



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

FOURTH SECTION

CASE OF MARIAN SOBCZYŃSKI v. POLAND

(Application no. 35494/08)

JUDGMENT

STRASBOURG

2 February 2010

FINAL

02/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Marian Sobczyński 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 12 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 35494/08) 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 Marian Sobczyński (“the applicant”), on 11 July 2008.

2. The Polish Government (“the Government”) were represented by their Agent, Mr Jakub 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 20 January 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided that the merits of the application be examined at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Marian Sobczyński, is a Polish national who was born in 1950 and who lives in Zabrze, Poland.

6. On 7 June 2006 the applicant was arrested on suspicion of being a member of an organised criminal gang, tax fraud, perjury and other related offences.

7. On 9 June 2006 the Katowice District Court (*Sąd Rejonowy*) remanded him in custody. That decision was justified by the strong evidence against the applicant, the gravity of the offences with which he had been charged and the severity of the penalty which could be imposed if convicted. In addition, the court relied on the risk that the applicant would induce witnesses to give false testimony and also go into hiding if released. The latter ground was justified in the light of the fact that the applicant did not have a fixed residence prior to his arrest.

8. It appears that the applicant's interlocutory appeal against the above detention order was dismissed on 23 June 2006.

9. Subsequently, the applicant's pre-trial detention was extended by the decisions of the Katowice District Court issued on 25 August, 24 November and 18 December 2006, 19 February, 25 April and 18 June 2007 and by the decisions of the Gliwice Regional Court (*Sąd Okręgowy*) issued on 20 September and 27 December 2007 and 25 March 2008.

10. The domestic courts relied on the original grounds for the applicant's detention. In addition it was noted that the proceedings were complex and involved a large number of witnesses and voluminous evidence. The investigating authorities had to obtain expert reports on accountancy, finance and forensics. Lastly, it was noted that new aspects of the alleged criminal activities of the applicant were being revealed in the course of the progressing investigation.

11. On 22 April 2008 the prosecutor lodged a bill of indictment against the applicant and his two alleged accomplices with the Katowice Regional Court. The applicant was indicted of numerous counts of tax fraud, money laundering and perjury, allegedly committed within an organised criminal gang.

12. The first hearing took place on 23 October 2008. It appears that since then the trials have been taking place once a month or more frequently.

13. Pending trial, the applicant's detention was extended by the Katowice Regional Court's decisions of 5 May and 5 November 2008.

14. The applicant or his lawyer challenged a number of decisions to extend his detention. It appears that an interlocutory appeal was not brought against seven of those decisions. The interlocutory appeals lodged by the applicant's lawyer against the decisions of 25 March, 5 May and 5 November 2008 were rejected by the Katowice Court of Appeal on 4 June 2008 and two unspecified dates respectively. Likewise, the applicant's request for release was rejected by the Katowice Regional Court on 21 July 2008.

15. On 6 March 2009 the Katowice Regional Court released the applicant from detention, placing him under police supervision (*dozór policyjny*). The court considered that keeping the applicant in detention was no longer necessary since the majority of witnesses had already been

examined by the trial court and in the light of the fact that the applicant had been recently registered at a fixed residence address.

16. It appears that the criminal proceedings against him are currently pending.

17. In parallel to his pre-trial detention subject of the instant application, the applicant served two separate prison sentences imposed on him by a competent criminal court. The two prison terms amounted to one year, six months and nineteen days. And thus from 2 March 2007 until 31 July 2008 the applicant was serving a sentence imposed on him by the Wieluń District Court in its judgment of 5 February 2007 and from 8 September until 28 October 2008 the applicant was serving a sentence, which was imposed on him by the same court in its decision of 28 July 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its extension, 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

19. 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.”

20. The Government contested that argument.

A. Admissibility

21. The Government submitted that the applicant had not exhausted all the remedies provided for by Polish law in that he had failed to appeal against several decisions extending his detention.

22. The applicant did not comment.

23. The Court observes that the applicant did not challenge every decision extending his detention. However, he did lodge an interlocutory appeal against his detention order of 9 June 2006 and at least three appeals against decisions extending the preventive measure (see paragraphs 8 and 14 above). He also unsuccessfully requested that his detention be lifted (see paragraph 14 above).

