



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 43748/98
by Rafał WIENSZTAL
against Poland

The European Court of Human Rights (Third Section), sitting on 21 October 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEŃ,
Mr J. HEDIGAN,
Mrs H.S. GREVE,
Mr L. GARLICKI, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 31 August 1995,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Rafał Wiensztal, is a Polish national, who was born in 1969 and lives in Radom, Poland. He was represented before the Court by

Mr M. Maj, a lawyer practising in Sopot. The respondent Government were represented by Mr K. Drzewicki, of the Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant was arrested on 24 August 1994 on suspicion of extorting protection money from an escort agency. By a decision of 26 August 1994 given by the Gdańsk Regional Prosecutor the applicant and other suspects were detained on remand.

On 2 September 1994 the applicant's lawyer appealed against the decision of 26 August 1994. His appeal was dismissed by a court on 8 September 1994.

On 24 October 1994 the Gdańsk Regional Prosecutor dismissed the applicant's lawyer's appeal of 19 October 1994 against the detention decision, considering that a number of witnesses had given evidence incriminating all the suspects. On 24 October 1994 the Gdańsk Regional Prosecutor ordered the applicant to undergo psychiatric observation.

On 10 November 1994 the Gdańsk Regional Court prolonged the applicant's detention on remand till 21 January 1995, considering that the charges against the applicant were of a severe nature and that they had been supported by the evidence gathered in the proceedings. The court pointed out that the investigation had not yet been completed and that the group the applicant belonged to had brought improper pressure upon the witnesses to change their testimony.

On 21 November 1994 an expert opinion on the state of the applicant's mental health was issued.

On 7 December 1994 the Gdańsk Court of Appeal dismissed the applicant's lawyer's appeal of 24 November 1994 against the decision of 10 November 1994 prolonging the applicant's detention on remand. The court emphasised that there was a strong likelihood that the applicant might obstruct the proper course of the proceedings by inciting the witnesses to give false testimony. The court also stated that the applicant's case did not disclose any of the grounds for release provided by Article 218.

On 17 January 1995 the Gdańsk Regional Court prolonged the applicant's detention on remand until 31 March 1995. The court found that in view of the seriousness of the offence he was charged with, the strong probability of his guilt and the danger of him (or another member of the group) exerting additional pressure on the witnesses, the applicant's detention was warranted. The court also pointed to the necessity of taking further evidence.

On 10 February 1995 the Gdańsk Regional Prosecutor dismissed the applicant's lawyer's request that the preventive measure be replaced by a

more lenient one, considering that the grounds on which the detention on remand had been ordered had not ceased to exist. On 9 March 1995 the Gdańsk Appellate Prosecutor dismissed the lawyer's appeal against this decision, relying on the grounds previously invoked by the courts.

By a decision of 21 March 1995 the Gdańsk Regional Court prolonged the applicant's detention on remand till 30 June 1995. The court was of the opinion that the applicant's detention was justified by the strong probability of his guilt, the necessity to obtain further evidence and the risk of bearing pressure on the witnesses.

On 5 April 1995 the applicant's lawyer appealed against this decision.

On 12 April 1995 the Gdańsk Court of Appeal upheld the contested decision, referring to the seriousness of the offence in question and the complexity of the case. The court remarked that the negative effect of the continuing detention upon his family situation was not such as to call for his release.

On 27 June 1995 the bill of indictment was lodged with the Gdańsk Regional Court against the applicant and eleven co-accused.

The court held hearings on 9, 16 and 23 November 1995. It heard the co-accused and several witnesses.

The hearing fixed for 11 January 1996 was adjourned due to the absence of the lawyer representing one of the co-accused.

On 17 January 1996 another hearing was held. The court heard four witnesses.

At the hearing of 25 January 1996 the applicant lodged an application for release. The court refused, considering that his detention was justified by the existence of strong evidence of his guilt, the nature of the charges against him and a risk of interference with witnesses in order to influence their testimony. Moreover, conditions for release referred to in Article 218 of the Code of Criminal Procedure were not satisfied. The hearing was then adjourned in view of the absence of the applicant's lawyer.

On 5 March 1996 the applicant appointed a new lawyer to represent him.

On 6 March 1996 the court held a hearing and heard seven witnesses.

On 15 March 1996, in a separate set of criminal proceedings, the applicant was sentenced by the Elbląg Regional Court to two and a half years imprisonment and a fine. He served his sentence between 15 March 1996 and 11 September 1997.

The hearing scheduled for 20 March 1996 was adjourned following a request of one of the lawyers.

On 22 May and on 3 June 1996 the court held hearings. It heard several witnesses.

