



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

FOURTH SECTION

CASE OF PIŃKOWSKI v. POLAND

(Application no. 16579/03)

JUDGMENT

STRASBOURG

23 February 2010

FINAL

23/05/2010

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

In the case of Pińkowski 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 2 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 16579/03) 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 Mariusz Pińkowski (“the applicant”), on 30 April 2003.

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

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

4. On 18 December 2008 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

5. The applicant, Mr Mariusz Pińkowski, is a Polish national who was born in 1970 and lives in Częstochowa.

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's pre-trial detention and criminal proceedings against him

6. On 9 March 2000 the Częstochowa Regional Prosecutor (*Prokurator Okręgowy*) charged the applicant with being an accomplice to an armed robbery and murder in France.

7. On the same date the Częstochowa District Court (*Sąd Rejonowy*) remanded the applicant in custody. The court justified its decision by the strong evidence against the applicant, the likelihood of a severe sentence of imprisonment being imposed on him if convicted and the risk that he might obstruct the proceedings.

8. On an unspecified date the applicant was charged with being an accomplice to an armed robbery, murder, false imprisonment and being a member of an organised criminal gang (no. II K 55/01). All the offences in question were alleged to have taken place in France.

9. Subsequently, on 25 May 2001 the applicant was charged with being an accomplice to an armed robbery and with the imprisonment, torture and murder of a certain A.T., and with being a member of an organised criminal gang in France.

10. On 18 June 2001 the bill of indictment was lodged with the Częstochowa Regional Court.

11. The applicant's pre-trial detention was extended by the decision of the Katowice Court of Appeal (*Sąd Apelacyjny*) of 28 August 2000 (upheld by the Supreme Court (*Sąd Najwyższy*) on 2 October 2000) and the decisions of the Katowice Regional Court of 14 February, 28 June and 29 November 2001 (upheld by the Katowice Court of Appeal on 14 March, 22 August and 20 December 2001, respectively).

12. The courts referred to the original grounds for the applicant's detention and, additionally, to the international dimension of the case.

13. Meanwhile, on 1 March 2002 the Nowy Sącz Regional Court convicted the applicant as charged and sentenced him to twenty-five years' imprisonment. The reports obtained from Polish and French forensic experts in the course of the proceedings were contradictory as regards the cause of the victim's death. However, relying on the witness testimony and other evidence, the court established that the victim had died not as a result of asphyxia (when the applicant, acting together with accomplices, strangled him with a wire and put tape around his face) as claimed by some experts but as a result of being shot by the applicant in a forest where the applicant had possibly buried him with the aid of the gang.

14. On 3 October 2002 the Kraków Court of Appeal quashed the above judgment and remitted the case to the prosecution for further investigation, with a view to eliminating the major discrepancies in the evidence obtained.

15. On 21 November 2003 the Częstochowa Regional Prosecutor issued a new decision charging the applicant with, among other offences, attempting to kill A.T. by strangling him and then hiding the body. The supplementary investigation revealed that the victim had died as a result of numerous wounds inflicted on him. In addition, the applicant was found to have incited and led the other accomplices, acting on orders from a certain R.S. All the offences in question were alleged to have taken place in France.

16. Meanwhile, the preventive measure was upheld by decisions of the Kraków Court of Appeal of 21 February, 21 August, 3 October and 31 December 2002, and 26 March, 24 September and 16 December 2003.

17. Subsequently the applicant's pre-trial detention was extended by the trial court, the Nowy Sącz Regional Court, in its decisions of 29 June and 15 November 2004 and of 29 March and 19 August 2005 (upheld by the Kraków Court of Appeal on 22 July and 9 December 2004 and on 4 May and 14 September 2005, respectively).

18. The courts reiterated the original grounds for the applicant's pre-trial detention. In addition, although they acknowledged the fact that the investigation had been lengthy, the domestic courts considered it justified in the light of the international character of the case and the fact that certain witnesses had to be examined with the aid of the French authorities.

