



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

FOURTH SECTION

CASE OF RAŻNIAK v. POLAND

(Application no. 6767/03)

JUDGMENT

STRASBOURG

7 October 2008

FINAL

07/01/2009

This judgment may be subject to editorial revision.

In the case of Rażniak 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *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. 6767/03) 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 Zygmunt Rażniak (“the applicant”), on 30 July 2001.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Jakub Wołásiewicz of the Ministry of Foreign Affairs.

3. On 13 September 2007 the President of the Fourth Section of the Court 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

4. The applicant was born in 1952 and lives in Warsaw. He is currently detained in Warsaw Remand Centre.

5. The applicant was arrested on 25 August 2000 and subsequently remanded in custody by the Warsaw District Court on suspicion of founding and leading a criminal armed gang within which he had ordered various crimes to be carried out, such as murder, robbery and drug trafficking. He was also accused of illegal possession of weapons and their use in assault and battery. In view of the fact that the applicant had been seriously injured

by an explosion in his car on 30 May 2000, the court had regard to a medical opinion given by experts from the Faculty and Institute of Forensic Medicine of the Warsaw Medical Academy. The experts found that there had been no indication that the applicant's detention would pose a danger to his health or life. The experts concluded that the applicant should receive appropriate medication and have unrestricted access to medical advice or be hospitalised on the ward of the detention centre. Accordingly, the court stressed in its decision that the applicant should receive adequate medical assistance during his detention.

6. The applicant unsuccessfully appealed against that decision. On 13 November 2000 he requested that the detention order be quashed, arguing, firstly, that there had been no reasonable suspicion that he had committed the offences with which he had been charged and, secondly, that he had been arrested at a hospital while being treated for injuries sustained as a result of a bomb explosion in his car. Accordingly, his detention created a serious risk for his health and life. He submitted medical opinions on his state of health, which confirmed that he had required surgery. According to two opinions, the applicant's detention in a detention centre could constitute a serious danger to his health and life. A third opinion stated that there were no sufficient and objective grounds for believing that detention could seriously endanger the applicant's health or life.

7. On 20 November 2000 the applicant's detention pending investigation was extended by the Warsaw District Court. The court was of the view that the suspicion against the applicant was reasonable and confirmed by witness testimonies and by evidence obtained during searches. It had also been established in the course of the investigation that the members of the gang were close and, hence, in view of the fact that most of them were sought by means of wanted notices, the applicant's detention was the only measure capable of ensuring the proper conduct of the investigation and preventing him from colluding with co-accused. The court took into account the serious nature of the offences with which the applicant had been charged and the severity of the penalty to which he was liable. The court also referred to a medical opinion of 25 August 2000 stating that there were no grounds for finding that the detention created any serious risk for the applicant's health or life. The decision was upheld on 28 December 2000 by the Warsaw Regional Court.

8. The applicant's pre-trial detention was subsequently extended by the same court's decisions of 27 April, 24 August, 31 December 2001, 27 March and 9 August 2002. They were based in particular on the need to conduct further complex investigative measures, the need to obtain extensive evidence and the fear of the applicant colluding with other gang members or absconding. The risk was very serious in view of the applicant's position in the criminal world and the fact that other members of the gang were still sought by the police.

9. The bill of indictment against the applicant and thirteen co-accused was transferred to the Warsaw Regional Court on 20 March 2002. The prosecutor requested 113 witnesses and three experts to give evidence and extensive documentary evidence was also submitted.

10. Between 19 September 2002 and 29 May 2003 the trial court held 57 hearings. The hearings were held on average 6 to 7 times per month, at times even 13 times per month. Prior to the first hearing the court held three preparatory meetings in order to examine the question of the extension of the applicant's detention and his health. On 7 May 2002 the director of the detention centre submitted a medical opinion prepared by a doctor from the remand centre and subsequently another by an orthopaedist. The specialists recommended that the treatment be continued and confirmed that the applicant was receiving adequate medical assistance. The court ordered medical examinations by a surgeon, including a vascular surgeon, and by a pulmonologist, with a view to verifying whether the applicant could be treated in the detention centre's ward.

11. On 29 May 2003 the Warsaw Regional Court found the applicant guilty of founding and leading an armed criminal gang for 10 years and sentenced him to 7 years' imprisonment. Both the applicant and the prosecutor appealed.

12. On 27 August 2003 the applicant's counsel lodged an application for the applicant to be released to allow him to receive specialist treatment.

