



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF DYLLER v. POLAND

(Application no. 39842/05)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 15 February 2011*

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Dyller 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,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 39842/05) 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 Zbigniew Dyller (“the applicant”), on 13 October 2005.

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

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

4. On 30 August 2007 the President of the Fourth Section of the Court decided to communicate the complaint concerning the length of the applicant’s pre-trial detention 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 1961 and lives in Tczew.

6. On 15 October 2003 the applicant was arrested by the police.

7. On 16 October 2003 the Tczew District Court (*Sąd Rejonowy*) decided to place the applicant in pre-trial detention in view of the reasonable suspicion that he had committed a robbery by punching R.O. and taking a “Slava” watch from him worth 100 Polish zlotys (PLN). The court also relied on the severity of the penalty that was likely to be imposed on the applicant and the fact that he had been previously convicted of another robbery, for which he had been sentenced to two years’ imprisonment.

8. On 8 January 2004 the applicant’s pre-trial detention was extended.

9. On 26 March 2004 the applicant was indicted before the Tczew District Court. The prosecutor established that on 15 October 2003, in Tczew train station, R.O., a homeless person, had been stopped by an individual who had taken a can of beer from him. The individual had then returned, hit R.O. in the face, causing a bruise, and taken his watch. When the police arrived, R.O. identified the applicant as the perpetrator. On his arrest the applicant had dropped the watch and it had been returned to its owner, R.O.

10. On 8 April 2004 the Tczew District Court further extended the applicant’s detention, finding that the grounds previously given remained relevant. Moreover, the court did not find any circumstances that would point in favour of the applicant’s release.

11. On 15 July 2004 the Starogard Gdański District Court, to which the case had been transferred, dismissed the applicant’s request for release and further extended his pre-trial detention. It relied on the reasonable suspicion against the applicant and on the likelihood that a severe sentence would be imposed.

12. It appears that on 29 July 2004 the trial court held the first hearing. Subsequently, hearings were held at regular intervals.

13. On 14 October 2004 the District Court extended the applicant’s detention, relying solely on the likely severity of the sentence.

14. On 12 January and 11 April 2005 the applicant’s detention was further extended. The court’s reasons included two grounds: the reasonable suspicion against the applicant and the severity of the penalty that was likely to be imposed.

15. On 13 July 2005 the court extended the detention of the applicant relying, in addition to the likelihood of a severe penalty being imposed, on the need to secure the proper conduct of the proceedings.

16. On 30 September 2005 the Starogard Gdański District Court found the applicant guilty of the robbery of a watch worth not less than PLN 3, committed within five years of his previous conviction. The court established that both the applicant and the victim had been under the influence of alcohol. The applicant was sentenced to three years and six months' imprisonment. The applicant lodged an appeal against the judgment.

17. The applicant's detention was subsequently extended.

18. On 13 January 2006 the Gdańsk Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal and upheld the judgment. It appears that the applicant failed to lodge a cassation appeal with the Supreme Court (*Sąd Najwyższy*) and that the judgment became final.

19. On 14 April 2007 the applicant was released from detention, having served the totality of his sentence.

20. On 4 July 2005 the Tczew District Court acquitted the applicant of the charge of having stolen a can of beer worth PLN 2.8 from R.O. It appears that the judgment was not appealed against and became final.

II. RELEVANT DOMESTIC LAW

21. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other so-called "preventive measures" (*środki zapobiegawcze*) are set out 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).

22. The relevant statistical data, recent amendments to the Code of Criminal Procedure designed to streamline criminal proceedings and references to relevant Council of Europe materials can be found in the Court's judgment in the case of *Kauczor* (see *Kauczor v. Poland*, no. 45219/06, §§ 27-28 and 30-35, 3 February 2009).

THE LAW

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

23. 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.”

24. The Government contested that argument.

A. Admissibility

25. The Government raised a preliminary objection arguing that the applicant had failed to exhaust domestic remedies in respect of his complaint about the unreasonable length of his pre-trial detention, in that he had failed to lodge a cassation appeal against the second-instance judgment given on 13 January 2006.

