



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

FOURTH SECTION

CASE OF GODYSZ v. POLAND

(Application no. 46949/07)

JUDGMENT

STRASBOURG

28 April 2009

FINAL

28/07/2009

This judgment may be subject to editorial revision.

In the case of Godysz 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 7 April 2009,

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

PROCEDURE

1. The case originated in an application (no. 46949/07) 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 Władysław Godysz (“the applicant”), on 3 September 2007.

2. The applicant was represented by Mr A. Dolniak, a lawyer practising in Katowice. The Polish Government (“the Government”) were represented by their Agent, Mr Jakub 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 1 July 2008 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 1951 and lives in Siemanowice.

6. On 28 April 2005 the applicant was arrested on suspicion of bribery, several counts of evasion of tax and customs duties and several counts of forgery, committed in an organised criminal gang.

7. On 29 April 2005 the Katowice District Court remanded him in custody, relying on the reasonable suspicion that he had committed the offence in question. The court referred to the complexity of the case and the considerable number of accused. 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 and induce witnesses to give false testimony. The court also stressed the severity of the anticipated sentence.

8. Later, twenty-one other persons were detained and charged in connection with the investigation against the applicant.

9. The applicant's appeal against the detention order, like 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 appeal, he argued that the charge against him was based on unreliable and contradictory evidence.

10. In the course of the investigation, the applicant's detention was prolonged on 22 July 2005, 20 October 2005, 20 January 2006, 29 March 2006, 28 June 2006, 27 September 2006, 4 January 2007 and 4 April 2007.

11. On 17 April 2007 the Katowice Regional Prosecutor lodged a bill of indictment with the Katowice Regional Court. The applicant was charged with bribery, several counts of evasion of tax and customs duties, several counts of forgery and membership of an organised criminal gang. The bill of indictment also concerned twenty-one other persons.

12. Further decisions extending the applicant's detention were taken on 25 July 2007, 24 October 2007 and 27 February 2008.

In a decision given on 24 October 2007, the Katowice Court of Appeal criticised the manner in which the investigation had been conducted. It also referred to delays in the proceedings which amounted to six months. It acknowledged that almost all the evidence had been gathered and that the risk that the applicant would tamper with evidence had been marginal.

In a decision given on 27 February 2008, the Katowice Court of Appeal ruled that the applicant could be released on bail on payment of security of 800,000 Polish zlotys. The applicant requested the court to reduce the amount of bail. On 28 March 2008 the court reduced it to 300,000 Polish zlotys. The applicant paid the security and he was released on 30 April 2008.

13. The criminal proceedings are currently pending before the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. 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.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. The Committee of Ministers

15. 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

16. 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 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

17. 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.”

18. The Government contested that argument.

A. Admissibility

19. 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

20. The applicant's detention started on 28 April 2005, when he was arrested on suspicion of bribery, several counts of evasion of tax and customs duties and several counts of forgery, committed in an organised criminal gang. He was released on 30 April 2008. Accordingly, the period to be taken into consideration amounts to three years and two days.

2. The parties' submissions

(a) The applicant

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

(b) The Government

22. The Government considered that the applicant's detention satisfied the requirements of Article 5 § 3 of the Convention. The Government emphasised that the serious nature of the charges as well as the fact that there had been twenty-one defendants charged with numerous offences required the authorities to take all necessary measures to secure the proper conduct of the trial. The necessity of the applicant's continued detention had been thoroughly examined by the courts which on each occasion had given sufficient reasons for their decisions. The applicant's case had been extremely complex on account of the number of charges (121) and defendants (21), and by reason of the volume of evidence. The Government further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case, the number of

witnesses to be heard and the number of co-accused, most of whom had been suspected of acting in an organised criminal group.

3. *The Court's assessment*

(a) General principles

23. 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

24. 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.

25. The applicant was charged with bribery, several counts of evasion of tax and customs duties, several counts of forgery and membership of 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).]

26. 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.

27. Indeed, in cases such as the present one concerning organised criminal gangs, 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.

28. 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).

29. 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 (twenty one) 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 had gathered all necessary evidence by October 2007 and that they subsequently failed to envisage the possibility of imposing other, less strict, preventive measures on the applicant (see paragraph 12 above).

30. While all those 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.

31. 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.

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

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION

32. 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.”

33. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, § 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 already 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 revealed 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. 36813/97, §§ 229-231, ECHR 2006-...; *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V with respect to the Italian length of proceedings cases”).

34. It is true that the present case concerns a 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 27, 30 and 31 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 25-31 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

35. 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

36. The applicant claimed EUR 2,000,000 in respect of pecuniary and non-pecuniary damage.

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

38. 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

39. The applicant also claimed EUR 18,000 for legal costs. He did not submit any documents in support of his claim.

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

41. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court observes that the applicant failed to produce any documents in support of his claim. In those circumstances, the Court makes no award under this head (see *Adamiak v. Poland*, no. 20758/03, § 49, 19 December 2006).

C. Default interest

42. 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 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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 amounts 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 28 April 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President