The Court has already considered that those remedies, namely an appeal against a detention order or a request for release, whether submitted to the prosecutor or to the court, depending on the stage of the proceedings, and also an appeal against a decision to extend detention, serve the same purpose under Polish law. Their objective is to secure the review of the lawfulness of detention at any given time in the proceedings, both in their pre-trial and trial stage, and to obtain release if the circumstances of the case no longer justify continued detention (see *Iwańczuk v. Poland* (dec.), no. 25196/94, 9 November 2000, and *Wolf v. Poland*, nos. 15667/03 and 2929/04, § 78, 16 January 2007). It follows from the Court's case-law that the applicant is not required to appeal against each and every decision extending his detention (see, by contrast, *Bronk v. Poland* (dec.), no. 30848/03, 11 September 2007).

24. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

25. The applicant's detention started on 7 June 2006, when he was arrested on suspicion of being a member of an organised criminal gang, tax fraud, perjury and other related offences. On 6 March 2009 the applicant was released from detention and placed under police supervision.

The relevant criminal proceedings against the applicant are currently pending before the domestic court.

26. In parallel to his pre-trial detention subject of the application, for the total of one year, six months and nineteen days, from 2 March 2007 until 31 July 2008 and 8 September until 28 October 2008 the applicant served

two separate prison sentences, which had been imposed on him in other criminal proceedings (see paragraph 17 above). These terms, as 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 one year, two months and ten days.

2. The parties' submissions

(a) The applicant

27. The applicant submitted that the length of his pre-trial detention had been excessive and that the measure had not been sufficiently justified by the authorities.

(b) The Government

28. 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 had increased both in absolute terms and in relation to other crimes. 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.

29. With reference to the present case, the Government submitted that the applicant's pre-trial detention had been justified by the nature of the charges, the scale of the alleged criminal activities 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 allegedly acted in an organised criminal gang. The latter element aggravated the risk that the applicant might obstruct the proceedings or tamper with evidence. Thus, the domestic courts had considered it necessary to remand the applicant in custody during the relevant period. However, the applicant had been released when the authorities had considered that further prolongation of his detention would not be justified. Thus, the authorities had attempted to find a balance between the competing interests in the case.

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 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

31. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three 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; and (3) the risk that the applicant might go into hiding. As regards the latter, they relied on the fact that the applicant did not have a fixed residence prior to his arrest (see paragraph 7 above).

32. The applicant was charged with numerous counts of tax fraud, money laundering, perjury and other related offence allegedly committed in an organised criminal gang (see paragraphs 6 and 11 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).

33. 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 often is, by the nature of things, high.

34. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Furthermore, 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 *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

35. On the other hand, the need to obtain voluminous evidence and the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, including experts in finance and forensics constituted valid grounds for maintaining of the applicant's detention for the period of one year, two months and ten days.

36. As regards the risk of the applicant's going into hiding, the Court finds the authorities' argument justified in the light of the fact that the applicant did not have a fixed residence prior to his arrest.

37. The Court takes notice of the fact that when the authorities could no longer justify the applicant's protracted detention, they replaced it with a less stringent preventive measure and placed the applicant under police supervision.

38. 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, that is one year, two months and ten days.

39. It therefore remains to be ascertained whether the national authorities displayed “special diligence” in the conduct of the proceedings.

In this regard, the Court observes that the investigation was of considerable complexity, regard being had to the number of witnesses, the extensive evidentiary proceedings and the implementation of special measures required in cases concerning organised crime. The Court does not discern any significant periods of inactivity in the investigation or the initial phase of the trial. Furthermore, as noted by the authorities, the proceedings were additionally complicated by the need to obtain evidence from the experts in finance, accounting and forensics. For these reasons, the Court considers that during the relevant period the domestic authorities handled the applicant’s case with relative expedition.

40. Having regard to the foregoing, the Court finds that there has been no violation of Article 5 § 3 of the Convention

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

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

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President