26. In the absence of any evidence, the Court finds that the Government have failed to substantiate their contention that a cassation appeal against the judgment of the appeal court should be considered an effective remedy for the applicant’s complaint under Article 5 § 3 of the Convention (see *Oleksy v. Poland*, no. 64284/01, § 25, 28 November 2006). At that stage of the proceedings his detention was covered by Article 5 § 1 (a) of the Convention.

27. Accordingly, the Court rejects the Government’s preliminary objection. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. The Court therefore declares it admissible.

B. Merits

1. Period to be taken into consideration

28. The applicant’s detention started on 15 October 2003, when he was arrested on suspicion of having committed a robbery. On 30 September 2005 the District Court convicted him as charged.

Accordingly, the applicant’s detention lasted one year, eleven months and sixteen days.

2. The parties’ submissions

29. The applicant submitted in general terms that he had been kept in pre-trial detention for an unjustified length of time.

30. The Government considered that the applicant’s pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by “relevant” and “sufficient” grounds. These grounds were, in particular, the gravity of the charges against the applicant and the fact that the applicant had been previously convicted. The Government considered that there had been a risk

of the applicant going into hiding or otherwise interfering with the proper course of the proceedings. The Government argued that the domestic authorities had shown due diligence, as required in cases against detained persons.

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, 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

32. In their detention decisions the authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds: the severity of the penalty to which he was liable and the fact that the applicant was a recidivist offender.

33. The Court firstly observes that although the applicant was detained on charges of robbery, the circumstances in which the offence was committed were rather trivial. The applicant was convicted of having robbed a homeless person in a train station of a watch worth approximately one euro (EUR). The applicant acted without accomplices and the main evidence against him had been the testimonies of the victim and the police officers who had caught him immediately after the incident. This offence, although committed following the applicant's relapse into crime, can hardly be considered as giving rise to particular difficulties for the investigation authorities and the courts in determining the facts, mounting a case against the applicant and reaching a conclusion (see *Malik v. Poland*, no. 57477/00, § 49, 4 April 2006).

34. The Court reiterates that Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004; *Sarban v. Moldova*, no. 3456/05, § 97, 4 October 2005; and *Owsik v. Poland*, no. 10381/04, § 34, 16 October 2007).

35. The Court accepts that the suspicion against the applicant of having committed the offence might initially have justified his detention. However, with the passage of time, the grounds given became less relevant and cannot

justify the entire period of almost two years during which the most serious preventive measure available was imposed on the applicant.

36. 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 pre-trial detention (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

37. The Court considers that the authorities did not rely on any specific circumstance capable of showing that the applicant's release would obstruct the process of obtaining evidence, and if so why and how. Finally, the Court notes that there is no specific indication that during the period of the applicant's pre-trial detention the authorities envisaged the possibility of imposing on him other preventive measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of the criminal proceedings.

In this context the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000).

38. Having regard to the foregoing and noting that the case did not belong to the category of organised crime (compare *Bak v. Poland*, no. 7870/04, ECHR 2007-... (extracts)), 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

39. The applicant complained that he did not have a “fair trial” and that he was innocent. He relied on Article 6 of the Convention.

However, pursuant to Article 35 § 1 of the Convention:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...”

40. The Court notes that the applicant failed to lodge a cassation appeal with the Supreme Court. Therefore, the Court finds that the applicant failed to exhaust the available domestic remedies.

41. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

42. 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.”

43. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, § 58 et seq. with further references) the Court 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 had affected, and may still affect in the future, an as yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

44. In the present case, as in other numerous similar detention cases, the authorities did not justify the applicant’s continued detention by relevant and sufficient reasons (see paragraph 38 above). 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).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed PLN 350,000 in respect of pecuniary and non-pecuniary damage.

47. The Government considered that these claims were excessive and as such should be rejected. They were of the view that in cases concerning

criminal proceedings a finding of a violation of Article 5 § 3 should constitute in itself sufficient just satisfaction.

48. 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 awards the applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

50. 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 unreasonable length of the applicant's 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 Polish zlotys 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 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President