



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

FOURTH SECTION

CASE OF WOJCIECHOWSKI v. POLAND

(Application no. 5422/04)

JUDGMENT

STRASBOURG

9 December 2008

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Wojciechowski 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 18 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 5422/04) 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 Janusz Wojciechowski (“the applicant”), on 29 January 2004.

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 exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 30 August 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 1961 and lives in Lublin

6. On 2 October 2001 the applicant was arrested on suspicion of acting in an organised and armed criminal group, deprivation of liberty, extortion and incitement to murder. On 4 October 2001 the Lublin District Court remanded him in custody, having regard to the severity of the likely penalty.

It also held that the application of that measure was necessary in order to secure the proper conduct of the proceedings and to prevent the applicant from interfering with witnesses.

7. The applicant's detention was subsequently prolonged on 18 December 2001 and 26 March 2002. The court referred to the complexity of the investigation and relied on the need to secure the proper conduct of the proceedings.

8. On 11 June 2002 the prosecution filed a bill of indictment against the applicant with the Lublin Regional Court. The applicant was charged with acting in an organised and armed criminal group, incitement to murder, deriving profits from prostitution, extortion and unlawful possession of a firearm. The bill of indictment concerned seven other persons. The trial court appointed a legal-aid counsel for the applicant.

9. On 14 June 2002 the Lublin Regional Court extended the applicant's detention until 30 September 2002, referring to the severity of the anticipated penalty.

10. On 3 September 2002 the Regional Court ordered that the applicant and his co-accused be kept in custody until 3 February 2003. It stated, *inter alia*, that:

“Evidence obtained in the case, namely statements of G.S., statements of witnesses I.K., S.C., M.I. and statements of anonymous witnesses, indicates that the accused committed the acts with which they were charged.”

The court also relied on the gravity of the charges. It added that, having regard to the nature of the charges and the personal characteristics of the accused, their detention on remand was the only measure which could secure the proper conduct of the proceedings.

11. On 16 September 2002 the applicant appealed against that decision. In a further letter he complained that in its decision of 3 September 2002, the court had expressly stated that he had committed the offences with which he had been charged.

12. On 16 October 2002 the Lublin Court of Appeal upheld the decision of 3 September 2002. The court considered that it was not its task to assess evidence at this stage of the proceedings. It was sufficient to establish that the evidence gathered in the case confirmed the strong suspicion of the applicant's involvement in the offences he had been charged with.

13. The applicant on several occasions challenged the presiding judge, alleging that he had infringed the rights of the defence by refusing his requests to admit evidence. On 22 October 2002 and 13 May 2003 the Lublin Regional Court dismissed the applicant's challenge.

14. The first hearing was held on 17 June 2003.

15. On 18 June 2003 the Regional Court extended the applicant's detention for a further unspecified period.

16. On 24 September 2003 the Lublin Court of Appeal extended the applicant's detention until 2 January 2004. It invoked the gravity of the charges and the severity of the anticipated penalty. The Court of Appeal also had regard to the particular complexity of the case related to the volume and nature of the evidence, which included anonymous witnesses.

17. The applicant's detention was subsequently extended by the Court of Appeal on 30 December 2003 (until 19 March 2004) and 17 March 2004 (until 5 June 2004). In the latter decision, the court found that hearings had been held regularly and that the case was particularly complex.

18. On 2 June 2004 the Court of Appeal extended the applicant's detention until 5 September 2004. Having regard to the organised character of the alleged criminal activities, it held that the applicant's detention was necessary in order to prevent him and the other co-accused from interfering with the proceedings.

19. On 11 August 2004 the Court of Appeal ordered that the applicant be held in custody until 5 December 2004. It relied on the same grounds as previously.

20. During the trial the applicant filed numerous unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention.

21. The trial court held about 59 hearings. On 3 December 2004 the Lublin Regional Court delivered a judgment. It convicted the applicant of acting in an organised and armed criminal group, deriving profits from prostitution and extortion. It acquitted him of the charges of incitement to murder and unlawful possession of a firearm. The court sentenced him to six years' imprisonment and a fine.

22. The applicant's legal-aid counsel and the prosecution appealed against the first-instance judgment. The applicant also filed his own appeal. The applicant remained in detention pending appeal.

