



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

FOURTH SECTION

CASE OF KAŻMIERCZAK v. POLAND

(Application no. 4317/04)

JUDGMENT

STRASBOURG

10 March 2009

FINAL

10/06/2009

This judgment may be subject to editorial revision.

In the case of Kaźmierczak 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,
David Thór Björgvinsson,
Ledi Bianku,
Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 4317/04) 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 Kaźmierczak (“the applicant”), on 22 December 2003.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz of the Ministry of Foreign Affairs.

3. On 18 October 2005 the Court decided to give notice of the application to the Government. It 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**

4. The applicant was born in 1955 and lives in Wrocław.

5. On 18 April 2002 the Opole District Court (*Sąd Rejonowy*) ordered that the applicant be remanded in custody in view of the reasonable suspicion that he had committed several offences of fraud and that he had organised and led a criminal group.

6. On 15 July 2002 the court extended the applicant’s detention until 17 September 2002. It relied on the 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.

7. On 13 September 2002 the court extended the applicant's detention until 17 November 2002. It repeated the grounds previously given for his detention and found that his remaining in custody was necessary to complete the expert psychiatric examination as to the state of the applicant's mental health.

8. The applicant's detention was subsequently extended on 14 November 2002. The court attached importance to the serious nature of the offences with which he had been charged and the likelihood of a heavy sentence being imposed on him.

9. On 11 December 2002, the applicant was indicted on several charges of fraud while acting in an organised criminal group. Subsequently, in March 2003, the case file was transferred to the Wrocław-Śródmieście District Court for reasons of procedural economy.

10. On 23 April 2003 the Wrocław-Śródmieście District Court extended the applicant's detention for a three-month period, until 23 July 2003. It considered that the severity of the anticipated sentence and the need to secure the proper course of the trial justified the continuation of that measure.

11. On 22 July 2003 the Wrocław-Śródmieście District Court extended the applicant's detention until 23 October 2003. It also observed that the applicant's continued detention was necessary in order to secure the proper conduct of the proceedings, given the gravity of the anticipated sentence. In addition, it referred to the complex nature of the case.

12. On 13 October 2003 the Wrocław-Śródmieście District Court extended the applicant's detention until 23 January 2004. The court referred to a strong likelihood that he had committed the serious offences with which he had been charged and stressed that a heavy penalty might be imposed on him. It also observed that no other measures would prevent the applicant from obstructing the proceedings or going into hiding.

13. That decision was upheld by the Wrocław Regional Court (*Sąd Okręgowy*) on 7 November 2003. The Regional Court stated in the relevant part of the reasons for its decision that:

“The appeals are not well-founded. (...) The District Court correctly pointed out that the fear that the accused would tamper with evidence arises also from the fact – as proved by the collected evidence – that he organised and led the group of offenders. Consequently, there is a strong probability that by using the same methods of pressure on the co-accused he may induce them to tamper with evidence.”

14. Between 14 November 2003 and 12 January 2004 the court held four hearings, two of which were adjourned.

15. On 21 January 2004 the Wrocław-Śródmieście District Court extended the applicant's detention until 23 March 2004.

16. In the course of the investigation and the court proceedings the applicant made numerous unsuccessful applications for release on bail or under police supervision and appealed, likewise unsuccessfully, against decisions extending his detention.

17. On 18 February 2004 the Wrocław-Śródmieście District Court dismissed the applicant's application for release, holding that the grounds originally given for his detention were still valid. The Court also expressed an opinion that his detention could be lifted and replaced by another preventive measure. It fixed bail at 100,000 Polish zlotys (PLN) [approx. 25,500 euros (EUR)], to be paid before 10 March 2004.

18. On 22 March 2004 the Wrocław Śródmieście District Court extended the applicant's detention until 10 April 2004. It also stated that the detention would be lifted if the applicant put up the bail.

19. On 25 March 2004 the applicant was released on bail. The court found that releasing the applicant on bail would be sufficient to secure the proper conduct of the proceedings, taking into account the fact that it had heard evidence from him.

20. Between 9 March 2004 and 20 March 2006 the court held thirty-three hearings.

21. It appears that the criminal proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Preventive measures, including detention

22. 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 *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

2. Offence of organising and leading an organised criminal group

23. Article 258 of the Polish Criminal Code provides:

"§ 1. A person who participates in an organised group or association having for its purpose the commission of offences shall be subject to the penalty of deprivation of liberty for up to 3 years.

§ 2. If the group or association specified in § 1 has the characteristics of an armed organisation, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§ 3. A person who sets up the group or association specified in § 1 or 2 or leads such a group or association shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years".

3. Presumption of innocence

24. Article 42 § 3 of the Constitution provides:

“Everyone shall be presumed innocent until proved guilty in a final judgment of a court.”

The principle of the presumption of innocence is laid down in Article 5 § 1 of the Code of Criminal Procedure in similar terms:

“An accused shall not be presumed guilty until his guilt has been proved and established by the final judgment”

THE LAW

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

25. 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.”

26. The Government contested that argument.

A. Admissibility

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. Period to be taken into consideration

28. The applicant’s detention started on 18 April 2002, when he was arrested on suspicion of having committed several offences of fraud acting in an organised group. It continued until 25 March 2004 when the applicant was released on bail.

Accordingly, the period to be taken into consideration amounts to one year, eleven months and seven days.

2. *The parties' submissions*

(a) **The applicant**

29. The applicant submitted that the length of his detention had been unreasonable. He stressed that the decisions extending his pre-trial detention had been taken routinely and the courts had simply repeated the grounds given in the previous decisions. He further emphasised that he had not contributed to the length of the proceedings, since he had been present at all hearings. Finally, he submitted that the authorities had failed to exercise all due diligence when dealing with his case.

