



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

FOURTH SECTION

CASE OF LEMEJDA v. POLAND

(Application no. 11825/07)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Lemejda 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 9 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 11825/07) 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 Maciej Lemejda (“the applicant”), on 21 February 2007.

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

4. On 1 June 2007 the President of the Fourth Section 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 1977 and lives in Warsaw.

6. On 6 July 2004 the applicant was arrested by the police on suspicion of having committed, *inter alia*, several offences of drug trafficking.

7. On 7 July 2004 the Kielce District Court (*Sąd Rejonowy*) remanded him in custody. It relied on a reasonable suspicion that the applicant had committed the offences with which he had been charged and on the risk that

he might tamper with evidence. Further, the court referred to the severity of the anticipated sentence.

8. The applicant appealed against the detention order. On 10 August 2004 the Kielce Regional Court (*Sąd Okręgowy*) upheld the first-instance decision. It explained that the reasons for his detention were still valid and stressed that the suspicion against him was supported by the fact that the applicant had partly confessed.

9. In the course of the investigation, the applicant's detention was extended several times. The courts relied on the suspicion that the applicant had committed the offence with which he had been charged. In their decisions, which also concerned several other suspects, the courts stressed the fact that most of the accused – however not the applicant - were acting in an organised group. Further, they referred to the complexity of the case, the fact that many suspects were involved in the case and that some of them had gone into hiding. They stressed that the detention was justified by the need to obtain further evidence, in particular, to obtain expert reports, to take evidence from numerous witnesses and suspects and to confront a witness with suspects. Lastly, the courts relied on the fact that some of the suspects were related to each other. On almost every occasion the courts relied on grounds that did not pertain to the applicant individually.

10. On 20 June 2005 the applicant and thirty three other suspects were indicted before the Warsaw Regional Court. The bill of indictment comprised 180 charges. The applicant was indicted on several charges of drug trafficking.

11. The applicant's detention was subsequently extended by the Warsaw Regional Court on 27 June and 24 October 2005, 27 January 2006 and later by the Warsaw Court of Appeal (*Sąd Apelacyjny*) on 27 June and 15 December 2006, 13 March, 13 July and 12 October 2007. The courts repeated the grounds given in the previous decisions. On an unspecified date in January 2008 the Warsaw Court of Appeal further extended the applicant's detention, until 3 April 2008. The applicant failed to submit information as to whether there any further decisions had been given extending his detention. On 23 May 2008 the applicant informed the Court that he had been released.

12. It appears that in the course of the proceedings, the applicant made numerous unsuccessful applications for release and appealed, likewise unsuccessfully, against refusals to release him and against decisions extending his detention. The Warsaw Court of Appeal upheld the first-instance decisions on the following dates: 29 November 2005, 3 March and 8 August 2006, and 3 August and 9 November 2007.

13. On 10 January 2006 the trial court held the first hearing. Between 10 January 2006 and 25 June 2007 it held approximately sixty hearings in the case.

14. It appears that the proceedings are still pending before the first-instance court.

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 extension, release from detention and rules governing other “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

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 6 July 2004, when he was arrested on suspicion of having committed, *inter alia*, several offences of drug trafficking. As it appears from the case file, his detention was extended at least until 3 April 2008. The parties have not supplied information whether his detention was extended further. On 23 May 2008 the applicant

was already released (see paragraph 11); the Court will proceed on the basis that his detention was lifted on 4 April 2008.

20. Accordingly, the period to be taken into consideration amounts to three years and nearly nine months.

2. The parties' submissions

(a) The applicant

21. The applicant submitted that he had been kept in detention for an unjustified period of time. He claimed that the authorities had failed to justify their assessment that he would obstruct the proper course of the proceedings. The applicant also maintained that the domestic authorities had failed to consider alternative means to secure his appearance at the trial. Furthermore, he complained that his applications for release from pre-trial detention had been refused.

(b) The Government

22. The Government considered that the applicant's detention satisfied the requirements of Article 5 § 3. They submitted that the detention had been justified during the entire period. The authorities had given relevant and sufficient reasons for extending it. Those grounds were, in particular, the gravity of the charges against the applicant and the fact that he had participated in an organised criminal group. They further underlined the exceptional complexity of the case, which had involved thirty-four accused, against whom 180 charges had been laid. The Government stressed also the fact that some of the accused had been charged with membership of an organised criminal group.

They further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case, in which evidence from 193 witnesses and three experts had to be heard and over 790 pieces of evidence had to be assessed.

3. The Court's assessment

(a) General principles

23. 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 were stated in a number of its previous judgements (see, among many other authorities, *Kudla 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

24. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the complexity of the case, (2) the need to secure the proper conduct of the proceedings, (3) the severity of the penalty to which he was liable and (4) the fact that the proceedings concerned an organised criminal group. The reasons for extending the detention on remand given by the courts were very general and did not concern the applicant in particular (see paragraph 9 above).

25. The applicant was charged with several offences of drug trafficking. The Court accepts that the reasonable suspicion against the applicant of having committed offences could initially warrant his detention. Also, the need to obtain voluminous evidence and the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the applicant's initial detention.

26. 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).

27. The Government also relied on the fact that the case concerned an organised criminal group. However, the applicant himself was not charged with being a member of such a group (see paragraph 10 above). Consequently, this circumstance was not relevant for assessment of his situation.

28. Apart from the grounds examined above, the domestic courts failed to advance any other argument justifying the extension of the applicant's detention. Indeed, the reasons for their decisions were particularly repetitive and vague, and the decisions extending the applicant's detention did not refer to any particular ground justifying keeping the applicant in detention (see paragraph 9 above).

29. Finally, the Court notes that there is no specific indication that during the period of the applicant's detention the authorities envisaged 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 criminal proceedings.

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 measures of ensuring his appearance at 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).

30. Having regard to the foregoing, 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

31. In his submissions made on 3 December 2007, the applicant complained about the unjustified use of force by the police during their search of his flat.

32. However, pursuant to Article 35 § 1 of the Convention:

“1. The Court may only deal with the matter ... within a period of six months from the date on which the final decision was taken...”

33. The Court notes that the alleged actions against the applicant were carried out in July 2004, thus more than six months before the date on which this complaint was submitted to the Court.

It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant, who was not represented by a lawyer, requested the Court to make an award of just satisfaction on the basis of its case-law in similar cases in order to redress the violation of the Convention. However, he did not specify the amount sought.

36. The Government asked the Court to rule that the finding of a violation constituted in itself sufficient just satisfaction.

37. 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

38. The applicant did not claim reimbursement of any costs and expenses incurred before the Court.

C. Default interest

39. 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 unreasonable length of 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.

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