



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

FOURTH SECTION

CASE OF LOŚ v. POLAND

(Application no. 24023/06)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Łoś v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 24023/06) 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, Ms Halina Maria Łoś (“the applicant”), on 7 June 2006.

2. The applicant was represented by Mr Henryk Szulejewski, a lawyer practising in Warsaw. 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 her detention on remand had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 30 January 2007 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) and to examine it simultaneously with the case of *Filon v. Poland* (no. 39163/06), which concerned the same criminal proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Warsaw.

Criminal proceedings against the applicant and her detention on remand

6. On 10 June 2003 the applicant was arrested on suspicion of fraud, committed in an organised criminal group.

7. On 11 June 2003 the Warsaw District Court (*Sąd Rejonowy*) remanded her in custody, relying on the reasonable suspicion that she had committed the offence in question. It also considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings, given the risk that she might tamper with evidence and induce witnesses to give false testimony. The court also stressed the severity of the anticipated sentence.

8. The applicant's appeal against the detention order, likewise her further appeals against decisions prolonging her detention and all her subsequent, numerous applications for release, were unsuccessful. In her applications and appeals, she argued that the charge against her was based on unreliable and contradictory evidence. She also relied on her personal circumstances, in particular her age.

9. In the course of the investigation, the applicant's detention was prolonged on several occasions by the Warsaw District Court (on 11 June 2003, 3 September 2003, 3 December 2003 and by the Warsaw Court of Appeal (on 8 June 2004, 7 September 2004, 3 December 2004, 1 March 2005). In all their detention decisions the authorities repeatedly relied on a strong suspicion that the applicant had committed the offences in question, which was supported by evidence from witnesses and experts. They attached importance to the grave nature of those offences and the likelihood of a severe sentence of imprisonment being imposed on the applicant. They further considered that the need to secure the proper conduct of the investigation, especially the need to verify evidence from suspects and witnesses and the need to obtain fresh evidence from experts justified holding her in custody.

10. On 12 May 2005 the Pruszków District Prosecutor (*Prokurator Rejonowy*) lodged a bill of indictment with the Warsaw District Court. The applicant was charged with fraud, committed in an organised criminal group. There were 16 defendants in the case, all charged with numerous counts of fraud committed in an organised criminal group. On 20 May 2005 the Warsaw District Court again prolonged the applicant's detention until 9 June 2005 reiterating the grounds previously given for her detention.

11. Since on 10 June 2005 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, a further prolongation of her detention and also detention of her co-accused E.C., A.F. and P.S until 9 December 2005 was ordered by the Warsaw Court of Appeal on 3 June 2005. The court found that the strong suspicion against her of having committed the serious offences with which she had been charged and the severity of the anticipated sentence justified holding her in custody. It pointed out that the case was complex given the number of accused and the number of charges brought against them. Moreover, it added that 450 witnesses were to be heard and numerous documents were to be examined.

12. On 12 August 2005 the trial court held the first hearing. Until 21 December 2006, the date on which the applicant was released from detention, the Warsaw District Court held 44 hearings in the case.

13. During the court proceedings the authorities further prolonged the applicant's detention pending trial. On 25 November 2005 the Warsaw Court of Appeal, on an application of the trial court, prolonged the detention of the applicant until 9 March 2006, reiterating the grounds previously given for her detention. The court found the request for prolongation of the applicant's pre-trial detention justified; however, it prolonged it only by three months and not by six months. The court also pointed out that it was possible for the trial court to examine all the evidence within the three-month time-limit and that maximum efforts should be made to expedite the examination of the case.

On 7 March 2006 the Warsaw Court of Appeal prolonged the detention of the applicant until 9 June 2006, reiterating the grounds previously given for her detention. The court pointed out that the three-month time-limit was sufficient for examining the evidence.

On 30 May 2006 the Warsaw Court of Appeal prolonged the detention of the applicant until 9 December 2006. The court stressed the complexity of the case in view of the number of witnesses to be heard. It also pointed out that the trial court should re-consider if it was necessary to hear all the witnesses listed in the bill of indictment. The trial court was instructed to take all necessary measures in order to expedite the proceedings.