At the hearing held on 18 June 1996 the court dismissed the applicant's request for release, referring to the gravity of the charges against him and considering that his case did not disclose any of the grounds for release

provided by Article 218 of the Code of Criminal Procedure. The hearing was adjourned due to the absence of one of the co-accused.

The hearing fixed for 7 August 1996 was cancelled because of a lay-judge's illness.

The hearing held on 21 August 1996 was adjourned as one of the co-accused had not appointed a lawyer.

The hearings set for 11 and 18 October 1996 were adjourned due to the absence of one of the lawyers.

The hearing scheduled for 8 November 1996 was adjourned following a request of one of the lawyers.

On 15 November 1996 the court held a hearing and heard four witnesses.

The hearing scheduled for 22 November 1996 was adjourned because of the illness of one of the lawyers. The court dismissed the applicant's request for release, considering that his continuing detention was necessary to ensure the proper conduct of the proceedings and that there were no grounds for releasing the applicant under Article 218 of the Code of Criminal Procedure.

On 30 December 1996 the Gdańsk Regional Court requested the Supreme Court to prolong the applicant's detention until 30 June 1997, submitting that from 9 November 1995 till 22 November 1996 nineteen hearings had been fixed but only eight out of them had in fact been held. The adjournments had been ordered mainly due to the absence of defence counsels. The co-accused and 41 witnesses had been heard until then, nevertheless 65 witnesses remained to be examined. On 16 January 1997 the Supreme Court granted the Regional Court's request, pointing to the complexity of the case and concluding that the delay in the proceedings could not be attributed to the Regional Court.

On 5 February 1997 the court held a hearing and heard 8 witnesses.

The hearing scheduled for 5 March 1997 was adjourned due to the absence of one of the co-accused.

The next meeting fixed for 16 April 1997 was adjourned due to the illness of some of the lawyers.

On 4 June 1997 the court held a hearing and heard seven witnesses. The court did not allow the applicant's request for release.

The hearing scheduled for 11 June 1997 was adjourned due to the absence of some of the lawyers.

On 26 June 1997 the Gdańsk Regional Court lodged a request with the Supreme Court to prolong the applicant's detention till 31 December 1997. The court submitted that hearings had been held on 5 February 1997 and on 4 June 1997. The hearings scheduled on 19 February 1997, 5 March 1997, 16 April 1997 and 11 June 1997 had been adjourned or cancelled because of the accused' and the defending counsels' illnesses. The court had heard 15 witnesses, but 50 other witnesses were still to be examined and the continuing detention was necessary to ensure the proper conduct of the

proceedings. On 13 August 1997 the Supreme Court, relying on the grounds given above, prolonged the applicant's detention. However, the limit of the duration of the detention was set to 1 December 1997 and not to 31 December 1997 as the Regional Court had requested.

The hearing held on 11 September 1997 was adjourned due to the absence of one of the co-accused.

On 16 September 1997 the Gdańsk Regional Court refused to release the applicant, observing that he had failed to indicate any new relevant circumstances in the case.

The hearing scheduled for 25 September 1997 was adjourned as one of the co-accused was ill.

The hearing scheduled for 1 October 1997 was adjourned because of the illness of the judge rapporteur.

The hearing held on 13 October 1997 was adjourned as two of the co-accused did not appear.

On 25 November 1997 the Gdańsk Regional Court again requested the Supreme Court to prolong the applicant's detention on remand. On 19 December 1997 the Supreme Court granted this request and prolonged the applicant's detention on remand until 30 April 1998. The Supreme Court observed that a number of hearings had not been held due to the absence of either the co-accused or their defence counsels. Moreover, the composition of the court had to be changed owing to the illness of the presiding judge. The case was complex and multi-layered and the charges of a serious nature. In addition, some of the accused contributed to the overall length of the proceedings by lodging motions with the court. In these circumstances, even though the proceedings in the case had been lengthy, the Regional Court could not be held responsible for this delay.

On 30 December 1997 the court decided to issue an arrest warrant in respect of the co-accused who had kept failing to attend hearings.

The hearings fixed for 7 January and 11 February 1998 were adjourned due to the absence of one of the co-accused.

On 25 February 1998, as a result of the change in its composition, the court recommenced the examination of the case. The co-accused had not agreed to continue the proceedings with new judges. The court decided to exclude two of the co-accused who would not appear at the hearings. The court adjourned the hearing due to the absence of some of the lawyers.

On 12 and 26 March the court held hearings. It heard the co-accused and 13 witnesses.

On 8 April 1998 the court adjourned the hearing as the applicant's lawyer and other co-accused did not appear.

