



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF DRUŻKOWSKI v. POLAND

(Application no. 24676/07)

JUDGMENT

STRASBOURG

1 December 2009

FINAL

01/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Družkowski 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 10 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 24676/07) 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 Tomasz Družkowski (“the applicant”), on 22 May 2007.

2. The applicant was represented by Mr A. Namysłowski, a lawyer practising in Bydgoszcz. 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 pre-trial detention and criminal proceedings exceeded a “reasonable time” within the meaning of Articles 5 § 3 and 6 § 1 of the Convention

4. On 23 June 2008 the President of the Fourth Section of the Court 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 1977 and lives in Toruń. He is currently detained in the Toruń Remand Centre.

6. On 20 November 2002 the Bydgoszcz District Court (*Sąd Rejonowy*) issued a “wanted” notice in respect of the applicant in view of the reasonable suspicion that he had committed a murder and had gone into hiding, thereby defeating attempts by the police to arrest him. The court also decided to remand the applicant in custody for a period of seven days from the date of his arrest.

7. On 13 March 2003 the applicant was arrested by the police. On 17 March 2003 the Toruń Regional Court (*Sąd Okręgowy*) extended his detention until 13 June 2003.

8. Subsequently, the Toruń Regional Court extended the applicant's detention on 4 June, 29 August and 8 December 2003. The court relied on the probability that a severe sentence might be imposed on the applicant and the fact that an arrest warrant had been issued during the time he had been in hiding.

9. His detention pending investigation was further extended by the Gdańsk Court of Appeal on 25 February and 28 April 2004.

10. On 31 May 2004 the applicant was indicted before the Toruń Regional Court. The act of indictment was directed against twelve persons. The applicant was charged with homicide.

11. The trial started in November 2004 and hearings were held at regular intervals. On several occasions the trial court found that the grounds for the applicant's detention remained valid and extended it.

12. On 23 February 2005 the Gdańsk Court of Appeal decided to extend the applicant's detention beyond the statutory time-limit of two years laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*).

13. On 8 December 2005 the Gdańsk Court of Appeal decided to further extend the applicant's detention. The court based its decision on the risk that he might interfere with the course of justice, given the severity of the penalty that could be imposed and the fact that he had been in hiding prior to his arrest in 2003.

14. On 12 May 2006 the Toruń Regional Court convicted the applicant and sentenced him to twelve years' imprisonment. The applicant would found guilty of having attacked a certain M.S., who was heavily under the influence of alcohol, in a billiards club, and beaten him, causing serious bodily harm and in consequence death.

15. The applicant lodged an appeal. It appears that the trial court transferred the case to the court of appeal nine months later. The Toruń Court of Appeal held a hearing on 6 April 2007.

16. On 27 April 2007 the court allowed the applicant's appeal and quashed the impugned judgment.

17. On 4 May 2007 the Gdańsk Court of Appeal extended the applicant's detention, finding that only detention would secure his attendance at the trial.

18. On 8 August and 14 December 2007 the Toruń Regional Court further extended his detention, observing that the grounds for detention were still valid. In its identically reasoned decisions the court relied on two grounds invoked previously: the severity of the penalty that might be imposed, which made it probable that the applicant would interfere with the proper course of proceedings, and the fact that he had been sought pursuant to a “wanted” notice in 2002.

19. At the hearings held on 7 March, 4 June, 12 September and 11 December 2008 the trial court further extended the applicant's detention. In every decision the court considered that the applicant's detention was necessary to complete the proceedings and that its length was in compliance with Convention standards.

20. On 18 February and 27 April 2009 the applicant's pre-trial detention was further extended on the grounds invoked previously.

21. On 12 August 2009 the Toruń Regional Court convicted the applicant and sentenced him to twelve years' imprisonment. The applicant requested a reasoned judgment be delivered to him with a view to lodging an appeal. The trial court further extended his detention.

