



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF MACIEJEWSKI v. POLAND

(Application no. 23755/03)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Maciejewski 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,

Päivi Hirvelä,

Ledi Bianku,

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. 23755/03) 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 Maksymilian Maciejewski (“the applicant”), on 11 July 2003.

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

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant’s detention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Gdańsk.

5. On 31 March 1999 the applicant was arrested on suspicion of armed robbery. On 1 April 1999 the Gdańsk District Court remanded him in custody in view of the reasonable suspicion that he had committed armed robbery and had unlawfully possessed a firearm. It also found that there was a risk that the applicant might go into hiding, tamper with evidence or obstruct the proceedings by other unlawful means.

6. Later, several other persons were detained and charged in connection with the same investigation conducted by the Department of Organised Crime of the Gdańsk Regional Prosecutor's Office.

7. On 24 June 1999 the Gdańsk Regional Court prolonged the applicant's detention until 30 September 1999. It relied on the need to obtain and secure further evidence. On 15 September 1999 the Gdańsk Court of Appeal prolonged the applicant's detention until 31 December 1999, reiterating the grounds previously given for his detention and adding that the measure was also justified by the severity of the anticipated penalty.

8. On 8 December 1999 the Gdańsk Court of Appeal extended his detention until 30 March 2000, relying on the grounds previously given for his detention. It underlined the serious nature of the offences with which the applicant had been charged and the need to obtain further expert evidence.

9. On 30 March 2000 the Supreme Court extended the applicant's detention until 30 June 2000. It found that the strong suspicion that he had committed the serious offences with which he had been charged, the severity of the anticipated penalty and the risk of his tampering with evidence justified holding him in custody. It also relied on the complexity of the case.

10. On 24 May 2000 the Supreme Court extended the applicant's detention until 15 December 2000, invoking the same grounds as given in its earlier decision. In addition, it found that the present case was "particularly complex" within the meaning of Article 263 § 4 of the Code of Criminal Procedure due to, *inter alia*, the nature of the offences and the number of suspects involved.

11. On 13 December 2000 the Gdańsk Court of Appeal extended the applicant's and his eight co-accused's detention until 31 March 2001.

12. On 7 March 2001 the Gdańsk Court of Appeal prolonged the applicant's detention until 31 May 2001. It relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and the severity of the anticipated penalty. The Court of Appeal further held that detention on remand was the only measure which could secure the proper conduct of the proceedings given the nature of the charges and the relations between the accused, all members of an organised criminal gang. It also considered that the prolongation of detention was justified by the need to obtain DNA evidence in order to corroborate evidence previously obtained.

13. Since on 30 March 2001 the applicant's detention had reached the statutory time-limit of two years laid down in Article 263 § 3 of the Code of Criminal Procedure, further prolongation of his detention was ordered by the Gdańsk Court of Appeal. The Gdańsk Court of Appeal gave decisions on the applicant's detention on 23 May 2001 and 24 October 2001, prolonging it respectively until 31 October 2001 and 31 March 2002.

14. On 15 May 2001 the prosecution filed a bill of indictment with the Gdańsk Regional Court. The applicant was charged with several dozen counts of armed robbery which had been committed while acting in an organised armed criminal group. The bill of indictment listed 120 charges brought against 19 defendants, who all were detained on remand. The case-file comprised 114 volumes. The prosecution asked the court to hear evidence from 366 witnesses.

15. The trial began on 28 December 2001. However, as of 22 April 2002 the reading out of the bill of indictment by the prosecution had still not been concluded. Initially, the trial court held three hearings per month.

16. On 13 March 2002 the Court of Appeal ordered that the applicant and his seven co-defendants be held in custody until 30 September 2002. It considered that the trial could be terminated by the last-mentioned date. In addition to the grounds previously invoked, the Court of Appeal found that the prolongation of detention was justified under Article 263 § 4 of the Code of Criminal Procedure by the particular complexity of the case. It further observed that the delays in the trial were partly attributable to some of the defendants who had attempted to disrupt the proceedings and, consequently, had to be removed from the court room during a hearing on 30 January 2002. The Court of Appeal instructed the trial court to hold more than 3 hearings per month. Furthermore, it held that no other preventive measure could secure the proper conduct of the trial. In that respect, the Court of Appeal observed that there was a reasonable risk that the applicant and other defendants might interfere with the proceedings, given the nature of the charges, the severity of the anticipated penalty and the fact that such attempts had been made in the course of the investigation.

17. On 11 September 2002 the Court of Appeal prolonged the applicant's and his nine co-defendants' detention until 31 December 2002. In addition to the grounds previously relied on, it considered that the applicant's detention was justified under Article 258 § 2 of the Code of Criminal Procedure since that provision established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings. It also noted that the prolongation of his detention was justified by the volume of evidence to be heard in the trial.

18. On 18 December 2002 the Court of Appeal ordered that the applicant and his 17 co-defendants be kept in custody until 30 June 2003. It held that the grounds invoked in its previous decisions were still valid.