19. On an unspecified date in early-2004 a new bill of indictment was lodged by the prosecutor (no. II K 8/04) and the case was sent to the Nowy Sącz Regional Court.

20. From 17 May 2004 until 18 November 2005 the trial court held thirteen hearings. The court examined a French witness and obtained a forensic report from a French expert. The case file comprised twenty-three volumes in Polish and twenty-nine volumes in French.

21. On 18 November 2005 the Nowy Sącz Regional Court convicted the applicant as charged and sentenced him to fifteen years' imprisonment. That term was reduced by the period which the applicant had already spent in pre-trial detention, from 11 March 2000 until 27 March 2001 and from 14 January 2003 until 18 November 2005.

22. On 8 March 2006 the Kraków Court of Appeal acquitted the applicant of inciting and commanding the other accomplices and upheld the remainder of the first-instance judgment.

23. On 15 February 2007 the Supreme Court dismissed the cassation appeals lodged by the defence lawyers.

24. In parallel to his pre-trial detention which is the subject of the instant application, the applicant served two separate prison sentences. Between 22 April and 31 July 2002 the applicant was serving a sentence of 100 days imposed on him by a judgment of the Częstochowa District Court of an

unspecified date (no. III K 1554/98). On 31 July 2002 he started serving a sentence of twelve years' imprisonment, which was imposed on him by a judgment of the Nowy Sącz Regional Court of an unspecified date (no. II K 14/06).

B. The conditions of the applicant's detention under the regime for “dangerous prisoners”

25. During his pre-trial detention, the applicant was first held in the Nowy Sącz Prison and later in Częstochowa Remand Centre.

26. On 14 November 2001 the Penitentiary Commission of Nowy Sącz Prison (*Komisja Penitencjarna*) classified him as a “dangerous detainee” (“N”). That decision was based on the information about the applicant obtained from the trial court, namely that he had been suspected of a cruel crime committed while acting in an organised criminal gang.

27. On 8 May 2003 that decision was lifted by the Penitentiary Commission of Częstochowa Remand Centre.

28. The applicant did not submit any details about the conditions of his detention under the “N” regime.

29. It appears that on 19 December 2007 the applicant was released on parole.

C. The length of the criminal proceedings against the applicant

30. The applicant did not complain about the length of the proceedings under the Act of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

31. 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 summarised in several judgments concerning similar cases (see, among others, *Kauczor v. Poland*, no. 45219/06, §§25-27, 3 February 2009; *Gólek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006; *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006).

B. Remedies for unreasonable length of proceedings

32. The relevant domestic law and practice concerning remedies for excessive length of judicial proceedings, in particular the applicable provisions of the above-mentioned 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 its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

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 contested that argument.

A. The Government's request to strike out the application under Article 37 of the Convention

35. In their letter of 6 November 2009 the Government asked that the application be struck out of the Court's list of cases on the basis of Article 37 of the Convention, which, in its relevant part, reads as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application...”

36. The Government maintained that the applicant had failed to pursue his application in that he had not submitted his observations on the admissibility and the merits of the case within the time-limit indicated by the Court.

37. The Court notes that the applicant, who acted without legal representation, has maintained extensive correspondence with the Court throughout the entire proceedings. In all of his letters, including the last letter sent to the Court before the expiration of the time-limit for his observations, the applicant stated that he confirmed his original pleadings and wished to pursue his application.

In such circumstances and having regard to the fact that the applicant expressed clearly his intention to pursue his application, the Court must continue the examination of his case.

38. This being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

B. Admissibility

39. 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.

C. Merits

1. Period to be taken into consideration

40. The applicant's detention started on 9 March 2000, when he was arrested on suspicion of being an accomplice to an armed robbery and murder in France. On 1 March 2002 the Nowy Sącz Regional Court convicted him as charged and sentenced him to twenty-five years' imprisonment.

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*, cited above, § 104).

On 3 October 2002 the Kraków Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 18 November 2005 when the applicant was again convicted.