23. On 4 October 2005 the Court of Appeal upheld the Regional Court's judgment in part. It remitted the case in respect of the two charges of which the applicant had been acquitted (incitement to murder and unlawful possession of a firearm).

24. On 16 December 2005 the written reasons for the judgment of the Court of Appeal were served on the applicant's counsel. On 22 December 2005 the counsel wrote to the Court of Appeal and the applicant that he had found no basis to prepare a cassation appeal in the case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. 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 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.

26. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, 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 in the 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

27. 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.”

28. The Government contested that argument.

A. Admissibility

29. The Government argued that the applicant had failed to exhaust the available domestic remedies, since he had not appealed against some of the decisions extending his detention (namely the decisions of 17 January 2003 and 18 June 2003).

30. The Court observes that it is true that the applicant did not appeal against the decisions referred to by the Government. However, he lodged appeals against the other decisions extending his detention. He also requested on several occasions that his detention be replaced by a more lenient preventive measure. The Court has already considered that those remedies, namely an appeal against a detention order and/or 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 extend detention, serve the same purpose under Polish law. Their objective is to secure a review of the lawfulness of detention at any given time during the proceedings, at both the pre-trial and the trial stage, and to obtain release if the circumstances of the case no longer justify continued detention

(see *Iwańczuk v. Poland* (dec.), no. 25196/94, 9 November 2000, and *Wolf v. Poland*, nos. 15667/03 and 2929/04, § 78, 16 January 2007). It follows from the Court's case-law that the applicant is not required to appeal against each and every decision extending his detention (see, *a contrario*, *Bronk v. Poland* (dec.), no. 30848/03, 11 September 2007). The Court therefore considers that the applicant was not required to appeal against all refusals to release him in order to comply with the requirement of exhaustion of domestic remedies. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies.

31. 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

32. The applicant's detention started on 2 October 2001, when he was arrested on suspicion of acting in an organised and armed criminal group, deprivation of liberty, extortion and incitement to murder. On 3 December 2004 the Lublin Regional Court convicted him of participation in an organised criminal group, deriving profits from prostitution and extortion.

33. From that date onwards 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 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

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

2. The parties' submissions

(a) The applicant

35. The applicant submitted that the period of his pre-trial detention had been unreasonably lengthy. He further argued that the pre-trial detention, initially justified by the domestic courts, had become unjustified with the lapse of time.

(b) The Government

36. The Government considered that the length of the applicant's pre-trial detention had satisfied the requirements of Article 5 § 3, in particular as it had been duly justified. The proceedings had been very complex. Evidence obtained by the trial court had come from a large

number of witnesses, including an anonymous witness. In addition, there had been a risk of the applicant's obstructing the proceedings and tampering with the evidence. This risk was a strong one as the proceedings concerned eight members of an organised, armed criminal group. Bearing in mind the seriousness of the crime and the anticipated penalty, his detention during the whole period in question had been justified in the public interest and based on relevant and sufficient grounds. Furthermore, the national authorities had displayed due diligence when dealing with the applicant's case.

37. They concluded that no violation of Article 5 § 3 had occurred in the present case.

3. *The Court's assessment*

(a) General principles

38. The Court points out 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*, cited above, § 110 *et seq.*, 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

39. In their detention decisions, in addition to the reasonable suspicion against the applicant, the authorities 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 secure the proper conduct of the proceedings.

40. The applicant was charged with acting in an organised and armed criminal group, deprivation of liberty, extortion and incitement to murder (see paragraph 6 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 *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

41. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to obtain voluminous evidence to determine the degree of the alleged responsibility of each of the defendants, who had acted in a criminal group and against whom numerous serious charges were laid, constituted valid grounds for the applicant's initial detention.

42. 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.

43. 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 detention on remand (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

44. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts unlimited power to prolong this measure. In this context, the Court would observe that until the date of his first-instance conviction the applicant had already spent three years and two months in pre-trial detention.

45. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

47. The applicant further complained of the fact that the Lublin Regional Court, in its decision of 3 September 2002, had considered him guilty before the opening of the trial. He relied on Article 6 § 2 of the Convention.

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. Admissibility

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. The parties' submissions

(a) The applicant

48. The applicant argued that his right to be presumed innocent had been breached on account of the terms employed in the grounds of the Regional Court's decision.

