



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

FOURTH SECTION

CASE OF PAKOS v. POLAND

(Application no. 3252/04)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Pakos 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 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 3252/04) 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 Andrzej Pakos (“the applicant”), on 12 January 2004.

2. The applicant was represented by Mr B. Piotrowski, a lawyer practising in Katowice. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that his detention on remand exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 6 June 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 1962 and lives in Łódź. He is currently detained in the Katowice Remand Centre.

6. On 15 February 2002 the applicant was arrested on suspicion of having been involved in drug trafficking as a member of an organised criminal group.

7. On 17 February 2002 the Katowice District Court (*Sąd Rejonowy*) ordered that the applicant be detained on remand until 15 May 2002 in view of the reasonable suspicion that he had committed the offences in question. The court considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings given the risk that he might obstruct them. This suspicion was, in the court's view, justified by the fact that the applicant had been acting in an organised criminal group, "the members of which had not been identified". The court also stressed the severity of the likely sentence.

8. The applicant's detention was repeatedly extended by several decisions of the Szczecin Regional Court (*Sąd Okręgowy*) and the Katowice Court of Appeal (*Sąd Apelacyjny*). In their decisions, the courts repeatedly relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, the serious nature of the offences and the risk that the applicant, as a member of an organised criminal group, would obstruct the investigation.

9. On 14 December 2004 the prosecutor lodged a bill of indictment with the Katowice Regional Court against the applicant and 32 other co-accused. The prosecutor requested 22 witnesses to be heard.

10. On 7 December 2005 the Katowice Court of Appeal, extending the applicant's detention for a further three months, noted that the length of the investigation had already been excessive and ordered that, by the end of the extended detention (that is, by 15 March 2006), the Regional Court commence the trial and hear all the defendants in the proceedings.

11. On an unspecified date the applicant appealed.

12. On 28 December 2005 the Katowice Court of Appeal confirmed its decision.

13. It appears that the Katowice Court of Appeal's instructions were not followed by the Regional Court. After 15 March 2006 the applicant's detention was extended three more times and the measure has still not been lifted.

14. On an unspecified date in January 2007 the applicant's lawyer, relying on the applicant's state of health and his family situation, requested the court to vary the preventive measure.

15. On 15 January 2007 the Katowice Regional Court refused the request, again invoking the serious nature of the offences with which the applicant had been charged and the risk that he would obstruct the proceedings. As regards the applicant's health and his family situation the court found that:

"It emerges from the information received from the Katowice Remand Centre's doctor that the applicant can be treated in detention.... The applicant's family situation

is not so different from the situation of most families where a husband and father is imprisoned. However, the applicant's wife runs her own business, which secures her and her children a basic income. It is true that the applicant's apartment has been sold at auction but, in the court's view, any possible eviction is still a long way off and even then the applicant and his family can obtain alternative accommodation. Lifting the applicant's detention order would not change the living conditions of his family much."

16. The applicant's detention was further extended by the Katowice Court of Appeal on 4 April, 27 June, 24 October and 28 December 2007 and on 6 February 2008. The applicant appealed against all those decisions, apart from the one given on 24 October 2007, but they were confirmed by the Court of Appeal. In all those decisions the Katowice Court of Appeal relied basically on the same grounds, repeating the arguments relating to the suspicion against the applicant, the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable and the risk that he might obstruct the proceedings. The suspicion was justified, in the court's view, by the charge of acting in an organised criminal group.

17. The applicant is still detained and the proceedings before the first-instance court have not yet been terminated.

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 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

19. The applicant complained that the length of his detention 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 contested that argument.

A. Admissibility

21. The Court notes that the application 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 15 February 2002, when he was arrested on suspicion of having committed several drug trafficking offences while acting in an organised criminal group, and has not yet ended.

Accordingly, the period to be taken into consideration amounts to over six years and nine months.

2. The parties' submissions

(a) The applicant

23. The applicant submitted in general terms that his application lodged with the Court was justified.

(b) The Government

24. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3 of the Convention. They submitted that the detention had been justified and that during the entire period the authorities had given relevant and sufficient reasons for extending it. They further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case, in which a considerable number of witnesses had to be examined, and the fact that the bill of indictment had been lodged against thirty-three co-accused. The Government also relied on the fact that the applicant had been charged with participation in an organised criminal group and that this factor itself created a risk that he might obstruct the proceedings.

3. The Court's assessment

(a) General principles

25. 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 have been 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

26. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he was liable; (3) the risk that the applicant might obstruct the proceedings. As regards the latter, they did not, however, specify any concrete grounds justifying their opinion apart from the fact that the applicant had been charged with acting in an organised criminal group.

27. The applicant was charged with numerous counts of drug trafficking committed in an organised and armed criminal group (see paragraphs 6 and 7 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 *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

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

29. 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. However, in this respect, the Court notes that when extending the applicant's detention the courts limited themselves to reiterating that the charge of acting in an organised criminal group created of itself a presumption that the applicant would obstruct the proceedings. They did not, however, give any concrete examples of the applicant's obstructive behaviour, such as attempts to intimidate witnesses or delaying or disrupting the proceedings (see paragraph 16 above).

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

31. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to extend this measure. In this context, the Court would observe that the applicant has already spent over six years and eight months in pre-trial detention and that the case is still pending 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.

33. In the circumstances, the Court finds that the authorities failed to act with all due diligence in handling the applicant's case.

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

35. As regards the applicant's allegations that his prolonged detention is incompatible with his right to respect for his family life, the Court notes that the Katowice Regional Court examined the applicant's appeal against the extension of his detention and found that the situation of his family did not substantially differ from the situations of other families in which the father was detained (see paragraph 15 above). It appears that the Regional Court's finding was not arbitrary. Detention, by its very nature, limits contacts of the detainees with their families and only in exceptional circumstances can it give rise to an obligation to lift this preventive measure.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 350,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government contested the claim and requested the Court, should it find a violation of Article 5 § 3 of the Convention, to hold that the finding of a violation in itself provides sufficient just satisfaction. Alternatively, the Government requested that the Court assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

39. 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 and making its assessment on an equitable basis the Court awards the applicant EUR 3,500 under this head.

B. Costs and expenses

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

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 application admissible;
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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage plus any tax that may be chargeable to be converted into the currency of the respondent State at the rate applicable at the date of 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 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President