conduct of the proceedings. However, the authorities did not refer to any specific circumstance capable of showing that the applicant's release would interfere with the proper conduct of the proceedings, and if so why and how. They did not point to any instance of the applicant's attempting to intimidate witnesses or to disrupt the trial at any stage during his detention. Nor is there any evidence that the applicant made any attempt to pervert the course of justice after his release in November 2006. Apart from the grounds examined above, the domestic courts failed to advance any other argument justifying the extension of the applicant's pre-trial detention.

30. Lastly, the Court would emphasise that, when deciding whether a person is to be released or detained, the authorities are obliged under Article 5 § 3 to consider alternative means of guaranteeing 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 *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

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 designed to secure his appearance at the trial. Nor did they give any consideration to the possibility of ensuring his

presence at trial by imposing on him other “preventive measures” expressly intended to secure the proper conduct of criminal proceedings. It is also unclear on what ground the authorities found in November 2006 that the applicant’s detention was no longer necessary after having required it for two years and almost six months.

31. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities cannot justify the overall period of the applicant’s detention. In these circumstances it is not necessary to examine under Article 5 § 3 of the Convention whether the proceedings were conducted with special diligence.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

33. The applicant complained that the length of the proceedings had been incompatible with the “reasonable-time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

34. The Government raised a preliminary objection that the applicant had failed to exhaust domestic remedies. They refrained from expressing their opinion on the merits of the complaint under Article 6 of the Convention.

35. The Court notes that the period to be taken into consideration began on 8 June 2004 and has not yet ended. It has so far lasted over four years for one level of jurisdiction.

A. Admissibility

36. The Government raised a preliminary objection that the applicant had not exhausted the domestic remedies available to him under Polish law, as required by Article 35 § 1 of the Convention. They maintained that since the applicant’s complaint lodged under the 2004 Act had been dismissed on 3 November 2006, the applicant could have lodged another length-of-proceedings complaint after the lapse of 12 months, in accordance with section 14 of that Act. In the new complaint the applicant could have raised his arguments concerning the courts’ conduct after 3 November 2006.

37. The Court has previously established that the remedies provided by the 2004 Act are effective in respect of the excessive length of criminal proceedings (see *Charzyński v. Poland*, cited above). However, it observes

that the applicant's complaint was dismissed when the proceedings in his case had already been pending for over two years before the trial court. It does not consider it necessary for the applicant, in order to comply with the requirement of Article 35 § 1 of the Convention, to lodge a new complaint every 12 months (see *Wolf v. Poland*, nos. 15667/03 and 2929/04, § 62, 16 January 2007, and *Osiński v. Poland*, no. 13732/03, § 63, 16 October 2007).

38. For this reason, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

39. The Court further 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

40. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

42. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

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

43. The applicant complained that the proceedings in his case were unfair. He alleged a breach of Article 6 § 1 of the Convention.

44. 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..."

45. The Court notes that the proceedings against the applicant are pending before the trial court. It will be thus open to the applicant to lodge an appeal against the trial court's judgment and a further cassation appeal against the second-instance court's judgment. Accordingly, the applicant still has an opportunity, which he should make use of, to put the substance of his complaints under this limb to the domestic authorities and ask for appropriate relief.

46. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed 5,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

49. The Government considered that this claim was excessive and as such should be rejected.

50. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

52. 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 and length of the criminal proceedings 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* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President