



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

FOURTH SECTION

CASE OF CYNARSKI v. POLAND

(Application no. 30049/06)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Cynarski 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 14 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 30049/06) 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 Krzysztof Cynarski (“the applicant”), on 12 July 2006.

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 10 October 2007 the President of the Fourth Section decided to communicate the complaint concerning the length of the applicant’s pre-trial detention 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 1976 and lives in Warsaw.

6. On 12 November 2003 the applicant was arrested by the police.

7. On 14 November 2003 the Warsaw District Court (*Sąd Rejonowy*) decided to place the applicant in pre-trial detention in view of the reasonable

suspicion that he had stolen four Jaguar cars as a member of an organised criminal gang. The applicant appealed against this decision.

8. On 15 January 2004 the Warsaw Regional Court (*Sąd Okręgowy*) dismissed his appeal.

9. The applicant's pre-trial detention was prolonged on 4 February, 16 April and 28 September 2004. The court relied on the reasonable suspicion against the applicant and on the severity of the penalty that might be imposed, making it probable that the applicant would obstruct the proceedings and attempt to put pressure on witnesses.

10. The applicant appealed against all those decisions and applied to be released from detention, but to no avail.

11. On 26 July and 27 October 2005 the Warsaw District Court further prolonged the applicant's detention on remand, giving identical reasons for its decisions as on previous occasions.

12. 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 several applications to the Warsaw Court of Appeal for the applicant's detention to be prolonged beyond that term. On 8 November 2005 and 10 March 2006 the Court of Appeal granted the application. The court justified its decisions with reference to the reasonable suspicion that the applicant had committed the offences and the complexity of the case, which concerned an organised criminal gang. The court also held that the measure was justified by the severity of the sentence to which the applicant was liable. On both occasions, however, the court decided to prolong the applicant's detention for a period shorter than had been requested by the trial court and instructed it to intensify its efforts to finish the trial, given that the most severe preventive measure had been applied to the applicant for a lengthy period.

13. On 9 June 2006 the Warsaw Court of Appeal prolonged the applicant's detention until 11 November 2006, reiterating the grounds given previously.

14. On 26 October 2006 the Warsaw District Court decided to release the applicant from detention and to place him under the supervision of the police. The court considered that it could not be excluded that the applicant would be sentenced to a prison term amounting to the period he had already spent in detention on remand. The court also found that police supervision would secure the proper course of the proceedings. On the same day the applicant was released from detention.

15. In 2006 the trial court held 18 hearings. On 31 January 2007 it gave a judgment. The applicant was convicted of membership of an organised criminal gang involved in stealing cars and of having stolen three Jaguars. He was sentenced to four years and six months' imprisonment.

16. The applicant lodged an appeal against the judgment. On 19 March 2008 the Warsaw Regional Court quashed the impugned judgment and remitted the case.

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

II. RELEVANT DOMESTIC LAW

18. 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 “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.

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 12 November 2003, when he was arrested on suspicion of theft, and ended on 26 October 2006 when he was released from detention.

Accordingly, the applicant's detention lasted two years, eleven months and fourteen days.

2. The parties' submissions

23. The applicant submitted that he had been kept in detention pending trial for an unjustified period of time. He submitted that two other co-accused, who had pleaded guilty, had been released from detention in 2004. The applicant complained that his case had been joined to another trial involving twenty-nine co-accused with whom he had nothing in common.

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, who had been accused of membership of an organised criminal gang. They further underlined the complexity of the case concerning several criminal gangs which had been stealing cars and smuggling them abroad. In the end, the domestic court had decided to sever the charges against the applicant and eleven co-accused into separate proceedings.

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

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, in addition to the reasonable suspicion against the applicant, relied principally on the severity of the penalty to which he was liable and 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. The authorities also relied on the complexity of the case.

27. The applicant was charged with several counts of theft 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 *Bąk v. Poland*, no. 7870/04, § 57, 16 January 2007).

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

29. 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, is often, by the nature of things, considerable. In this connection, however, the Court notes that there is no appearance that the applicant made any attempts to intimidate witnesses during the proceedings or tried to delay or disrupt the trial. Moreover, the Court notes that there is no evidence that, since his release in October 2006, the applicant has undertaken any such activities aimed at interfering with the proper conduct of the proceedings.

30. 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 *Micha v. Poland*, no. 13425/02, § 49, 4 May 2006).

31. 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. Only after almost three years of continuous detention of the applicant did the domestic court consider that its length had been excessive and that police supervision would be a sufficient guarantee for his appearance at the trial.

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 *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed approximately 38,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

35. The Government failed to submit their comments within the prescribed time-limit.

36. 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 1,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

38. 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 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 1,000 (one 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 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President