On 30 April 1998 the applicant was released under police supervision.

On 8 June 1998 the court held a hearing. One of the co-accused did not appear.

At the hearing held on 18 June 1998 one of the lawyers did not appear.

The hearing scheduled for 3 September 1998 had to be adjourned due to the absence of one of the co-accused.

At the hearing held on 17 September 1998 the court ordered to have one of the co-accused be brought to the court.

As the co-accused did not appear at the next hearing held on 6 October 1998 the court decided to examine his case separately.

The hearings scheduled for 27 October, 3 and 17 December 1998 were adjourned due to the absence of the co-accused.

In January and February 1999 one of the co-accused informed the court that due to his illness he would be unable to take part in the proceedings. On 30 March 1999 the co-accused failed to undergo medical examination ordered on 18 February 1999 by the court.

On 20 May 1999 the court held a hearing and heard 3 witnesses.

At the next hearing on 14 June 1999 the court imposed fines on two witnesses for their failure to appear.

The hearing scheduled for 24 June 1999 had to be adjourned due to the absence of two of the co-accused.

At the hearing held on 29 July 1999 the court heard one witness and ordered that three other witnesses should be brought to the court.

The hearing scheduled for 26 August 1999 was adjourned as the witnesses could not be brought to the court.

The hearing scheduled for 20 September 1999 had to be adjourned due to the absence of three lawyers. The court imposed fines on three absent witnesses.

On 22 October 1999 the court held a hearing. It heard three witnesses, one of whom was brought to the court.

The hearing scheduled for 4 November 1999 had to be adjourned due to the absence of some of the lawyers.

On 2 December 1999 the court held a hearing and heard one witness.

On 20 December 1999 one of the co-accused informed the court that due to the injuries sustained by him in consequence of a road accident he would not be able to attend the hearings for the next two months.

On 4 January 2000 the court adjourned the hearing as two of the co-accused did not appear and imposed a fine on a witness for non-appearance.

On 3 February 2000 the court held a hearing. Because of the absence of one of the co-accused the court was unable to hear one of the summoned witnesses.

At the hearing held on 29 February 2000 the applicant and three other co-accused were absent. The court had to adjourn the hearing.

At the hearing held on 20 March 2000 two of the co-accused did not appear. The court decided to impose a fine on an absent witness.

At the hearing held on 20 April 2000 three of the co-accused did not appear. In consequence the court could not hear the present witnesses.

On 25 May 2000 the court held a hearing at which two of the co-accused and one lawyer were not present. The court imposed fines on three witnesses. It heard three other witnesses.

At the hearing held on 20 June 2000 two of the co-accused did not appear. The court imposed fines on two witnesses for non-appearance.

At the hearing held on 3 July 2000 one of the co-accused was not present. Nevertheless, the court heard some witnesses.

At the hearing held on 17 August 2000 the applicant's lawyer did not appear and the court had to adjourn the hearing. The court ordered that one of the co-accused be arrested and brought to the court.

The hearing scheduled for 14 September 2000 had to be adjourned due to the illness of one of the co-accused.

At the hearing held on 19 October 2000 one of the co-accused and two lawyers did not appear.

On 26 October 2000 the court informed the Regional Bar Association about the absence of the applicant's lawyers.

At the hearing held on 16 November 2000 one of the lawyers gave notice of termination of attorney power to one of the co-accused. The court heard four witnesses and imposed fines on two absent witnesses.

At the hearing held on 14 December 2000 one of the co-accused was not present. The court heard four witnesses and imposed fines on two other absent witnesses.

On 5 January 2001 the court held a hearing at which three of the co-accused did not appear. The court decided to detain one of them on remand if he did not appear at the next hearing.

The hearing scheduled for 24 January 2001 was adjourned due to the absence of one of the lawyers.

At the hearing held on 21 February 2001 one of the co-accused did not appear. Nevertheless the court heard three witnesses.

The hearing scheduled for 22 March 2001 had to be adjourned due to the absence of one of the lawyers. The court decided to impose a fine on one of the absent witnesses.

The hearings scheduled for 26 April and 24 May 2001 were adjourned due to the absence of some of the co-accused.

At the hearing held on 28 June 2001 the court took evidence and imposed fines on two absent witnesses.

On 2 August 2001 the court held another hearing and took evidence.

The hearing scheduled for 4 September 2001 had to be adjourned due to the absence of one of the co-accused.

At the next hearing held on 27 September 2001 one of the co-accused did not appear. The court heard two witnesses and imposed a fine on an absent witness.

At the hearing held on 25 October 2001 one of the co-accused was absent, but the court heard a witness.

