



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

FOURTH SECTION

CASE OF RUSIECKI v. POLAND

(Application no. 36246/97)

JUDGMENT

STRASBOURG

21 April 2009

FINAL

21/07/2009

This judgment may be subject to editorial revision.

In the case of Rusiecki 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 31 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 36246/97) against the Republic of Poland lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Edmund Rusiecki (“the applicant”), on 1 September 1994.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz.

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

4. On 15 March 2001 the Court decided to give notice of the application to the Government. On 15 March 2001 and 25 November 2008 other complaints submitted by the applicant were declared inadmissible. The Court (Fourth Section) declared admissible the complaint about the excessive length of the applicant’s detention.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1946.

6. On 6 December 1995 L.T. who had been wounded by a gunshot, requested that a criminal investigation be instituted. Consequently, an

investigation *in rem* was instituted. On 17 January 1996 the applicant was arrested in connection with the investigation. On 18 January 1996 the Łódź Regional Prosecutor imposed pre-trial detention on him and three other suspects on charges of acting in an organised criminal gang and aggravated assault. The prosecutor considered that the evidence had justified the charges against the applicant, who was also suspected of being a leader of the criminal gang. It was further noted that other members of the gang had not yet been arrested. There was therefore a serious risk of collusion and suppression of evidence. Furthermore, there were grounds for believing that the applicant had ordered someone to murder L.T. The applicant appealed.

7. On 22 January 1996 the prosecutor served the applicant with a written statement of the charges against him. This document referred to the investigation concerning the attempted murder of L.T. The prosecutor observed that the evidence gathered in this investigation had given rise to a suspicion that the attempt on L.T.'s life had been made by an organised criminal gang engaged in assaults and racketeering. Evidence given by certain witnesses, who were to remain anonymous pursuant to Article 164 (a) of the Code of Criminal Procedure of 1969, had unequivocally demonstrated that the applicant was a member of that gang. Hence, charges in respect of criminal offences punishable under Article 276 § 1 of the Criminal Code had to be laid against him.

8. On 2 February 1996 the Łódź Regional Court upheld the applicant's detention order of 18 January 1996. It noted that the evidence gathered sufficiently supported the charges against him. It indicated that it was likely that the applicant was a member of an organised criminal gang, committing aggravated assaults with the use of firearms. Having regard to the evidence given by anonymous witness no. 2, and in particular in the light of the statements given by other witnesses, including anonymous witnesses, and having also regard to various documents and the results of the inspection of a car, the court concluded that the charges against the applicant were justified. The character of those charges, involving violent crimes, also justified the decisions to impose and maintain detention, the more so as other members of the gang still remained at liberty. The applicant's release would endanger the purpose of the ongoing investigation.

9. On 29 February 1996 the Łódź Regional Prosecutor ordered that an expert opinion be prepared for the purposes of the further investigation. Altogether, fifteen expert opinions were prepared during the investigation.

10. On 2 March 1996 the Łódź Regional Prosecutor refused the applicant's new application for release, considering that the evidence gathered in the case, in particular the statements made by the anonymous witnesses, indicated that it was necessary to keep him in custody.

11. On 12 April 1996 the Łódź Regional Court extended the applicant's detention until 28 June 1996, having regard, in particular, to the evidence given by anonymous witnesses nos. 1 to 9. It observed that new

developments were to be expected regarding new offences which had come to light, including a crime of manslaughter which appeared to have been committed with the applicant's involvement. Moreover, new witnesses were to be questioned and further expert evidence had to be gathered, having regard to sixteen expert reports which had been prepared for the purposes of the investigation.

The court referred to the evidence gathered in the case and considered that there was a reasonable suspicion that the applicant had committed the offences concerned. The court also took into account that the applicant had been charged with serious crimes committed by an organised criminal gang. It further referred to the need to continue the process of gathering evidence.

12. On an unspecified later date in June the applicant's detention was further extended. Subsequently, on 24 September 1996, the Łódź Court of Appeal held a session during which it extended the applicant's pre-trial detention until 29 December 1996.

13. On 21 October 1996 the applicant was granted full access to the file and arrangements were made for him to study it. He examined the file daily from 21 to 31 October and subsequently from 4 until 25 November 1996. Later on, the applicant read the file on 28 and 29 November and from 2 to 8 December 1996.

14. On 26 November 1996 the Łódź Court of Appeal extended the applicant's detention until 17 January 1997. It observed that the investigation was coming to an end and that the prosecuting authorities had begun to acquaint the suspects with the files. However, it seemed that the suspects, while availing themselves of their procedural rights in this respect, were at the same time trying to prolong the proceedings by various delaying tactics. Thus, it was necessary to extend their detention.

15. On 20 December 1996 a bill of indictment against the applicant and his ten co-defendants was lodged with the Łódź Regional Court. The applicant was charged with eleven criminal offences. The bill of indictment concerned fifty different crimes. The case file numbered thirty-one volumes.

16. On 17 January 1997 the Supreme Court refused to entertain an appeal by the applicant against the decision of 26 November 1996, finding that, in any event, the time-limits for detention as specified in Article 222 of the Code of Criminal Procedure had ceased to apply after the bill of indictment had been lodged with the court.

17. The first hearing in the case was held on 24 February 1997. From February 1997 until February 1999 the court held seventy-nine hearings. On 25 January 1999 the first-instance court sentenced the applicant to eight years' imprisonment on various charges.