41. However, in parallel to his pre-trial detention, the applicant served two prison sentences which had been imposed on him in other criminal proceedings. Between 22 April and 31 July 2002 the applicant served a prison sentence imposed on him by the Częstochowa District Court and on 31 July 2002 he started serving a sentence of twelve years' imprisonment imposed by the Nowy Sącz Regional Court (see paragraph 23 above). Those terms, 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 1 year, 11 months and 22 days.

2. The parties' submissions

(a) The applicant

42. When lodging his application with the Court, 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. He did not make any comments on the Government's observations on the case.

(b) The Government

43. 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.

44. With reference to the present case, the Government considered that the measure in question had satisfied the requirements of Article 5 § 3. Throughout its entire period it had been justified by "relevant" and "sufficient" grounds, in particular the existence of a reasonable suspicion that he had committed the offences he had been charged with. 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. That risk became particularly real when one of the witnesses had testified before the trial court that the applicant had tried to influence him to change his testimony. Moreover, the Government considered that the applicant's protracted detention pending trial was justified by the gravity of the charges which the applicant was facing and the severity of the anticipated penalty, as well as the fact that the case was very complex due to its international dimension.

3. The Court's assessment

(a) General principles

45. 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], 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

46. 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; (3) the risk that the applicant might tamper with evidence. As regards the latter, they relied on the fact that the applicant and his co-defendants had allegedly acted in an organised criminal gang and that the applicant had already attempted to intimidate a witness (see paragraph 43 above). Lastly, the authorities referred to the complexity of the investigation and the trial in the light of the international character of the case (see paragraphs 12 and 18 above).

47. The applicant was charged with armed robbery, murder, false imprisonment and torture, committed in an organised criminal gang in France and Poland (see paragraphs 6, 9 and 15 above).

In the Court's view, the facts that the case concerned a member of such a criminal group and that some of the offences had been committed abroad should be taken into account in assessing compliance with Article 5 § 3 (see *Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

48. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences warranted his initial detention. Also, the need to determine the degree of the alleged responsibility of each of the defendants and the need to secure the proper conduct of the proceedings, constituted valid grounds for the applicant's initial detention.

49. 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. In this respect, the Court takes notice of the Government's submission that the applicant had apparently made attempts to intimidate a witness during the proceedings (see paragraph 43 above).

50. 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 *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

51. 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, some of whom had to be examined with the aid of the French authorities, constituted valid grounds for maintaining the applicant's detention for the period of one year, eleven months and twenty-two days.

52. 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, eleven months and twenty-two days (see *Raźniak v. Poland*, no. 6767/03, 7 October 2008).

53. 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 international character of the case, 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, the proceedings were additionally complicated by the need to obtain evidence with the aid of the French authorities and the fact that the material obtained from the forensic experts was contradictory as regards the cause of the victim's death (see paragraphs 13, 15 and 20 above). For these reasons, the Court considers that during the relevant period the domestic authorities handled the applicant's case with relative expedition.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. In addition the applicant made the following complaints: (1) a general complaint under Article 3 of the Convention concerning the conditions of his detention under the regime for so-called "dangerous prisoners"; (2) a complaint under Article 6 § 1 of the Convention about the unreasonable length of the criminal proceedings against him; and (3) a complaint under Article 6 § 1 of the Convention about the unfairness and the alleged shortcomings of the criminal proceedings against him.

56. The Court notes that the complaint under point (2) is inadmissible on the ground of non-exhaustion of domestic remedies since the applicant failed to lodge with a domestic court a complaint under the 2004 Act. Moreover, as regards the remaining complaints (points 1 and 3), having examined all the material in its possession, the Court finds nothing in the case file which might disclose any appearance of a violation of the rights

guaranteed by the Convention. Consequently, these complaints are manifestly ill-founded.

57. It follows that this part of the application is inadmissible and must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government's request to strike the application out of the list;
2. *Declares* the complaint under Article 5 § 3 of the Convention concerning the length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 23 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President