



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

FOURTH SECTION

CASE OF GRZEGORZ HULEWICZ v. POLAND (No. 2)

(Application no. 6544/05)

(Partial re-opening of the decision on inadmissibility)

JUDGMENT

STRASBOURG

19 January 2010

This judgment is final but it may be subject to editorial revision.

In the case of Grzegorz Hulewicz v. Poland (no. 2),

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 16 June 2009 and 19 January 2010,

Delivers the following judgment, which was adopted on both dates:

PROCEDURE

1. The case originated in an application (no. 6544/05) 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 Grzegorz Hulewicz (“the applicant”), on 15 December 2004.

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

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

4. On 5 July 2007 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).

5. On 16 June 2009 the judgment was adopted. The Court found no violation of Article 5 § 3 of the Convention and declared the remainder of the application inadmissible. The judgment was delivered on 7 July 2009.

6. On 5 October 2009 the applicant challenged the inadmissibility part of the Court's judgment in so far as it declared his complaint about the unfairness of his criminal proceedings inadmissible.

7. On 19 January 2010 the Chamber decided to restore to the list this particular complaint and to re-examine it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1974 and lives in Lębork. He is currently serving a prison term.

9. On 19 November 2002 the applicant was arrested on suspicion of forgery of documents as well as armed robbery and drug trafficking, committed in an organised criminal group. Since September 2002 he had been in hiding.

10. On 21 November 2002 the Gdańsk District Court (*Sąd Rejonowy*) remanded him in custody, relying on the reasonable suspicion that he had committed the offences in question. It also considered that detaining the applicant was necessary to secure the proper conduct of the proceedings, because the applicant had threatened the victim at the time of the commitment of the alleged offence. The court also stressed the severity of the anticipated sentence and the fact that the applicant had a previous criminal record.

11. An appeal by the applicant against the detention order was unsuccessful. On 16 December 2002 the Gdańsk Regional Court (*Sąd Okręgowy*) upheld the challenged decision, basically repeating the arguments of the District Court and relying additionally on the fact that in September 2002 the applicant had gone into hiding.

12. The argument that the applicant had gone into hiding was repeated by the Słupsk District Court in its decisions of 18 February 2003 and 3 June 2003, extending the applicant's detention.

13. Numerous appeals by the applicant against decisions extending his detention and all his subsequent applications for release were unsuccessful.

14. Subsequently, the applicant's pre-trial detention was prolonged on several occasions (on 18 February, 6 March, 3 June, 28 August and 5 December 2003 and on 16 February, 8 June and 17 August 2004). In all their detention decisions the courts repeatedly relied on a strong suspicion that the applicant had committed the offences in question, which was supported by evidence from witnesses. They attached importance to the grave nature of those offences and the likelihood of a severe sentence of imprisonment being imposed on the applicant.

15. On 22 July 2003 the Public Prosecutor lodged a bill of indictment with the Słupsk District Court. The bill of indictment comprised fifty charges of, among others, participation in an organised criminal group, drug trafficking, uttering threats and robberies brought against thirteen defendants. The applicant was charged with participation in an organised criminal group, drug smuggling, uttering threats and forgery of documents.

16. Once the length of the applicant's detention had reached the statutory two-year maximum laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks Postępowania Karnego*), the first-instance court no longer had jurisdiction to extend it. Consequently, it was the Gdańsk Court of Appeal (*Sąd Apelacyjny*) which issued further extensions. In its first extension decision, on 13 October 2004, the Gdańsk Court of Appeal relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and on the considerable complexity of the case. The court also held that the risk that the applicant and other co-accused would obstruct the investigation had been established.

17. The applicant's detention was subsequently extended by the Gdańsk Court of Appeal on 1 December 2004, 26 January 2005 and 1 March 2005. The Court relied on the reasonable suspicion that the applicant had committed the offences in question and on their serious nature. It also stressed that the fact that the applicant and the co-defendants were charged with participation in an organised criminal group created the reasonable fear that they might obstruct the proceedings or try to influence witnesses. The Court additionally examined the conduct of the proceedings and found no undue or unjustified delays. Between 15 September and 23 November 2004 the District Court held nine hearings. In December 2004 four hearings were held and in January 2005 five hearings were held.

18. On 21 March 2005 the Słupsk District Court convicted the applicant as charged and sentenced him to four years' imprisonment.

19. On the same day the court lifted the applicant's detention.

20. On 2 January 2006 the applicant and his lawyer lodged appeals against the first-instance judgment.

21. On 11 December 2006 the Słupsk Regional Court heard the appeals, partly varied the first-instance judgment, acquitted the applicant of one charge of forgery and sentenced the applicant to two years and ten months' imprisonment.

22. The applicant lodged a cassation appeal (*kasacja*) with the Supreme Court (*Sąd Najwyższy*).

23. On 28 February 2008 the Supreme Court dismissed the cassation appeal as manifestly ill-founded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

25. For the latest amendments of the provisions concerning detention on remand see the Court's judgment in the case of *Kauczor v. Poland*, no. 45219/06, § 25-33, 3 February 2009.

THE LAW

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

26. The applicant complained that the length of his pre-trial 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.”

27. The Government contested that argument.

A. Admissibility

28. 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

29. The applicant's detention started on 19 November 2002, when he was arrested on suspicion of having committed forgery of documents as well as armed robbery and drug trafficking, while acting in an organised criminal group. On 21 March 2005 the Słupsk District Court convicted him as charged and ordered his release from detention (see paragraphs 18 and 19 above).

30. Accordingly, the period to be taken into consideration amounts to two years, four months and one day.

2. The parties' submissions

31. The Government submitted that the applicant's detention had been based cumulatively on all the prerequisites of detention listed in the Code of Criminal Procedure as applicable at the material time. It also satisfied all criteria laid down in the Court's case-law.