Some of the witnesses refused to appear before the court at the hearing scheduled for 15 November 2001 for a fear of revenge by the accused. At the hearing two of the co-accused did not appear. The court heard two witnesses.

At the hearing held on 13 December 2001 one of the co-accused did not appear. The court took evidence.

At the hearing held on 17 January 2002 one of the co-accused did not appear. Nevertheless, the court took evidence. The court imposed a fine on an absent witness and ordered that two other witnesses be brought to the court.

On 14 February 2002 the court held a hearing at which one of the co-accused did not appear. The court took evidence and imposed a fine on an absent witness.

The next hearing had to be cancelled because a hearing in other criminal proceedings against one of the co-accused was fixed for the same date.

At the hearing held on 20 March 2002 one of the co-accused was not present. The court imposed a fine on two absent witnesses and ordered that a witness be heard by the court in Elbląg.

At the hearing held on 16 April 2002 one of the co-accused was not present. The court imposed fines on two absent witnesses and heard three others.

At the hearings held on 30 April and 21 May 2002 the court took evidence from the witnesses.

At the hearing held on 6 June 2002 one of the co-accused did not appear. The court heard some witnesses.

At the hearing held on 11 July 2002 the court took evidence.

The court held subsequent hearings on 18 July and 22 August 2002.

At the hearing held on 10 September 2002 two of the co-accused did not appear.

At the hearing held on 15 October 2002 the court heard witnesses, took evidence and closed the proceedings.

On 22 October 2002 the court gave its judgment. It sentenced the applicant to three years imprisonment.

Apparently, no final decision has yet been given in the case.

B. Relevant domestic law

a) Polish criminal law in the relevant period

At the material time, the 1969 Code of Criminal Procedure listed as preventive measures, *inter alia*, detention on remand, bail and police supervision. Article 209 of the Code, which set out general grounds justifying the imposition of preventive measures, provided as follows:

“Preventive measures may be imposed in order to secure the proper course of proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence.”

Furthermore, the Code of Criminal Procedure allowed authorities a margin of discretion as to whether to continue the enforcement of preventive measures. Detention on remand was regarded as the most severe preventive measure. Article 213 of the Code provided as follows:

“A preventive measure shall be immediately quashed or changed if the grounds therefor have ceased to exist or if new circumstances have arisen, which justify quashing a given measure or replacing it with one that is either more or less severe.”

Article 225 of the Code provided:

“Detention on remand shall be imposed only when it is mandatory; this measure shall not be imposed if bail or police supervision, or both of these measures are considered adequate.”

Article 217 of the Code, before it was amended on 1 January 1996, provided insofar as relevant:

“Detention on remand may be imposed if:

1. there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or he has no permanent domicile, or
2. there is a reasonable risk that he will attempt to induce witnesses to give false testimony or to obstruct the proper course of proceedings by any other unlawful means, or
3. the accused was charged with a commission of a criminal offence or acted as a habitual offender, as provided for by the Criminal Code, or
4. the accused was charged with the commission of an act which constituted significant danger to society.”

Pursuant to Article 218 of the “old” Code, if there were no special considerations to the contrary, detention on remand should not be imposed or should be lifted, if it involved danger to life or limb or entailed particular hardship for a suspect or his family.

Until 4 August 1996, when the Code of Criminal Procedure was amended, Polish law did not set out any statutory time-limits concerning detention on remand in court proceedings, but only in respect of the investigative stage.

Article 222 of the Code of Criminal Procedure, as applicable after 4 August 1996, provided, insofar as relevant:

“3. The whole period of detention on remand until the date on which the court of first instance gives judgment may not exceed one year and six months in cases concerning ordinary offences. In cases concerning serious offences this period may not exceed two years.

4. In cases where it is particularly justified the Supreme Court may, upon the request of the court competent to deal with the case (...) prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a suspension of the proceedings, a prolonged psychiatric observation of the accused, when evidence needs to be obtained from abroad or when the accused has deliberately obstructed the termination of the proceedings in the terms referred to in paragraph 3.”

Subsequently, point 4 was extended to include also “other significant circumstances, which could not be overcome by the organs conducting the proceedings”.

b) Act of 17 June 2004

On 17 June 2004 Polish Parliament adopted a new law 'on a complaint about a breach of a right to have one's case heard within a reasonable time'. The Act entered into force on 17 September 2004.

Article 2 of the Act provides for a special action by which a party can seek a declaration that his or her right to have the case heard within a reasonable time has been breached. The court shall take into consideration the following criteria: the conduct of the court before which the case is pending; the character of the case and the complexity of legal and factual issues involved therein; what was at stake for the complainant, and the conduct of the parties.