13. On 1 September 2003 the Warsaw Regional Court ordered a medical opinion from the Tuberculosis and Lung Diseases Institute. The opinion of 10 October 2003 stated that

“(...) the patient presents a high risk of recurrent thromboembolic complications, which means that there is a need for preventive measures in certain situations to be taken (...). His current condition does not seem to warrant further diagnostic studies or referrals, such as to a pulmonologist.”

14. On 31 March 2004 the Warsaw Court of Appeal upheld the first-instance judgment.

15. By a ruling of 10 May 2005 the Supreme Court dismissed the applicant's cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law and practice concerning the imposition of detention during judicial proceedings (*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

17. The applicant complained that the length of his 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.”

18. The Government contested that argument.

A. Admissibility

19. 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

20. The applicant's detention started with his arrest on 25 August 2000. On 29 May 2003 the Warsaw Regional Court issued a judgment convicting him.

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)

Accordingly, the period to be taken into consideration amounts to two years and nine months.

2. The parties' submissions

(a) The applicant

21. The applicant argued that the length of his detention had been unreasonable. In his opinion, the courts had not given sufficient and relevant reasons for keeping him in detention for such a long period and had failed to consider applying a less severe preventive measure.

(b) The Government

22. The Government submitted that the applicant's pre-trial detention had been justified by the existence of substantial evidence of his guilt, the nature of the offences with which he had been charged and the severity of the anticipated penalty. They underlined that the length of the applicant's detention should be assessed in the light of the fact that he had acted in an organised criminal group. The risk that the defendants might obstruct the proceedings or tamper with evidence had been aggravated by the fact that they had been closely linked as members of a criminal gang and that the applicant had been the leader of the gang. Only the isolation of the members of the group could prevent them from coordinating their testimonies or influencing witnesses. Thus, the domestic courts had considered it necessary to detain the applicant until all relevant witnesses had been questioned and other members of the group remanded in custody.

23. The Government asserted that the necessity of the applicant's continued detention had been thoroughly examined by the courts, which on each occasion had given sufficient reasons for their decisions. Furthermore, the applicant's case had been extremely complex. Lastly, they submitted that the authorities had displayed special diligence in the conduct of the proceedings.

3. The Court's assessment

(a) General principles

24. The Court notes 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; *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-...; and *Bqk v. Poland*, no. 7870/04, §§ 51-53, ECHR 2007-... (extracts), with further references).

(b) Application of the above principles in the present case

25. The Court observes that the present case concerned a serious crime, namely membership and leadership of a criminal gang, robberies and theft committed with violence. Thus it was a classic example of organised crime, by definition presenting more difficulties for the investigation authorities and, later, for the courts in determining the facts and the degree of responsibility of each member of the group. It is obvious that in cases of this kind continuous control and limitation of the defendants' contact with each other and with other persons may be essential to avoid their absconding, tampering with evidence and, most importantly of all, influencing, or even

threatening, witnesses. Accordingly, longer periods of detention than in other cases may be reasonable.

26. 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*, cited above, § 57).

27. The Court observes that in their decision to remand the applicant in custody the judicial authorities relied on the following principal grounds: the reasonable suspicion against the applicant, the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable, the risk of his influencing the testimonies of witnesses and of the co-accused or obstructing the proceedings by other means and the need to obtain extensive evidence (see paragraphs 7 and 8 above). Furthermore, the Government stated that the particular complexity of the case, as it concerned organised crime, additionally justified the applicant's detention.

28. The Court notes that the suspicion that the applicant had committed serious offences was confirmed in particular by the testimonies of the witnesses and the co-accused and initially warranted his detention. Therefore, the only question which remains is whether and when the continuation of his detention ceased to be warranted by "relevant" and "sufficient" reasons. Having said that, the Court would emphasise that there is a general rule that the domestic courts, in particular the trial court, are better placed to examine all the circumstances of the case and take all the necessary decisions, including those in respect of pre-trial detention.

29. The Court considers that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants who had been charged with acting as part of an organised criminal gang. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the existence of a general risk flowing from the organised nature of the applicant's alleged criminal activities, constituted relevant and sufficient grounds for extending his detention during the time necessary to complete the investigation, to draw up the bill of indictment and to hear evidence from the accused.