22. In November 2006 the applicant lodged a complaint under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”). However the applicant failed to pay the court fee of 100 Polish zlotys (PLN 100, approximately 25 euros (EUR)). On 19 December 2006 the Gdańsk Court of Appeal returned the complaint to the applicant unexamined.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The relevant domestic law and practice concerning the imposition of detention during judicial proceedings (*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.

24. The relevant domestic law and practice concerning remedies for excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V, and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII, and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

25. 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 2007 Interim Resolution of the Committee of Ministers 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

26. The applicant complained that the length of his 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 13 March 2003, when he was arrested on suspicion of homicide. On 12 May 2006 the Toruń Regional Court convicted him as charged.

As of 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 (see *Kudla v. Poland*, [GC] no. 30210/96, § 104).

On 27 April 2007 the Toruń Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered

by Article 5 § 3 until 12 August 2009 when the Toruń Regional Court convicted the applicant.

Accordingly, the period to be taken into consideration amounted to five years, five months and eighteen days.

2. The parties' submissions

30. The applicant submitted that he had been kept in pre-trial detention for an unjustified length of time. He argued that there had been no justifiable grounds for extending his detention and that the authorities' decisions had been repetitive. They failed to refer to any events that would substantiate an alleged risk of the applicant obstructing the course of the proceedings.

31. 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 gone into hiding and had been sought by means of a “wanted” notice. The Government conceded that the overall period of the applicant's detention had been lengthy but considered that there had been a risk of the applicant going into hiding or otherwise interfering with the proper course of the proceedings. Moreover, the proceedings had been very complex. 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

32. The Court reiterates 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, *Kudla*, 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

33. In their detention decisions the authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds, namely the severity of the penalty to which he was liable, which created a presumption that he would interfere with the course of the proceedings, and the risk that the applicant might go into hiding, given the fact that prior to 2003 a wanted notice had been issued for him. They repeated those grounds in all their decisions. The authorities failed to advance any other justifications to extend the applicant's detention.

34. The Court accepts that the suspicion against the applicant of having committed the offence might initially have justified his detention, particularly since he had gone into hiding before his arrest (see *Krowiak v. Poland*, no. 12786/02, § 41, 16 October 2007). However, with the passage of time the grounds given became less relevant and cannot justify the entire period of over five years and five months, during which the most serious preventive measure available was imposed on the applicant (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006; *Depa v. Poland*, no. 62324/00, § 38, 12 December 2006; and *Czajka v. Poland*, no. 15067/02, § 46, 13 February 2007).

35. 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 *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

36. The Court considers that the authorities did not rely on any other 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 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 *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

37. 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 extraordinarily long 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

38. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

39. The Government contested that argument and indicated that the applicant had failed to exhaust domestic remedies.

40. 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...”

41. The Court observes that after the entry into force, on 17 September 2004, of the 2004 Act, it was open to the applicant to lodge a complaint that the length of the proceedings was unreasonable with the relevant domestic court. The applicant lodged such a complaint on one occasion, in November 2006; however, he failed to pay the court fees, which resulted in the court leaving it unexamined (see paragraph 22 above). There is no indication that the applicant applied for exemption from this fee or that he lodged another complaint about the length of the proceedings under the 2004 Act.

42. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it to be effective in respect of complaints of excessive length of judicial proceedings in Poland. In particular it has considered that that remedy is capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42, ECHR 2005-V).

43. It follows that this part of the application 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

44. 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.”

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

46 The Government submitted that it could not be said that the length of the pre-trial detention in the present case revealed a systemic problem.

47. 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 of the Committee of Ministers 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.

48. 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 paragraphs 34-37 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

49. 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

50. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government submitted that the claim was excessive.

52. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed EUR 2,771 for the costs and expenses incurred before the Court.

54. The Government submitted that the costs and expenses should be awarded only in so far as they had been incurred necessarily and in a reasonable amount.

55. 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 are 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 1,500 for the proceedings before the Court.

C. Default interest

56. 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, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 1 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President