(b) **The Government**

30. The Government argued that the length of the applicant's detention had been reasonable and duly justified throughout the entire period. They relied firstly on the existence of a strong likelihood that the applicant had committed the offences in question. Furthermore, the Government referred to the gravity of the charges against the applicant and the severity of the anticipated penalty.

31. They further argued that the applicant's detention had been justified in order to secure the proper conduct of the proceedings, as there had been a risk that he 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 and the fact that he had been accused of being a leader of the group.

32. They further pointed out that the applicant's detention had been reviewed at regular intervals and the domestic authorities had displayed adequate diligence in dealing with his case. Lastly, the Government justified the length of the applicant's detention by the complexity of the case, which stemmed from the number of defendants and the amount of evidence involved.

3. *The Court's assessment*

(a) **General principles**

33. 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 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).

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

34. 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 and (4) the complex nature of the case (see paragraphs 6, 7, 8, 10, 11, 12 and 17 above).

35. The applicant was charged with numerous counts of fraud committed in an organised criminal group (see paragraphs 5 and 9 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 *Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

36. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. 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).

37. The Court next observes that the judicial authorities relied on the fact that the applicant had been charged together with other persons. The Court, having regard to the relative complexity of the case and the need to obtain a considerable amount of evidence, is prepared to accept that there existed relevant and sufficient grounds for the applicant's detention during the time needed to terminate the investigation, to draw up the bill of indictment and to hear evidence from the accused. Moreover, the Court notes the authorities gave consideration to other non-custodial preventive measures with a view to ensuring the applicant's presence at trial (see paragraphs 17 and 18 above).

38. In this respect, the Court observes that the applicant was released on bail on 25 March 2004, while the trial was still in progress. The court found that releasing the applicant on bail would be sufficient to secure the proper conduct of the proceedings (see paragraph 19 above).

39. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire relevant period.

40. It therefore remains for the Court to ascertain whether the authorities, in dealing with the applicant's case, displayed diligence required under Article 5 § 3 (see *Mc Kay*, cited above, § 30). In this regard, the Court firstly notes that no significant periods of inactivity occurred on the part of the prosecution authorities and the trial court. The Court observes that the

investigation was completed by the prosecution authorities within a short period of time. The Court notes that the trial court took eleven months to prepare the case for the first hearing. However, the court expedited the examination of the case. From 14 November 2003 the court held numerous hearings at regular intervals (see paragraphs 9, 14 and 20 above). Lastly, the Court notes that the criminal case at issue was a relatively complex one on account of the number of co-accused and the charges against them. A significant amount of evidence had to be examined in the course of the proceedings. For these reasons, the Court considers that the domestic authorities handled the applicant's case with acceptable expedition.

41. In view of the foregoing, the Court concludes that there has been no violation of Article 5 § 3 of the Convention.

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

42. The applicant further complained that his right to be presumed innocent until proved guilty had been breached in respect of the grounds for the Regional Court's decision of 7 November 2003. He relied on Article 6 § 2 of the Convention, which reads as follows:

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

43. The Government contested that argument.

A. Admissibility

44. The Government submitted that the applicant had not exhausted available domestic remedies. They noted in general terms that complaints intended to be brought before the Court in Strasbourg should first have been made – at least in substance – to the appropriate domestic body. They did not specify any particular remedy whereby the applicant could have effectively submitted the substance of the present complaint to the domestic authorities and sought relief.

45. The applicant did not comment on that matter.

46. The Court notes that the applicant could not rely in substance on his right to be presumed innocent before the domestic authorities, as he could not appeal against the decision of 7 November 2003. By this decision the Wrocław Regional Court dismissed the applicant's appeal against the decision of 13 October 2003 given by the Wrocław-Śródmieście District Court. Consequently, the Wrocław Regional Court had already acted as a second-instance court and any further appeals were inadmissible in Polish law. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

47. 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 argued that the impugned Regional Court's decision of 7 November 2003 should be read as a whole. Although some of the terms employed in that decision seemed to suggest that the applicant had committed the offences with which he had been charged, the applicant's complaint in that matter is premature. The court justified the extension of the applicant's detention but the judgment in the applicant's case has not yet been given and the proceedings are pending. Moreover, the conclusion of this part of the decision indicated that the credibility of all evidence would be assessed by the trial court. It was obvious from the context that the Regional Court had referred to the existence of evidence pointing to a strong probability that the applicant had committed the offences in issue, and not to the question of his guilt or innocence.

50. The Government emphasised that the other decisions of the courts as regards the extension of the applicant's detention were reasoned in a similar way and referred only to the prerequisites of the applicant's pre-trial detention stipulated in Article 258 of the Code of Criminal Procedure.

2. The Court's assessment

(a) General principles

51. 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, *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; *Karakaş and Yeşilirmak v. Turkey*, no. 43925/98, § 49, 28 June 2005 and *Garycki v. Poland*, no. 14348/02, § 71, 6 February 2007).

52. 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, § 35, 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

53. The Court notes that in the grounds for its decision of 7 November 2003 on the extension of the applicant’s detention, the Regional Court stated that the applicant had committed one of the offences with which he had been charged, namely that “he organised and led the group of offenders.”

54. 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 one of the offences in issue, 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*, cited above, § 71 and *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 as regards one of the offences with which he had been charged 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 proceedings in the applicant’s case are still pending is irrelevant to 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 51 above).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 400,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

59. The Government contested this claim and considered it exorbitant.

60. The Court considers that in the circumstances of the case, the above finding of a violation of Article 6 § 2 of the Convention constitutes in itself sufficient just satisfaction for any moral damage suffered by the applicant.

B. Costs and expenses

61. The applicant did not claim reimbursement of the costs and expenses incurred before the domestic courts and the Court.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no 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* that the finding of violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 10 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President