The length complaint must be lodged when the proceedings concerned are still pending. The complainant shall submit, apart from the request that declaration be given to the effect that the proceedings exceeded a reasonable time, the evidence to substantiate this complaint. The complaint shall be examined by a court composed of three professional judges. The court shall give its decision within two months from the date on which the complaint has been lodged.

Pursuant to Article 12, if the court finds that the length complaint is well-founded, it shall give a ruling to this effect. If the complainant so requests, the court can also recommend that the court before which the case is pending takes certain procedural measures in the impugned proceedings. The court may also, award an appropriate amount of money to the complainant, in the amount not exceeding PLN 10,000.

Under Article 18, within six months after the entry into force of this Act, anyone who has lodged an application with the European Court of Human Rights in due time complaining of a violation of the 'reasonable-time' requirement contained in Article 6 § 1 of the Convention shall be entitled to lodge a length complaint provided for by the Act, if the application to the Court has been lodged when the proceedings were still pending and that it has not by then been declared admissible by the European Court.

COMPLAINTS

1. The applicant complained under Article 5 § 1 of the Convention that his detention on remand had been unjustified since he had not committed the criminal offence at issue.

2. The applicant also complained under Article 5 § 3 of the Convention that his detention on remand had been unreasonably long.

3. He further complained under Article 6 § 1 of the Convention about the overall length of the criminal proceedings against him.

THE LAW

1. The applicant complained under Article 5 § 1 of the Convention that his detention on remand had been unjustified since he had not committed the criminal offence at issue. Article 5 § 1, insofar as relevant, provides as follows:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

The Court does not find any indication that the applicant's detention was unlawful or ordered otherwise than "in accordance with a procedure prescribed by law", within the meaning of Article 5 § 1. The Court considers that it was ordered and confirmed in accordance with domestic law and fell within the ambit of Article 5 § 1(c) of the Convention, as having been effected for the purpose of bringing him before the competent legal authority on suspicion of having committed an offence. The charges against the applicant were based on solid evidence and on testimonies of numerous witnesses. The applicant can accordingly be said to have been arrested and detained on “reasonable suspicion” of a criminal offence, within the meaning of sub-paragraph (c) of Article 5 § 1.

It follows that the complaint under Article 5 § 1 is inadmissible as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

2. The applicant further complained that his detention on remand had lasted an unreasonably long time. He relied on Article 5 § 3 of the Convention, the relevant part of which provides:

“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.”

1. The parties' submissions

The Government pointed out that the entire period in question lasted twenty-six months. In their opinion there had been valid reasons for holding the applicant in custody. The applicant's detention had been subject to regular judicial supervision and the reasons given by the courts were sufficient and relevant. The applicant had been detained on the basis of voluminous evidence justifying reasonable suspicion that he had committed the offences in question. The Government further referred to the seriousness of the charges against the applicant and to a risk of his interfering with the proper course of the proceedings. The Government stressed that almost all prerequisites of detention on remand, listed by the Code of Criminal Procedure at the material time, applied in the applicant's case.

The applicant disagreed with the Government's arguments. He submitted that, according to relevant provisions of the Code of Criminal procedure, the extension of time-limits of detention on remand could be justified only in cases, where owing to exceptional circumstances, investigation could not be completed. In his opinion, there was nothing exceptionally complex in the nature of the proceedings against him. He maintained that the overall period of his detention on remand had been particularly long and consequently, it had had a punitive character.

2. The Court's assessment

The Court notes that the applicant was arrested on 24 August 1994 and was deprived of his liberty according to Article 5 § 1 (c) of the Convention until 15 March 1996, on which date, in a separate set of criminal proceedings, the Elbląg Regional Court sentenced him to two years and six months' imprisonment. After the date of the judgment, the applicant's deprivation of liberty was based on Article 5 § 1 (a) of the Convention as “the lawful detention of a person after conviction by a competent court” and cannot therefore be taken into account for the purposes of Article 5 § 3 of the Convention (see, for instance, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, p. 14, § 36). The applicant finished serving this sentence on 11 September 1997. He was again detained on remand until his release on 30 April 1998. Accordingly, the overall period of the applicant's detention on remand lasted over two years and two months.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court

concludes therefore that the second part of this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant also maintained that the length of the criminal proceedings against him had been excessive, in breach of Article 6 § 1 of the Convention, which, in so far as relevant, provides:

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

The Court considers that it cannot, at the present state of the file, determine the admissibility of this complaint. The Court therefore considers that this part of the application must be adjourned.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of criminal proceedings;

Declares admissible, without prejudging the merits, the applicant's complaint concerning the length of his detention on remand;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President