



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF WOŹNIAK v. POLAND

(Application no. 29940/06)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Woźniak 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. 29940/06) 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 Hungarian national, Mr Richard Woźniak (“the applicant”), on 6 July 2006.

2. The applicant was represented by Mr J. Danisewicz, a lawyer practising in Gdańsk. The Polish Government (“the Government”) were represented by their Agent, Mr J. 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 18 January 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Gdańsk.

6. On 20 July 2001 the applicant was remanded in custody by the Gdańsk Regional Court on suspicion of murder. The court held that there had been a

risk that the applicant might obstruct the proceedings or abscond, given the severity of the penalty he faced.

7. Later, several other persons were detained and charged in connection with the same investigation conducted by the Gdańsk District Prosecutor's Office. The charges against the applicant were also extended.

8. The applicant's detention was subsequently prolonged on the following dates: 11 October 2001, 10 January, 18 April, 17 September 2002, 28 January, 2 July, 1 October, 30 December 2003, 3 February, 21 April, 7 December 2004, 24 February, 9 June 2005, 29 May and 21 September 2006. The courts relied mainly on the reasonable suspicion that the applicant had committed the offences in question and on the gravity of the charges. The courts considered that the applicant had been charged with the commission of crimes for which he was liable to a sentence of imprisonment exceeding 8 years, and that the circumstances of the case indicated that there was a reasonable risk that he might obstruct the proceedings. Regard was also had to the number of suspects and the need to obtain further evidence.

9. During the investigation and the trial the applicant filed several unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention.

10. From 20 March 2002 until 9 May 2002 and from 17 February 2003 until 18 March 2003 the applicant served prison sentences imposed in other sets of criminal proceedings against him.

11. On 14 June 2004 the Gdańsk Regional Court delivered a judgment in the case. The applicant appealed.

12. On 24 February 2005 the Gdańsk Court of Appeal partly quashed the first-instance judgment in respect of the applicant, sentenced him to 6-years' imprisonment in respect of some of the charges, and remitted the remainder of the case for retrial.

13. Between 2005 and 2007 the Gdańsk Regional Court held fourteen hearings in the case.

14. The applicant was released on 14 May 2007. The Gdańsk Regional Court found that the necessary pieces of evidence had been obtained and the case was at its final stage, so there was no need to prolong the applicant's detention.

15. The proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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.

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.”

A. Admissibility

18. The Government submitted in the first place that the applicant had not exhausted the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention, in that he had failed to appeal against some of the decisions prolonging his detention or dismissing his motions for release.

19. The Court reiterates that it is well established in its case-law that an applicant must make normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Yaşa v. Turkey*, 2 September 1998, § 71, *Reports of Judgments and Decisions* 1998-VI).

20. In the present case the applicant lodged appeals against most of the decisions prolonging his detention. The Court considers that the purpose of the remedies used by the applicant was to obtain a review of his detention pending trial. In the circumstances of the case these remedies constituted adequate and effective remedies within the meaning of Article 35 of the Convention as their aim was to obtain his release.

21. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in a previous case against Poland (see *Buta v. Poland*, no. 18368/02, 28 November 2006) and that the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

22. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court 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

23. The applicant's detention started on 20 July 2001, when he was arrested on suspicion of murder. On 14 June 2004 the Gdańsk Regional Court convicted him as charged.

24. 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 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

25. When on 24 February 2005 the Gdańsk Court of Appeal partly quashed the first-instance judgment and remitted a part of the case for retrial, the applicant was still serving the sentence imposed with respect to the charges upheld in the appeal.

26. The Court further notes that between 20 March 2002 and 9 May 2002 and from 17 February 2003 until 18 March 2003 the applicant served a prison sentence which had been imposed on him in other criminal proceedings. This term, being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's pre-trial detention for the purposes of Article 5 § 3.

Accordingly, the period to be taken into consideration amounts to 2 years and 7 months.

2. The parties' submissions

(a) The applicant

27. The applicant submitted that the length of his detention on remand had been unreasonable.

(b) The Government

28. 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.

29. The Government asserted that 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. Furthermore, the applicant's case had been extremely complex. Lastly, they submitted

that the authorities had displayed special diligence in the conduct of the proceedings.

3. *The Court's assessment*

(a) General principles

30. 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], cited above, § 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

31. In their decisions on the applicant's detention, the authorities, in addition to the reasonable suspicion against him, relied principally on four grounds, namely the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable, the need to ensure the proper conduct of the proceedings, and the risk that the applicant might tamper with evidence.

32. The applicant was charged with murder (see paragraph 6 above) and subsequently also with other charges.

33. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially have warranted his detention. Also, the need 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.

34. 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 – namely, the severity of the anticipated sentence and the risk that the applicant would tamper with evidence – were “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

35. The Court reiterates that while 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.

36. The Court further notes that, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that he 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).

37. Having regard to the foregoing, 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 41 OF THE CONVENTION

38. 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

39. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government rejected the claim as being exorbitant.

41. 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 EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

43. The Government pointed to the fact that they had not received any invoice acknowledging that the applicant had incurred any legal costs and expenses in the preparation and defence of his case before the Court.

44. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 200 for costs and expenses for the proceedings before the Court.

C. Default interest

45. 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 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 200 (two hundred euros) costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State 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 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 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President