18. The applicant appealed. On 4 April 2000 the Łódź Court of Appeal quashed the judgment in part and remitted this part of the case to the first-instance court. It upheld it in so far as it related to the charge of intimidating witnesses by recourse to physical violence. It upheld the

applicant's conviction in respect of that charge and imposed on him a sentence of four years' imprisonment. It ordered that the period of detention pending trial be counted towards the sentence. Accordingly, the applicant's sentence had expired on 18 January 2000.

19. From 4 April 2000 the applicant was again detained pending trial. The applicant lodged a cassation appeal with the Supreme Court against the judgment of 4 April 2000 in so far as the latter court had upheld the judgment of 25 January 1999. On 3 December 2002 the Supreme Court dismissed the appeal.

20. On 21 November 2000 the Łódź Regional Court started to hold hearings in the part of the case which had been remitted for re-examination. Between November 2000 and March 2001 it held fourteen hearings.

21. On 12 April 2002 the Łódź Regional Court convicted the applicant of various criminal charges and sentenced him to ten years' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. 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 *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-46, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

III. THE RESOLUTION OF THE COUNCIL OF EUROPE COMMITTEE OF MINISTERS

A. The Committee of Ministers

23. On 6 June 2007 the Committee of Ministers adopted an 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 violations of Article 5 § 3 of the Convention against Poland was constantly increasing, it concluded that this 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

24. On 20 June 2007 the Council of Europe's Commissioner for Human Rights released a 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 4 to 6 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

25. 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.”

26. The Government contested that argument.

1. Period to be taken into consideration

27. The Court observes that on 17 January 1996 the applicant was remanded in custody. On 25 January 1999 the Łódź Regional Court convicted him of various charges and sentenced him to eight 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

28. On 4 April 2000 the Łódź Court of Appeal partly quashed the first-instance judgment and remitted certain charges to the first-instance court. However, it upheld the applicant's conviction in its part concerning charges of intimidation of witnesses with the use of violence. It imposed a sentence of four years' imprisonment on him in respect of these charges and ordered that the period of the applicant's detention should be counted towards the sentence. As that period had come to end on 18 January 2000, four years after his arrest on 17 January 1996, after 4 April 2000 the

applicant was again detained pending trial until the judgment given by the Łódź Regional Court on 12 April 2002.

29. Hence, the period to be examined lasted from 17 January 1996 until the first-instance judgment given on 25 January 1999, that is, three years and eight days, and from 4 April 2000 until 12 April 2002, that is two years and eight days. The overall period of the applicant's detention during the judicial proceedings therefore lasted five years and sixteen days.

2. The parties' submissions

30. The applicant submitted that his detention on remand had been unreasonably long. The Government contested this argument.

3. The Court's assessment

(a) General principles

31. 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 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

32. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on the serious nature of the offences with which he had been charged, the need to secure the proper conduct of the proceedings and the risk that the applicant or his co-accused might tamper with evidence. They also relied on the fact that the applicant and his co-defendants had recourse to delaying tactics in order to disrupt the process of taking evidence.

33. The applicant was charged with numerous counts of aggravated assault with use of firearms, committed in an organised criminal gang. In the Court's view, the fact that the case concerned a member of a such criminal gang should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

34. 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, to determine the degree of the alleged responsibility of each of the defendants who had acted in a criminal gang and against whom numerous charges of serious offences were laid, and the need to secure the proper conduct of the proceedings, in

particular the process of obtaining expert evidence, constituted valid grounds for the applicant's initial detention.

35. Indeed, in cases such as the present one concerning an organised criminal gang, 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 that the charges laid against the applicant and his co-defendants included attempts to intimidate certain witnesses in the investigation.

36. As regards the complexity of the case, the Court notes the nature of the charges, the number of accused (ten) and the voluminous documentation. It appears, however, that the authorities referred to the complexity of the case in a very general manner. Moreover, it seems that the authorities failed to envisage the possibility of imposing other preventive measures on the applicant.

37. 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 by the judgment given on 4 April 2000 the applicant had already spent four years, two months and twenty-one days in pre-trial detention.

38. 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 gang, 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.

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

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION

40. 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.”

41. Recently in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, paragraphs 58 *et seq.*, with further references, the Court referred to the above-mentioned 2007 Resolution of the Committee of Ministers taken together with the number of judgments recently delivered and concluded:

“60. The Court thus concludes, as the Committee of Ministers did, that for many years, at least as recently as in 2007, numerous cases have demonstrated that the excessive length of pre-trial detention in Poland reveals a structural problem

consisting of “a practice that is incompatible with the Convention” (see *mutatis mutandis Broniowski v. Poland* [GC], no. 31443/96, §§ 190-191, ECHR 2004-V; *Scordino v. Italy (no. 1)* [GC], no. 36813”).

42. It is true that the present case, unlike the *Kauczor* case, concerns a person involved in an organised criminal gang. 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 gang is entitled to the protection against unreasonably lengthy detention afforded by this provision (see paragraphs 33, 35 and 38 above). As in other numerous similar detention cases, the authorities did not justify the applicant’s continued detention by relevant and sufficient reasons (see paragraph 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 a structural problem and the need for the Polish State to adopt measures to remedy the situation (see *Kauczor*, cited above, §§ 60-62).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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.”

44. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been a violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 21 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President