



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

FOURTH SECTION

CASE OF HILGARTNER v. POLAND

(Application no. 37976/06)

JUDGMENT

STRASBOURG

3 March 2009

FINAL

03/06/2009

This judgment may be subject to editorial revision.

In the case of Hilgartner 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 10 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 37976/06) 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, Mr Sebastian Hilgartner (“the applicant”), on 1 September 2006.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz 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 20 November 2007 the Court decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Strzelce Opolskie.

6. On 1 July 2003 the applicant was arrested on suspicion of two counts of kidnapping, deprivation of liberty, extortion and battery, committed in an organised and armed criminal group.

7. On 2 July 2003 the Katowice District Court remanded him in custody, relying on the reasonable suspicion that he had committed the offences 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 he might tamper with evidence. The court also stressed the severity of the anticipated sentence and the fact that the offences had been committed in an organised criminal group.

8. Subsequently, fourteen other persons suspected of belonging to the same criminal group were charged in connection with the investigation of the applicant.

9. The applicant's appeal against the detention order, likewise his further appeals against decisions prolonging his detention and all his subsequent, numerous applications for release and appeals against refusals to release him, were unsuccessful. In his applications and appeals, he argued that the charges against him were based on unreliable evidence. He further relied on his personal circumstances; in particular the fact that he was unable to complete his university education and continue running his business, and the need to ensure that his parents were cared for. Lastly, the applicant stressed, on several occasions, that he had never made any attempts to disrupt the trial.

10. In the course of the investigation the applicant's detention was prolonged on 22 September and 22 December 2003, 22 March, 23 June and 22 September 2004.

11. On 18 November 2004 the bill of indictment was lodged with the Częstochowa Regional Court. The applicant was charged with kidnapping, deprivation of liberty, extortion and battery committed in an organised criminal group. The bill of indictment contained fourteen other persons.

12. Further decisions extending the applicant's detention were taken on 21 December 2004, 29 June and 21 December 2005, 19 April and 11 October 2006, 22 February, 20 June and 28 November 2007. 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 on the likelihood of a severe sentence of imprisonment being imposed on the applicant. They attached importance to the complexity of the case, the significant number of persons involved and the voluminous documentation. They further considered that the need to secure the proper conduct of the proceedings, especially the need to verify evidence from suspects and witnesses justified holding him in custody and that the applicant, if released, could obstruct the proper course of the proceedings. The courts found no special grounds that would justify lifting the detention and imposing a less severe measure. In its decision of 21 December 2005 the Katowice Court of Appeal recommended to the Częstochowa Regional Court that hearings should be held more frequently, in order to ensure the speedy progress of the proceedings. Further, in the decisions of 11 October 2006 and 22 February and 20 June 2007, the Katowice Court of Appeal stressed the need to terminate the criminal proceedings pending before the first-instance court.

13. By letters of 12 January, 29 June, 8 August and 26 September 2005 and 1 December 2006 the Częstochowa Regional Court refused the applicant's requests to receive visits from friends in detention. It held that the permission to receive visits was limited to the members of the applicant's close family only.

14. On 21 August 2007 the Częstochowa Regional Court did not allow the applicant to have a book written by Charles Dickens in English delivered to the detention centre.

15. On 10 January 2008 the Częstochowa Regional Court delivered its judgment. The applicant was convicted and sentenced to seven years' imprisonment and a fine of 2,250 Polish zlotys (PLN).

16. By decisions of 17 January and 19 June 2008 the Częstochowa Regional Court further extended the applicant's detention. It held that in the light of the first-instance judgment, the reasons for keeping the applicant in detention were still valid.

17. On 17 July 2008 the applicant lodged an appeal.

18. On 26 November 2008 the Katowice Court of Appeal prolonged the applicant's detention until 31 January 2009.

19. On 22 December 2008 the Katowice Court of Appeal lifted the applicant's detention and placed him under police supervision. The court held that the applicant's presence at home was necessary to ensure the care of his parents in the light of their difficult financial situation and the forthcoming surgery of the applicant's father.

The applicant was released on 23 December 2008.

20. It appears that the criminal proceedings are still pending before the appellate court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant domestic law and practice concerning the imposition of detention (*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 *Gólek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. The Committee of Ministers

22. On 6 June 2007 the Committee of Ministers adopted on the Interim Resolution concerning the judgments of the European Court of Human Rights in 44 cases against Poland relating to the excessive length of

detention on remand (“the 2007 Resolution”). Noting that the number of cases in which the European Court had found similar violations was constantly increasing. It concluded that the number of the Court’s judgments finding Poland in violation of Article 5 § 3 of the Convention revealed a structural problem. A more detailed rendition of the 2007 Resolution can be found in the Court’s judgment given in the case of *Kauczor v. Poland* (see *Kauczor v. Poland*, no. 45219/06, § 34, 3 February 2009; not final).

B. The Council of Europe’s Commissioner for Human Rights

23. On 20 June 2007 the Council of Europe’s Commissioner for Human Rights released the Memorandum to the Polish Government concerning, among other issues, the use of the detention measure in Poland, stressing that examples of cases brought to the Court where pre-trial detention had lasted between four to six years were not uncommon. The Commissioner urged the Polish authorities to review the application and functioning of pre-trial detention in Polish law. A more detailed rendition of the relevant parts of the memorandum can be found in the above mentioned *Kauczor* judgment (see *Kauczor v. Poland*, cited above, § 35).

THE LAW

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

24. 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.”

25. The Government did not submit any observations within the time-limit set for that purpose, which expired on 14 March 2008.

