



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

FOURTH SECTION

CASE OF GULCZYŃSKI v. POLAND

(Application no. 33176/06)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

02/03/2009

This judgment may be subject to editorial revision.

In the case of Gulczyński 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 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 33176/06) 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 Sebastian Gulczyński (“the applicant”), on 8 August 2006.

2. The applicant was represented by Ms A. Pietras, a lawyer practising in Gdynia. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wolasiewicz 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 27 September 2007 the President of the Fourth Section of the Court 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 1976 and lives in Gdańsk.

6. On 2 March 2003 the applicant was arrested on suspicion of armed robbery and theft committed as part of an organised criminal gang.

7. On 3 March 2003 the Gdańsk Regional Court (*Sąd Okręgowy*) ordered his pre-trial detention. It referred to the likelihood that the applicant had committed the offences with which he had been charged. It further considered that there was a reasonable risk that the applicant would obstruct the investigation by inducing witnesses to give false testimony.

8. In the course of the investigation the applicant's detention was prolonged by the Regional Court several times. The court referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant and the complexity of the case. It relied on the fact that there were no circumstances to justify the application of a different preventive measure.

9. On 20 November 2003 the Gdańsk Regional Prosecutor (*Prokurator Okręgowy*) indicted the applicant together with 13 other persons on charges of armed robbery, fraud, destruction of documents and theft committed as part of an organised criminal gang. The prosecutor asked the court to hear evidence from at least 120 witnesses.

10. The trial began on 17 March 2004. The trial court held on average three hearings per month.

11. In the course of the trial the applicant's detention was prolonged by the Regional Court and the Gdańsk Court of Appeal (*Sąd Apelacyjny*) several times. The court relied on the previous grounds. It also referred to the need to conclude the proceedings and in particular to ensure that the numerous co-accused and witnesses were questioned.

12. The applicant's appeals against the decisions extending his detention and against the detention order, and all his subsequent, numerous applications for release and appeals against refusals to release him, were unsuccessful.

13. In particular, on 31 July 2006 the applicant made an application for his detention to be lifted or replaced by another preventive measure. He referred to the fact that his role in the organised criminal gang had been marginal and that the process of obtaining evidence had been successfully completed. On 17 August 2006 the Regional Court dismissed the application.

14. On 15 November 2006 the Gdańsk Regional Court convicted the applicant as charged and sentenced him to eight years' imprisonment. The judgment became final, as on 28 November 2006 the applicant informed the Gdańsk Regional Court that he would not appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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 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

16. 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.”

17. The Government contested that argument.

A. Admissibility

18. 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

19. The applicant's detention started on 2 March 2003, when he was arrested on suspicion of armed robbery and theft committed as part of an organised criminal gang. On 15 November 2006 the Gdańsk Regional Court convicted him as charged.

20. 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, ECHR 2000-XI).

21. Accordingly, the period to be taken into consideration amounts to three years, eight months and twelve days.

2. *The parties' submissions*

(a) **The applicant**

22. The applicant submitted that as a result of the delays in the proceedings in his case, the length of his pre-trial detention had been unreasonable.

(b) **The Government**

23. The Government submitted that the applicant's pre-trial detention had satisfied the requirements of Article 5 § 3. It had been justified by "relevant" and "sufficient" grounds. These grounds were, in particular, the strong suspicion that the applicant had committed the offences with which he had been charged, the serious nature of the offences and the severity of the anticipated penalty. Moreover, the Government submitted that the case had been complex.

24. The Government further argued that the domestic authorities had shown due diligence and that keeping the applicant in custody had been necessary in order to prevent him from evading justice and tampering with evidence.

25. Finally, in the Government's opinion the applicant's case had not disclosed any of the grounds for release from detention listed in Article 259 of the Code of Criminal Procedure.

3. *The Court's assessment*

(a) **General principles**

26. The Court observes 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*, cited above, §§ 110 et seq., ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

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

27. In their decisions on the applicant's detention, the authorities, in addition to the reasonable suspicion against him, relied principally on three grounds, namely the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable, and the need to ensure the proper conduct of the proceedings.

28. The applicant was charged with armed robbery and theft committed as part of an organised criminal gang (see paragraphs 6-7 above). In the Court's view, the fact that the case concerned a member of such a criminal

gang should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, no. 7870/04, § 57, ECHR 2007-...).

29. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially have warranted his detention. In addition, the need to obtain voluminous evidence to determine the degree of the alleged responsibility of each of the defendants, who had been part of a criminal gang and against whom numerous charges of serious offences were laid, constituted valid grounds for the applicant's initial detention.

30. 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, high.

31. 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 reoffending, the gravity of the charges cannot by itself justify long periods of detention on remand (see *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

32. While all those above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to prolong this measure. In this context, the Court would observe that by the date of his first-instance conviction the applicant had already spent more than three years and eight months in pre-trial detention (see paragraph 14 above).

33. 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 gang, 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicant also alleged a breach of Article 6 § 1 on the ground of the excessive length of the proceedings. He further complained, under Article 6 §§ 1 and 3, that the proceedings had been unfair.

36. As regards the complaint about the excessive length of the proceedings, the Court observes that the present application was lodged with the Court while the relevant proceedings were pending before the domestic court. It was 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*).

37. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it to be 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 had already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42, ECHR 2005-V). In the present case, the applicant failed to avail himself of this remedy.

38. 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.

39. The Court has examined the applicant's complaints about the alleged unfairness of the proceedings. In this respect the Court observes that the applicant failed to lodge an appeal against the judgment of the Gdansk Regional Court of 15 November 2006 (see paragraph 14). Accordingly, this complaint 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

40. 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

41. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

42. The Government contested this claim.

43. The Court considers that the applicant 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

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

C. Default interest

45. 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 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 the 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 2 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President