30. The Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending. It acknowledges that in view of the seriousness of the accusations against the applicant, the authorities could justifiably have considered that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention (see *Ilykov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). In the circumstances of the present case, the Court finds that the severity of the anticipated penalty alone, or in conjunction with the other grounds relied on

by the authorities, cannot constitute a “relevant and sufficient ground” for holding the applicant in detention for a considerably long period.

31. The Court further notes that the applicant was the leader of an organised criminal group and had close links to its other members, many of whom were in hiding and placed on wanted lists or were co-accused in the criminal proceedings against the applicant. Accordingly, the Court accepts that, in the special circumstances of the case, the risk flowing from the nature of the applicant’s criminal activities actually existed and justified holding him in custody for the relevant period.

32. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant’s pre-trial detention were “relevant” and “sufficient” to justify holding him in custody for the entire relevant period.

33. The Court lastly observes that the proceedings were of considerable complexity, regard being had to the number of defendants, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. Nevertheless, the hearings in the applicant’s case were held regularly and at very short intervals (see paragraph 10 above). The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings. The length of the investigation and of the trial was justified by the exceptional complexity of the case.

34. Having regard to the foregoing, the Court considers that there has been no violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

1. Complaint under Article 3 of the Convention

35. The applicant alleged, relying on Article 3 of the Convention, that imposing detention on him, given his condition, amounted to an inhuman treatment and exposed him to a genuine risk of a permanent and serious deterioration in his health. He also complained about the fact that he was qualified as “a dangerous detainee”.

36. Article 3 of the Convention reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

37. The Court reiterates that, according to the Convention organs’ case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). It also notes that lack of medical treatment may raise an issue under

Article 3. In such cases, the factors to be considered are the seriousness of the applicant's condition, the quality of medical care he receives and whether his state of health is compatible with detention. Also, States remain obliged to maintain a continuous review of the detention arrangements employed with a view to ensuring the health and well-being of all prisoners, having due regard to the ordinary and reasonable requirements of imprisonment (see *Bonnechaux v. Switzerland*, Commission's report of 5 December 1979, DR 18, §§ 100 and 148; *Lukanov v. Bulgaria*, Commission decision of 12 January 1995, DR 80-A, §§ 128-130; *Sadowski v. Poland* (dec.), no. 32726/96, 12 October 2000; and *Kawka v. Poland* (dec.), no. 28997/95, 13 July 1999).

38. Turning to the facts of the present case, the Court observes that before ruling on the applicant's detention, the Warsaw District Court ordered that the applicant should be examined by specialists from the Faculty and Institute of Forensic Medicine of the Warsaw Medical Academy. The relevant decision was based on the experts' conclusion that detention would be compatible with the applicant's health. Moreover, one of the opinions submitted by the applicant himself also pointed to the absence of obstacles to his detention.

39. The Court further observes that there is no indication that the applicant's health deteriorated during his detention. The Court also notes that medical treatment in the detention centre was provided in line with the external medical experts' recommendations. The applicant's state of health was examined by independent experts several times during his detention (see paragraphs 5, 10 and 13).

40. In sum, the Court is satisfied that applicant's condition was, throughout his detention, monitored by the prison health service and that he received appropriate medical treatment. There is no indication of any negligence on the part of the medical services, nor has the applicant adduced any evidence to show that the authorities were negligent in administering medical treatment to him.

41. The Court concludes that there is no indication that the applicant's condition was incompatible with his detention. Consequently, the Court considers that the treatment complained of does not disclose any indication of a violation of Article 3 of the Convention.

42. The applicant also complained under the same Article about the fact that he was qualified as "a dangerous detainee".

43. The Court notes that not only did the applicant formulate his arguments in vague terms but also that he has not produced any material to show that the decision qualifying him as a dangerous detainee exposed him to any treatment that might fall within the ambit of Article 3 of the Convention.

44. It follows that the complaint is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to paragraph 4 of that Article.

2. Complaint under Article 5 § 1 of the Convention

45. The applicant complained that he had been arrested and detained despite his innocence and contrary to the principle of presumption of innocence.

46. The complaint is to be examined under Article 5 § 1 of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.”

47. The Court reiterates that the reasonableness of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c). Having a “reasonable suspicion” presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 16, § 32). However, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at a later stage of the process of criminal investigation (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27 § 55).

48. In the light of the documents in the file, there is no indication that there was no reasonable suspicion against the applicant which provided grounds for his detention or that the authorities did not have at their disposal evidence in support of the imposition of detention.

49. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

3. Complaint under Article 5 § 4 of the Convention

50. The applicant also alleged that Article 5 § 4 had been breached in his case in that he had been deprived of the opportunity to attend the proceedings in which the extension of his detention had been decided.

51. Article 5 § 4 reads:

“4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

52. In the light of the established case-law it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 of the Convention for criminal or civil litigation. However, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Reinprecht v. Austria*, no. 67175/01, 15 November 2005, § 31-42; *Trzaska v. Poland*, no. 25792/94, 11 July 2000; and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162 and *Włoch v. Poland*, no. 27785/95, § 125, ECHR 2000-XI, both with reference to *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22).

53. According to Article 249 §§ 3 and 5 of the Polish Code of Criminal procedure, a lawyer is entitled to participate in the sessions at which the court examines the question of extension of detention during judicial proceedings.

54. In the present case, the applicant stated that his lawyer had not participated in some of these sessions. However, the Court notes that it does not transpire from the case-file that either the applicant or his legal-aid lawyer requested to be brought before the court to attend these sessions and availed themselves of the opportunity to be present during the examination of the question of extension of detention, which amounts to a waiver of rights (see *Kawka v. Poland*, no. 25874/94, §§ 60 and 61, 9 January 2001 and, by contrast, *Nešták v. Slovakia*, no. 65559/01, § 82, 27 February 2007).

55. Having regard to the above considerations, there is no indication that the proceedings in question in the applicant's case were not in conformity with Article 5 § 4.

56. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

4. Complaint under Article 6 § 1 of the Convention

57. The applicant also complained that the length of proceedings in his case had been unreasonable. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by [a] ... tribunal...”

58. On 1 March 2005 the Court gave decisions in two leading cases: *Charzynski v. Poland* no. 15212/03 (criminal proceedings) and *Michalak v. Poland* no. 24549/03 (civil proceedings), holding that persons

complaining about the length of proceedings before the Polish courts were required by Article 35 § 1 of the Convention to lodge a complaint of breach of the right to a trial within a reasonable time under the 2004 Act. Under section 2 of this Act, a party to the judicial proceedings is entitled to lodge a complaint of a breach of the right to a trial within a reasonable time. Under section 5 of the 2004 Act, such a complaint must be lodged while the proceedings are still pending before the domestic courts. A party may seek, under section 12, a finding that there was an unreasonable delay and ask for just satisfaction and acceleration of the proceedings in question.

59. The Court reiterates that under Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted.

60. In the light of the foregoing, the Court considers that the applicant was required by Article 35 § 1 of the Convention to lodge a complaint of a breach of the right to a trial within a reasonable time with the domestic court under the 2004 Act. However, he did not avail himself of this remedy.

61. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

5. Complaint under Article 13 of the Convention

62. Finally, the applicant alleged, relying on Article 13 of the Convention, that the refusal to quash the detention order could not be appealed against.

63. Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

64. Leaving aside the question of whether the relevant provisions of the Polish Code of Criminal Procedure governing the quashing of detention raise any issue under this Article, the Court observes that all remedies concerned remedies available in Poland as regards detention on remand, i.e. an appeal against the detention order, a request for release, whether submitted to the prosecutor or to the court, depending on the stage of the proceedings, and also an appeal against a decision to prolong detention on remand, serve the same purpose under Polish law. Their objective is to secure a review of the lawfulness of detention at any given time of the proceedings, both in their pre-trial and trial stage, and to obtain release if the circumstances of the case no longer justify continued detention (see *Iwańczuk v. Poland*, no. 25196/94, (dec.)). The request of release can be submitted at any time both during the investigation and the judicial stage of the proceedings. The law does not limit in any way either the frequency or the number of such requests which can be submitted by the detainee. Such

a request should be examined by the competent authority within three days. This remedy is best suited to ensure an adequate and swift reaction of the authorities to such grounds for termination of detention on remand as, for instance, bad health or difficult personal situation.

65. Consequently, having regard to the wide range of remedies available in respect of the imposition and maintenance of detention on remand and, in particular to the characteristics of the request for release, the Court is of the view that the lack of appeal against such a request, seen in the context of the Polish legal system governing the detention on remand, does not raise any issue under Article 13 of the Convention.

66. Thus, the lack of appeal procedure against a refusal to quash the detention cannot be regarded as rendering this remedy ineffective or insufficient. Accordingly, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 3 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

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