(b) The Government

49. The Government did not contest that the applicant had invoked in substance his right to be presumed innocent before the domestic authorities, as he had appealed against the decision of 3 September 2002. However, they were of the opinion that the wording of the decision of 3 September 2002 could not be interpreted as a pronouncement on the applicant's guilt.

50. The Government stressed that the reasoning of the decision of 3 September 2002 contained only statements which merely described "a state of suspicion". They also emphasised that similar language had not been used in any other court decision regarding the applicant's pre-trial detention.

51. Furthermore, they found no indication that the impugned terms had adversely affected the court judgments regarding the applicant's criminal responsibility. On 3 December 2004 the applicant had been acquitted of two charges brought against him by the prosecution.

2. The Court's assessment

(a) General principles

52. The Court reiterates that the presumption of innocence under Article 6 § 2 will be violated if a judicial decision or, indeed, a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before his guilt has been proved according to law. It suffices, in the absence of a formal finding, that there is some reasoning suggesting that the court or the official in question regards the accused as guilty, while a premature expression of such an opinion by the tribunal itself will inevitably run foul of the said presumption (see, among other authorities, *Deweert v. Belgium*, 27 February 1980, § 56, Series A no. 35; *Minelli v. Switzerland*, 25 March 1983, §§ 27, 30 and 37, Series A no. 62; *Allenet de Ribemont v. France*, 10 February 1995, §§ 35-36, Series A no. 308; and *Karakaş and Yeşilırmak v. Turkey*, no. 43925/98, § 49, 28 June 2005).

53. Article 6 § 2 governs criminal proceedings in their entirety, “irrespective of the outcome of the prosecution” (see *Minelli*, cited above, § 30). However, once an accused has been found guilty, in principle, it ceases to apply in respect of any allegations made during the subsequent sentencing procedure (see *Phillips v. the United Kingdom* no. 41087/98, ECHR 2001-VII and *Engel and Others v. the Netherlands* judgment of 8 June 1976, Series A no. 22).

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

54. The Court notes that in the grounds for its decision of 3 September 2002 on the prolongation of the applicant’s detention, the Lublin Regional Court stated that the evidence against the defendants, including the applicant, indicated that they had committed the offences with which they had been charged. The Government argued that, having regard to the overall context of that decision, the Regional Court had referred to the existence of evidence pointing to a likelihood that the applicant had committed the offences concerned, and not to the question of his guilt or innocence. However, the Court emphasises that there is a fundamental distinction to be made between a statement that someone is merely *suspected* of having committed a crime and a clear judicial declaration, in the absence of a final conviction, that the individual *has committed* the crime in question (see, *Garycki v. Poland*, no. 14348/02, § 71, 6 February 2007, *Nešták v. Slovakia*, no. 65559/01, 89, 27 February 2007). Having regard to the explicit and unqualified character of the impugned statement, the Court finds that it amounted to a pronouncement on the applicant’s guilt before he was proved guilty according to law. The Court underlines that there can be no justification for a court of law to make a premature pronouncement of this kind.

55. The fact that the applicant was ultimately found guilty of some of the charges cannot vacate his initial right to be presumed innocent until proved guilty according to law. As noted repeatedly in this Court’s case-law, Article 6 § 2 governs criminal proceedings in their entirety “irrespective of the outcome of the prosecution” (see paragraph 53 above).

56. There has accordingly been a violation of Article 6 § 2 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

57. Lastly, the applicant complained generally and without further substantiation under Articles 5 §§ 1 and 2, and 6 §§ 1 and 3 of the Convention, and under Article 2 § 1 of Protocol No. 7.

58. The Court has examined the applicant’s complaints. Even assuming that the applicant exhausted the required domestic remedies, having regard to all the material in its possession, and in so far as the matters complained

of are within its competence, the Court finds that the facts of the case do not disclose any appearance of a violation of the above-mentioned provisions. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant did not claim any particular sum in respect of pecuniary and non-pecuniary damage. However, he requested the Court to grant him just satisfaction in an amount it considered equitable, given the detriment suffered by him.

61. The Government did not address this matter

62. The Court considers that the applicant has 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 1,500 euros (EUR) under this head.

B. Costs and expenses

63. The applicant did not submit a claim for costs and expenses

C. Default interest

64. 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 complaints under Articles 5 § 3 and 6 § 2 of the Convention 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 § 2 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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage to be converted into Polish zlotys at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
 - (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.

Done in English, and notified in writing on 9 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President