32. Firstly, the Government pointed out that the evidence obtained in the proceedings indicated that there was a strong likelihood that the applicant had committed the crimes in question. Secondly, the charges brought against him concerned numerous offences committed in an organised criminal gang, for which the applicant faced a severe punishment. Thus, bearing in mind the severity of the charges and of the likely penalty, the applicant's detention was justified, in the Government's opinion, by a genuine public-interest requirement which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty. Thirdly, the detention was aimed at ensuring the proper conduct of the proceedings and was justified by the risk that the applicant would obstruct the proceedings or tamper with the evidence. This risk stemmed from the fact that the proceedings concerned an organised criminal gang and that the applicant was a persistent offender. There existed a serious threat that the accused might attempt to influence some of the other defendants and the witnesses. Having said that, the Government concluded that only the isolation of the members of the group could prevent their colluding and coordinating their testimonies.

33. The Government argued that the above-mentioned circumstances had remained valid during the whole period of the applicant's detention. The Government further requested the Court to assess the length of the applicant's detention in the light of the fact that he had been charged with crimes committed in an organised criminal gang.

34. The Government also submitted that the courts had decided to release the applicant when they found that the reasons justifying his detention had ceased to persist.

35. The applicant considered that the length of his detention had been excessive, in breach of Article 5 § 3 of the Convention. He submitted in general terms that his application to the Court was justified and that he had not contributed in any way to the general length of the proceedings against him.

3. The Court's assessment

36. 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, 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).

37. 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; (4) the risk that the applicant might tamper with evidence and the risk that the applicant might go into hiding. As regards the latter, they relied on the fact that the applicant had already gone into hiding prior to his arrest in 2002.

38. The applicant was charged with uttering threats, forgery of documents and drug smuggling committed in an organised criminal group (see paragraph 15 above).

39. The Court will take into account in assessing the conduct of the authorities in the present case the special circumstances deriving from the fact that it concerned a member of a criminal gang (see *Celejewski v. Poland*, no. 17584/04, 4 May 2006).

40. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. In addition, the need to obtain voluminous evidence and 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 had been laid, and the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the initial detention.

41. 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 frequently, by the nature of things, high.

42. Furthermore, according to the authorities, the serious nature of the offences in question and 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 *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

43. The Court would reiterate that, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other ground adduced by the courts – namely, the risk of the applicant's going into hiding – was “relevant” and “sufficient” (see, *Kudhla* cited above, § 111).

In this connection the Court notes that the domestic courts relied on the fact that the applicant had already gone into hiding prior to his arrest, in 2002. The Court considers that this fact, taken together with other grounds of the applicant's detention relied on by the domestic authorities, constituted a relevant ground for the reasonable fear that the applicant might have tried to abscond again.

44. 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.

45. It remains for the Court to ascertain whether the authorities, in dealing with the applicant's case, displayed the diligence required under Article 5 § 3. In this regard, it would observe that the proceedings were of considerable complexity, regard being had to the number of defendants, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. Nevertheless, the hearings in the applicant's case were held regularly and at short intervals. The courts also took proper measures to ensure the speedy progress of the proceedings (see paragraph 17 above). The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings. The length of the investigation and of the trial was justified by the complexity of the case. It should not be overlooked that, while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the efforts of the judges to clarify fully the facts in issue, to provide both the defence and the prosecution with all necessary facilities for putting forward their evidence and stating their case and to give judgment only after careful reflection on whether the offences were in fact committed and on the sentence to be imposed.

There has accordingly been no violation of Article 5 § 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Restoration to the list of the applicant's complaint relating to the alleged unfairness of the proceedings

46. The applicant complained under Article 6 § 3 (b) and (c) alleging a breach of his defence rights in the course of the investigation and the judicial proceedings.

47. The Court notes that in the inadmissibility part of its judgment adopted on 16 June 2009 it had declared the above-mentioned complaint inadmissible as being premature. The applicant has pointed out that, contrary to what was stated in the facts part of the judgment, the proceedings had in fact ended. In these circumstances the Court considers that this particular complaint should be restored to the list and re-examined. However, in the light of the applicant's submissions and the materials filed in support of his complaint, the Court finds that there are other grounds for rejecting the complaint. In particular, there is no appearance of any breach of the fairness guarantees contained in Article 6 of the Convention. It therefore declares the complaint inadmissible under Article 35 §§ 3 and 4 of the Convention as being manifestly ill-founded.

B. Remaining complaints

48. The applicant further complained of the fact that at the time of his arrest he had been subjected to inhuman and degrading treatment in violation of Article 3 of the Convention. He also invoked Article 5 § 4, submitting that there had been no review of the lawfulness of his detention and that during the investigation the principle of equality of arms had not been respected. He further complained under Article 6 § 1 of a violation of his right to have his case heard within a reasonable time. Lastly, the applicant invoked Article 8 of the Convention, maintaining that his right to respect for private and family life had been violated because during his detention he was denied contact with his fiancée for 6 months.

49. The Court observes that, by virtue of section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*), it is open to persons such as the applicant in the present case to lodge a complaint about the unreasonable length of the proceedings with the relevant domestic court. The applicant failed to make use of that domestic remedy.

50. Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

51. As to the other complaints, the Court has examined them as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant has failed to substantiate his complaints. It follows that this part of the application must be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to restore to the list the application only in so far as it relates to the complaint concerning the unfairness of the proceedings;

2. *Declares* the complaint concerning the alleged excessive length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible, including the above-mentioned unfairness complaint;

3. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 19 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President