



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

FOURTH SECTION

CASE OF MARECKI v. POLAND

(Application no. 20834/02)

JUDGMENT

STRASBOURG

2 December 2008

FINAL

02/03/2009

This judgment may be subject to editorial revision.

In the case of Marecki 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. 20834/02) 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 Stanisław Marecki (“the applicant”), on 2 July 2001.

2. 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 23 October 2007 the Court decided to give notice of the complaint to the Government. It 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 1955 and lives in Brzozów.

6. On 12 December 1998 the applicant was arrested on a charge of numerous counts of armed robbery and membership of a criminal gang. On 13 December 1998 he was detained on remand by a decision of the Łowicz District Court. On an unspecified date in 2000 the Łódź Regional

Prosecutor laid additional charges against the applicant (armed robbery committed as part of an organised criminal gang and homicide).

7. Subsequently, further decisions prolonging his detention on remand were taken by the Skierniewice Regional Court. The relevant decisions were taken on the following dates: 3 March 1999 (extending his detention until 11 June 1999); 26 May 1999 (extending his detention until 12 June 1999); and 28 April 2000 (extending his detention until 12 December 2000).

8. From June 1999 onwards, decisions prolonging the applicant's detention on remand were taken by the Łódź Court of Appeal. The relevant decisions were taken on the following dates: 1 June 1999 (extending his detention until 12 September 1999; that decision was upheld by the Supreme Court on 29 July 1999); 7 September 1999 (extending his detention until 13 December 1999; that decision was upheld by the Supreme Court on 27 October 1999); 5 December 2000 (extending his detention until 31 March 2001); 20 March 2001 (extending his detention until 31 October 2001); 23 October 2001 (extending his detention until 28 February 2002); 12 February 2002 (extending his detention until 31 May 2002); 13 August 2002 (extending his detention until 23 November 2002); 5 August 2003 (extending his detention until 23 December 2003); and 22 December 2003 (extending his detention until 22 June 2004).

9. On 25 November 1999 and 10 March 2000, decisions prolonging the applicant's detention were taken by the Supreme Court following requests by the Prosecutor General.

10. The courts justified their decisions prolonging the applicant's detention on remand and their refusals to release him by the need to hear evidence from the accused and witnesses, some of whom lived abroad, the complexity of the case, the significant number of accused, the voluminous documents gathered in the case, the existence of a reasonable suspicion that the applicant had committed the offences (including homicide) and the severity of the anticipated sentence. These considerations led the courts to assume that the applicant, if released, could obstruct the proper course of the proceedings. The courts found on several occasions that there were no special grounds, as specified in Article 259 § 1 of the Code of Criminal Procedure, that would justify lifting the detention order and imposing a less severe measure. In its decision of 12 February 2002 the Łódź Court of Appeal also acknowledged the delay in the proceedings and asked the trial court to expedite the examination of the case.

11. The applicant's appeals against decisions prolonging his detention were unsuccessful. They were dismissed by the Skierniewice Regional Court on 12 July 2000, 6 September 2000 and 4 October 2000 and by the Łódź Regional Court on 30 March 2001, 25 January 2002, 14 June 2002, 29 October 2002, 29 November 2002, 7 January 2003, 25 March 2003, 6 May 2003, 15 July 2003, 17 February 2004 and 25 March 2004.

12. In the meantime, on 6 March 2000 the Skierniewice Regional Court, following the recommendations of doctors, had ordered that the applicant undergo a psychiatric observation for six weeks and that an expert's opinion concerning his health be prepared.

13. A bill of indictment, concerning six accused and involving 140 witnesses, was filed with the Łódź Regional Court on 25 April 2000.

14. On 23 May 2002 the Łódź Regional Court convicted the applicant as charged and sentenced him to 25 years' imprisonment.

15. On 22 December 2003 the Łódź Court of Appeal quashed the first-instance judgment and remitted the case to the Regional Court.

16. On 6 December 2004 the Łódź Regional Court acquitted the applicant and he was released from detention.

17. The applicant lodged a claim for compensation for wrongful detention. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. 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

19. 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."

20. The Government did not submit any comments.

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 December 1998, when he was arrested. On 23 May 2002 the Łódź Regional Court convicted him as charged.

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 *Kudla v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

On 22 December 2003 the Łódź Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 6 December 2004, when the applicant was acquitted and released.

23. Accordingly, the period to be taken into consideration amounts to four years and six months.

2. The parties' submissions

(a) The applicant

24. The applicant submitted that the length of his detention on remand had been unreasonable.

(b) The Government

25. The Government did not submit any observations on the merits of the case.

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, *Kudla*, 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 four grounds, namely the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable, the need to ensure the proper conduct of the proceedings, and the risk that the applicant might tamper with evidence.

28. The applicant was charged with numerous counts of armed robbery and homicide committed as part of an organised and armed criminal gang (see paragraph 6 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 and to determine the degree of the alleged responsibility of each of the defendants, who had acted as part of a criminal gang, as well as the process of obtaining evidence from witnesses, 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. 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 original first-instance conviction, the applicant had already spent three years and six months in pre-trial detention. Following the quashing of that conviction on appeal, he was kept in custody for a further year.

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 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The applicant further complained under Article 6 § 1 of the Convention that the length of the proceedings in his case had exceeded a “reasonable time” within the meaning of that provision.

34. 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...”

As regards the complaint about the unreasonable length of the proceedings, the Court observes that the present application was lodged with it while the relevant proceedings were pending before the domestic courts.

35. It further observes that, 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*), it was open to an applicant, in the course of the impugned proceedings, to lodge a complaint about the unreasonable length of proceedings with the relevant domestic court.

36. 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, ECHR 2005-V). However, the applicant has not availed himself of this remedy.

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

37. The applicant also complained about the unfavourable outcome of the criminal proceedings in his case.

38. The Court reiterates that according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

39. In the light of all the material in its possession and in so far as the applicant’s complaint about the outcome of the proceedings has been substantiated, the Court finds that it does not disclose any appearance of a violation of the Convention. The Court finds no elements indicating that the national courts went beyond their proper discretion in their assessment of

the facts or that they reached conclusions which could be considered unfair or unreasonable.

It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and therefore must be rejected in accordance with Article 35 § 4.

40. Lastly, the applicant complained that the proceedings for compensation for his wrongful detention had been unfair.

The Court observes that the domestic proceedings to determine the applicant's claim for compensation are currently pending. Therefore, in so far as the applicant relied on Article 6 of the Convention, the Court considers that it would be premature to take a position on the substance of this complaint. The complaint must therefore be declared inadmissible for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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.”

Damage, costs and expenses

42. The applicant did not submit any claim under Article 41.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the applicant's detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

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