19. On 25 June 2003 the Court of Appeal prolonged the applicant's and eighteen of his co-defendant's detention until 31 December 2003, relying on the same grounds as given previously. In addition, it observed that the trial could not have been terminated due to obstructiveness on the part of the defendants who had filed numerous requests challenging the trial court. It

also noted that the trial court had taken various procedural steps in order to accelerate the proceedings.

20. Subsequently, the Court of Appeal prolonged the applicant's detention on several occasions. The relevant decisions were given on 17 December 2003 (prolonging his detention until 30 June 2004), 23 June 2004 (extending his detention until 31 December 2004), 15 December 2004 (ordering his continued detention until 31 March 2005), 30 March 2005 (prolonging his detention until 30 June 2005) and 22 June 2005 (extending his detention until 30 September 2005). In all those decisions the Court of Appeal stated that the grounds previously given for the applicant's detention were still valid. It also stressed the exceptionally complex nature of the case.

21. In its decision on the applicant's detention of 23 June 2004, the Court of Appeal observed that up to April 2003 the main reason for the delays during the trial was the obstructiveness of the defendants and the abuse of the rights of the defence. It also observed that the trial could be concluded by the end of 2004 provided that the Regional Court endeavoured to organise the trial efficiently.

22. In its decision of 27 July 2005 dismissing the applicant's appeal against the decision of 22 June 2005 prolonging his detention, the Court of Appeal referred, *inter alia*, to the presumption established under Article 258 § 2 of the Code of Criminal Procedure and held that that presumption alone justified the applicant's continued detention. It also held that keeping the applicant in custody was necessary in order to prevent him from interfering with the trial, given the reasonable risk of such interference which flowed from the fact that he had been charged with commission of offences as a member of an organised criminal group.

23. By March 2006 the trial court had held some 135 hearings of the 162 which had been scheduled. It heard more than 400 witnesses.

24. During the proceedings the applicant filed numerous but unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention.

25. On 21 March 2005 the Gdańsk Regional Court made a severance order with a view to expediting the proceedings, and thereafter four defendants (J.N., G.P., Z.S. and Z.C.), who in the meantime had been released from detention, were to be tried separately.

26. After 20 June 2005 no hearing was held due to the serious illness of the judge rapporteur. On 21 September 2005 the President of the IV Criminal Section of the Gdańsk Regional Court assigned a new judge rapporteur. Consequently, the trial had to commence *de novo*.

27. On 20 September 2005 the Court of Appeal prolonged the applicant's detention until 31 January 2006. The applicant appealed against that decision. On 18 October 2005 a different panel of the Court of Appeal quashed the impugned decision and ordered the applicant's release under police supervision. It also imposed on him a prohibition on leaving the

country. The Court of Appeal had regard to the fact that the trial had to commence *de novo* and that the applicant had already spent a few years in pre-trial detention.

28. The applicant was released on 19 October 2005.

29. On 24 November 2005 the trial court made a further severance order and divided the case into eleven separate cases.

30. It appears that the proceedings are still pending before the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

31. The relevant domestic law and practice concerning the imposition of detention on remand (*tymczasowe aresztowanie*), the grounds for its prolongation, release from detention and rules governing other, so-called “preventive measures” (*środki zapobiegawcze*) at the material time 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.

32. 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 including the Committee of Ministers’ Interim Resolution of 6 June 2007 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

33. 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.”

34. The Government, having regard to the Court’s case-law concerning the length of pre-trial detention, refrained from taking a position on the admissibility of the complaint.

A. Admissibility

35. 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

36. The applicant's detention started on 31 March 1999, when he was arrested on suspicion of armed robbery. It continued until 19 October 2005 when the applicant was released. Accordingly, the period to be taken into consideration amounts to 6 years, 7 months and 2 days.

2. The parties' submissions

(a) The applicant

37. The applicant argued that the length of his pre-trial detention had been unreasonable and contested the reasons given therefor. He submitted that his prolonged detention on remand had amounted to serving a prison sentence. Furthermore, he had not contributed to any delays in the proceedings.

(b) The Government

38. The Government firstly presented some statistical data, indicating that in the years 2000-2005 the number of indictments and convictions in cases concerning organised crime increased both in absolute terms and in relation to other crimes. In 2004 there were 617 indictments in such cases and 220 persons were convicted. They argued that in organised crime cases the authorities were faced with particular problems, relating to the taking and assessment of evidence and various logistical issues.

39. With reference to the present case, the Government submitted that the applicant's pre-trial detention had been justified by the existence of substantial evidence of his guilt, the nature of the offences with which he had been charged and the severity of the anticipated penalty. They underlined that the length of the applicant's detention should be assessed with reference to the fact that he and his co-defendants had acted in an organised criminal gang. The risk that the defendants might obstruct the proceedings or tamper with evidence was aggravated by the fact they were members of a tightly-knit organised criminal group. Thus, the domestic

courts had considered it necessary to remand the applicant and his co-defendants in custody until all relevant witnesses had been heard.