A. Admissibility

26. The applicant’s detention started on 1 July 2003, when he was arrested on suspicion of kidnapping, robbery and battery, committed in an organised criminal group. On 10 January 2008 the Częstochowa Regional

Court convicted the applicant and sentenced him to seven years' imprisonment.

As 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 (cf. *Kudła*, cited above, § 104).

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

27. 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. General principles

28. 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 were stated in a number of its previous judgments (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).

2. Application of the above principles in the present case

29. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four 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 need to secure the proper conduct of the proceedings, particularly the risk that he might tamper with evidence and (4) the complexity of the case.

30. The applicant was charged with kidnapping, deprivation of liberty, extortion and battery committed in an organised criminal group (see paragraphs 6 and 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 *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

31. 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 a large volume of evidence and 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.

32. 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. In this respect, the Court notes, however, that in all the decisions extending the applicant's detention, no specific substantiation of the risk that the applicant would tamper with evidence, intimidate witnesses or attempt to otherwise disrupt the trial emerged. In the absence of any other factor capable of showing that the risk relied on actually existed, this argument cannot be accepted in the context of the whole period.

33. 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).

34. As regards the complexity of the case, the Court's attention has been drawn to the nature of the charges, the number of the accused (fifteen) and the voluminous documentation. It appears, however, that the authorities referred to the complexity of the case in a very general manner. There is no indication that the nature of the case required the applicant's continuous detention. Moreover, it seems that the authorities failed to envisage the possibility of imposing other preventive measures on the applicant.

35. 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 prolong this measure. In this context, the Court would observe that until the date of his first-instance conviction the applicant had already spent four years, six months and eight days in pre-trial detention.

36. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicant complained, in substance under Article 8 of the Convention, that his correspondence had been delayed and censored by the prison authorities and that he had not been authorised to make phone calls. Further, he complained that he had not been allowed to receive visits from friends during his detention.

39. As regards the complaint concerning the correspondence, the Court observes that the applicant has failed to substantiate his allegations, as he did not submit copies of the allegedly delayed or censored letters. Furthermore, the letters in his file do not show any signs of censorship or any other form of interference.

40. With regard to the complaint about being denied visits from friends during his detention, the Court reiterates that detention, similar to any other measure depriving a person of his liberty, entails inherent limitations on private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see *Klamecki v. Poland* (no. 2), no. 31583/96, § 144, 3 April 2003). Such restrictions as limitations put on the number of family visits, supervision over those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visiting arrangements constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision. In the present case, regard being had to the fact that the applicant has been allowed regular visits from his parents (twice a month) and his brother, and taking into account the margin of appreciation left to the State authorities, the Courts finds no appearance of a violation of the Convention.

41. As to the alleged lack of access to telephone facilities, the applicant failed to substantiate his complaint.

42. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 TO THE CONVENTION

43. Relying on Article 2 of Protocol No. 1 to the Convention, the applicant complained that due to his lengthy detention, he had been unable to complete his university education; and that he had failed to improve his language skills, as no English books were allowed in detention.

44. Having examined all the material in its possession, regardless of other possible grounds of inadmissibility, the Court finds nothing in the case file which might disclose any appearance of a violation of the right guaranteed by the provision relied on.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

45. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

46. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, § 58 et seq. with further references) the Court has held that the 2007 Resolution taken together with the number of judgments already delivered and of the pending cases raising an issue of excessive detention incompatible with Article 5 § 3 demonstrated that the violation of the applicant’s right under Article 5 § 3 of the Convention had originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which has had affected, and may still affect in the future, an yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

It concluded, as the Committee of Ministers had already done, that the excessive length of pre-trial detention in Poland revealed a structural problem consisting of “a practice that is incompatible with the Convention” (see *Kauczor*, cited above, § 60; and *mutatis mutandis Broniowski v. Poland* [GC], no. 31443/96, §§ 190-191, ECHR 2004-V; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 229-231, ECHR 2006-...; *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V with respect to the Italian length of proceedings cases).

47. It is true that the present case concerns the person involved in an organised criminal group. However, as stated above, while this element is to be taken into account in assessing compliance with Article 5 § 3 and may justify a longer period of detention than in a case concerning an individual offender, a member of an organised criminal group is entitled to the protection against unreasonably lengthy detention afforded by this provision (see paragraphs 30, 32 and 36 above). As in other numerous similar detention cases, the authorities did not justify the applicant’s continued detention by relevant and sufficient reasons (see paragraphs 30-36 above). Moreover, as demonstrated by the ever increasing number of judgments in which the Court has found Poland to be in breach of Article 5 § 3 in respect of applicants involved in organised crime, the present case is by no means an isolated example of the imposition of unjustifiably lengthy detention but a confirmation of a practice found to be contrary to the Convention (see, among many other examples, *Celejewski v. Poland*, no. 17584/04, 4 May

2006; *Kąkol v. Poland*, no. 3994/03, 6 September 2007; *Malikowski v. Poland*, no. 15154/03, 16 October 2007). Consequently, the Court sees no reason to diverge from its findings made in *Kauczor* as to the existence of the structural problem and the need for the Polish State to adopt measures to remedy the situation (see *Kauczor*, cited above, §§ 60-62).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 690,000 euros (EUR) in respect of pecuniary damages and non-pecuniary damage. He further demanded that EUR 500,000 be awarded to Amnesty International.

50. The Government did not express an opinion on the matter.

51. 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 2,000 under this head.

B. Costs and expenses

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

C. Default interest

53. 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 pre-trial 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 2,000 (two thousand 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 3 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President