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

FIRST SECTION

DECISION

Application no. 38539/18
D.Ł.
against Poland

The European Court of Human Rights (First Section), sitting on 22 November 2022 as a Committee composed of:

Lətif Hüseynov*, President*,
Krzysztof Wojtyczek,
Ivana Jelić*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 38539/18) 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") on 3 August 2018 by a Polish national, Mr D.Ł., who was born in 1992 and lives in Radom ("the applicant") who was represented by Mr M. Pietrzak, a lawyer practising in Warsaw;

the decision to give notice of the complaint concerning the allegedly excessive length of the applicant's detention on remand to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the allegedly excessive length of the applicant's detention on remand.

2. On 17 April 2015 the applicant was arrested at Oslo Airport in Norway and, on 15 November 2015, he was returned to Poland where he was arrested on suspicion of participating in an armed criminal group committing

terrorism-related offences and operating within the territory of Norway, Poland, Turkey and Syria (a crime carrying a maximum penalty of eight years' imprisonment).

3. On 17 November 2015 the Łódź-Śródmieście District Court (*Sąd Rejonowy*) detained the applicant on remand for a period of three months. The court considered that the character and gravity of the charges, as well as the high risk of him fleeing and/or obstructing proceedings, based on his alleged participation in an organised criminal group, justified his detention. On 11 December 2015 the Łódź Regional Court (*Sąd Okręgowy*) upheld that ruling.

4. On 9 February 2016 the Łódź Regional Court extended the applicant's detention on remand for a further three months. The court noted that he had covertly transferred correspondence to one of the key witnesses in the case, thus substantiating the risk of obstructing proceedings. It also observed that the applicant had been in possession of written instructions (apparently prepared by other members of the group) containing guidance on the recommended responses to questions concerning his stay in the Middle East, in the event of an arrest. The court further established a high risk of absconding, owing to the applicant's vast network of connections and his previously expressed intention to stay in Europe only briefly.

5. The applicant's detention was extended by decisions of the Łódź Regional Court of 10 May and 9 August 2016, 25 July and 17 October 2017 and the Łódź Court of Appeal (*Sąd Apelacyjny*) of 3 November 2016, 1 February, 28 April and 2 November 2017, 8 May and 1 August 2018. His appeals against these decisions were unsuccessful. In their decisions, the domestic courts relied on essentially the same grounds (see paragraphs 3-4 above) and referred to further activities that had to be performed (such as the examination of additional evidence, questioning of witnesses, obtaining an expert opinion and international legal assistance from the Norwegian authorities).

6. On 11 July 2017 a bill of indictment against the applicant was lodged. The first hearing took place on 7 November 2017. Hearings before the Łódź Regional Court were held regularly and at short intervals. Several of them had to be adjourned due to technical problems with questioning witnesses residing in Norway *via* videoconference.

7. During a hearing held on 8 October 2018 the Łódź Regional Court stated that it would not seek an extension of the applicant's detention on remand from the Court of Appeal. The prosecutor appealed against that decision. The Łódź Court of Appeal upheld the lower court's ruling on 5 December 2018.

8. On 10 October 2018 the applicant was released from detention and ordered to report to a police station six times a week, prohibited from contacting certain witnesses and from leaving the country.

9. On 24 September 2019 the Łódź Regional Court convicted the applicant of participation in an armed criminal group committing terrorism-related offences and seeking to overthrow a legally appointed government of the Syrian Arab Republic. He was sentenced to four years' imprisonment and the period that he had spent in detention on remand was deducted from his sentence.

10. On 4 December 2020 the Łodź Court of Appeal upheld the judgment rendered by the first-instance court. Proceedings are currently pending before the Supreme Court (*Sąd Najwyższy*).

11. The applicant complained under Article 5 § 3 that the length of his detention on remand had been excessive.

THE COURT'S ASSESSMENT

12. The general principles concerning the right to a trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention, have been summarised in *Kudła v. Poland* ([GC], no. 30210/96, § 110 et seq., ECHR 2000-XI), *McKay v. the United Kingdom* ([GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references), and *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91, 5 July 2016).

13. In the present case, the Court observes that the applicant's detention on remand lasted for roughly two years and eleven months.

14. The Court recalls that in cases involving the alleged membership in an organised criminal group, continuous control and limitation of the defendant's contact with other members of the group and with other persons may be essential to avoid him absconding, tampering with evidence and, most importantly, influencing or even threatening witnesses (see *Bąk v. Poland*, no. 7870/04, § 56, 16 January 2007; *Luković v. Serbia*, no. 43808/07, § 46, 26 March 2013; *Mierzejewski v. Poland*, no. 15612/13, § 42, 24 February 2015; and *Podeschi v. San Marino*, no. 66357/14, § 147, 13 April 2017). The Court further considers that the fact that the case concerned an alleged member of a terrorist organisation, whose operations spanned across several countries should be taken into account in assessing compliance with Article 5 § 3 of the Convention (see, *mutatis mutandis*, *Bąk*, cited above, § 57).

15. The Court observes that in their decisions to detain the applicant on remand the judicial authorities relied on the following principal grounds: the reasonable suspicion against the applicant, the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable, the risk of his absconding, influencing the testimonies of witnesses and/or obstructing the proceedings by other means and the need to obtain extensive evidence, including from foreign authorities (see paragraphs 3-5 above). Furthermore, the Government argued that the particular complexity

of the case, as it concerned organised crime, additionally justified the applicant's detention.

16. The suspicion that the applicant had committed serious offences was confirmed in particular by the testimonies of the witnesses and other evidence (such as photographs and video recordings) and initially warranted his detention. Therefore, the only question which remains is whether and when the continuation of his detention ceased to be warranted by "relevant" and "sufficient" reasons.

17. In this context the Court notes that the decisions to extend the applicant's detention on remand referred to the risk of pressure being brought on witnesses or of the obstruction of the proceedings by other unlawful means. The domestic courts emphasised the fact that these fears were well-founded since the applicant had attempted to covertly contact a witness (see paragraph 4 above). The Court also observes that the risk of absconding in the applicant's case was particularly high, since he had planned to leave Europe and the fear of him using his network of connections in order to facilitate his departure was justified. Accordingly, the Court accepts that, in the special circumstances of the case, the risks flowing from the nature of the applicant's criminal activities were real and justified holding him in custody for the relevant period.

18. The Court lastly observes that although the proceedings were of considerable complexity, regard being had to their international context and the extensive evidentiary material, the hearings in the applicant's case were held regularly and at short intervals (see paragraph 6 above). The Court therefore concludes that the national authorities displayed special diligence in the conduct of the proceedings.

19. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 December 2022.

Liv Tigerstedt Deputy Registrar	Lətif Hüseynov President