40. The Government emphasised that the serious nature of the charges as well as the fact that there had been nineteen defendants charged with numerous offences required that the proper conduct of the proceedings be secured with particular diligence. 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 and defendants, and by reason of the volume of evidence.

41. Furthermore, the Government maintained that the defendants bore the main responsibility for the length of the trial. They had lodged hundreds of applications and appealed against every decision, even when they had been informed that the appeal had been inadmissible. The Government referred in that respect to the decision of the Court of Appeal of 23 June 2004 which had observed that the main reason for the delays in the proceedings until April 2003 had been the obstructiveness of the defendants and the abuse of the rights of the defence. They further submitted that during the hearing held on 30 January 2002 the applicant and other co-accused had refused to participate in the hearing and tried to leave the courtroom. Consequently the judge had ordered that they be expelled. In their view the defendants' behaviour justified the conclusion that they had resorted to delaying tactics. Lastly, they maintained that the authorities had displayed special diligence in dealing with the applicant's case.

3. *The Court's assessment*

(a) **General principles**

42. 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 judgements (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**

43. 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 charges against him, (2) the severity of the penalty to which he was liable, (3) the risk that he might abscond, tamper with evidence or obstruct the proceedings by other unlawful means, and (4) the complexity of the case related to the number of defendants and volume of evidence to be heard. The domestic courts also

referred to the obstructive behaviour of the defendants aimed at delaying the trial.

44. The applicant was charged with numerous counts of armed robbery committed in an organised and armed criminal group (see paragraph 14 above). In the Court's view, the fact that the case concerned a member of a such 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).

45. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences could initially warrant his detention. In addition, it notes that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the fact that in the course of the investigation new suspects had been identified, constituted relevant and sufficient grounds for the applicant's initial detention.

46. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts were "relevant" and "sufficient" (see, *Kudła v. Poland*, cited above, § 111).

47. 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, for instance, *Kąkol v. Poland*, no. 3994/03, § 51, 6 September 2007).

48. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal gang. In this regard, the Court reiterates that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings (see, *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent prolongations of the detention (see, *Celejewski*, cited above, § 37). It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. Moreover, the Court considers that in cases such as the present 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, is by the nature of things often particularly high. In this respect, the Court notes that although the authorities invoked the risk of absconding and tampering with evidence, they did not specify any concrete grounds justifying their opinion. On the other hand, the Court observes that the applicant and some of his

co-defendants had made attempts to disrupt the trial in its early stages (see paragraphs 16 and 41 above). Furthermore, it accepts that certain delays during the trial were caused by the defendants' obstructiveness (see paragraphs 19 and 21 above).

49. 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. Even if the particular circumstances of the case required detention on remand to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify this (*Wolf v. Poland*, nos. 15667/03 and 2929/04, § 90, 16 January 2007). In this respect the Court observes that the applicant had spent 6 years and 7 months in pre-trial detention which is a particularly long period.

50. 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 members of an organised criminal group, 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.

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

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION

52. 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."

A. The parties' submissions

1. *The applicant*

53. The applicant did not submit any observations concerning this provision.

2. *The Government*

54. The Government submitted that the proceedings in the applicant's case had exceptional features that distinguished it from other cases of detention on remand and that the length of the applicant's detention could be explained by the extreme complexity of the proceedings and the fact that

they involved an organised criminal group. They emphasised that from the very beginning of the trial the behaviour of the accused, including the applicant, had impeded the swift conduct of the proceedings. Consequently, the length of the applicant's pre-trial detention did not reveal the existence of a structural problem. They further stressed that Polish law was compatible with the standards of Article 5 § 3 of the Convention.

55. Maintaining that the number of cases in which the domestic courts had ordered detention on remand lasting from twelve months to two years or longer was decreasing, the Government made reference to the statistical data for 2005-2007 which they had submitted to the Court. They further stressed that the awareness of courts of the standards concerning the length of the detention on remand was growing.

56. The Government concluded that, bearing in mind the efforts of the Polish authorities and the legislative reforms which were and had been undertaken by them to solve the problem of the length of detention on remand, Poland could not be said to have failed to comply with its obligations under Article 46 of the Convention to abide by the Court's judgments.

B. The Court's assessment

57. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, § 58 et seq. with further references) the Court held that the Interim Resolution adopted by the Committee of Ministers on 6 June 2007 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.

58. 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 44 and 48-50 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 45-50 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*, cited above; *Kąkol v. Poland*, cited above; *Malikowski v. Poland*, no. 15154/03, 16 October 2007 and also *Hilgartner v. Poland*, no. 37976/06, §§ 46-48, 3 March 2009; not final). 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

59. 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.”

60. The applicant did not submit a claim for just satisfaction within the time-limit (13 September 2006) fixed by the President of the Chamber under Rule 60 § 2 of the Rules of Court. On 2 October 2007, when submitting his comments on the additional question put to the parties on the application of Article 46 of the Convention, he claimed 20,000 euros in respect of non-pecuniary damage. Having regard to the above, the Court finds that the applicant failed to comply with the relevant time-limit and rejects his claims for just satisfaction (Rule 60 § 3 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

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