On 8 December 2006 the Warsaw Court of Appeal prolonged the applicant's detention until 31 December 2006. The court relied on the grounds stated in the previous decisions.

14. On 21 December 2006 the applicant was released.

15. The proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

17. The applicant complained that the length of her detention on remand had been excessive. She 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 on 10 June 2003, when she was arrested on suspicion of fraud, committed in an organised criminal group. On 21 December 2006 she was released home while the criminal proceedings against her were pending before the first-instance court.

2. The parties’ submissions

(a) The applicant

21. The applicant’s lawyer submitted in general terms that the applicant’s application lodged with the Court was justified.

(b) The Government

22. The Government first presented some statistical data, indicating that in the years 2000-2005 the number of indictments and convictions in cases concerning organised crime had increased both in absolute terms and in relation to other crimes. In 2004 there were 617 indictments in such cases and 220 persons were convicted. They argued that in organised crime cases the authorities were faced with particular problems relating to the taking and assessment of evidence and various logistical issues.

23. With reference to the present case, the Government submitted that the applicant's detention satisfied the requirements of Article 5 § 3. It was justified by "relevant" and "sufficient" grounds, in particular, the existence of a reasonable suspicion throughout the entire period of the applicant's pre-trial detention. Furthermore, the Government referred to the gravity of the charges against the applicant and the severity of the anticipated penalty.

24. They further argued that the applicant's detention had been necessary to secure the proper conduct of the proceedings, as there had been a risk that she would tamper with evidence. This risk was increased by the fact that the charges against the applicant concerned numerous offences committed by an organised criminal group. They maintained that the authorities had displayed due diligence when dealing with her case.

25. Lastly, the Government justified the length of the applicant's detention by the complexity of the case, which stemmed from the number of defendants, the charges brought against them and the fact that the applicant had committed the offence in connection with the activities of an organised criminal group.

3. The Court's assessment

(a) General principles

26. The Court recalls 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 judgements (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

27. In their detention decisions, the authorities relied principally on four grounds, in addition to the reasonable suspicion against the applicant, namely: (1) the serious nature of the offences with which she had been charged; (2) the heavy penalty to which she was liable; (3) the need to

secure the proper conduct of the proceedings, (4) the complexity of the case.

28. The applicant was charged with fraud, committed in an organised criminal group (see paragraphs 11 above).

In the Court's view, the fact that the case concerned a member of a such criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

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

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

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 the applicant spent in detention three years and six months pending trial before the first-instance court.

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. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

33. In his observations of 2 October 2007 the applicant's lawyer raised an additional complaint submitting that the applicant had been kept in detention without a valid detention order. He submitted that the decision prolonging her detention given by the Warsaw District Court on

16 November 2005 should have been given by a panel of three judges, however it was given by one judge.

34. However, the Court notes that the complaint was submitted only on 2 October 2007, which is more than six months after the date on which the decision had been taken.

Accordingly, the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-compliance with the six-month time requirement.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

35. The applicant further complained that the proceedings in her case had been unfair; in particular, she complained about the manner in which the authorities had applied domestic law and assessed the facts of the case. The applicant relied on Article 6 § 1 of the Convention.

36. However, the Court notes that the impugned proceedings are still pending and therefore it is premature to examine the applicant's complaint.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 9,200 euros (EUR) in respect of pecuniary damage and 12,900 euros (EUR) in respect of non-pecuniary damage.

39. The Government considered the applicant's claims exorbitant. They asked the Court to rule that a finding of a violation would constitute in itself sufficient just satisfaction.

40. 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 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, in particular the fact that the applicant was charged with a non-violent crime, and making

its assessment on an equitable basis, the Court awards the applicant EUR 1,500 under this head.

B. Costs and expenses

40. The applicant claimed costs and expenses in an unspecified amount for the proceedings before the Court. However, the Court observes that neither she nor her lawyer had produced any documents in support of the claim. In those circumstances, the Court rejects the claim for costs and expenses (see, *Adamiak v. Poland*, no. 20758/03, § 49, 19 December 2006).

C. Default interest

41. 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 length of the applicant's 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; to be converted into Polish zlotys at the rate applicable at the date of 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President