CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 75107/01
by Jacek DOMBEK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 25 October 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr K. TRAJA,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application lodged on 10 October 1999,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jacek Dombek, is a Polish national who was born in 1965 and is at present detained in the Zielona Góra prison.

A. The circumstances of the case

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

1. First set of criminal proceedings ("the Bydgoszcz case")

On 9 July 1996 the applicant was arrested and detained on remand. On 12 August 1996 the Kędzierzyn-Koźle District Court (*Sąd Rejonowy*) released the applicant.

On 20 October 1997 the applicant was again arrested by the police. On 21 October 1997 the Częstochowa District Court decided to detain him on remand in view of the reasonable suspicion that he had committed several offences acting in an organised group of criminals.

The applicant's appeal against this decision was dismissed by the Częstochowa Regional Court (*Sąd Wojewódzki*) on 6 November 1997. The appeal lodged by his lawyer was dismissed on 20 November 1997.

On 8 December 1997 the Częstochowa Regional Court prolonged the applicant's pre-trial detention reiterating the grounds originally given for his detention and adding that the measure was necessary to secure the proper conduct of the investigation.

On 4 March 1998 the Katowice Court of Appeal (*Sąd Apelacyjny*) further prolonged his detention on remand. That decision was upheld by the Supreme Court (Sąd Najwyższy) on 24 April 1998.

Subsequently, the applicant's detention was prolonged by the Katowice Court of Appeal on 8 July 1998. The court considered that the severity of the anticipated penalty and the risk of collusion justified keeping him in custody.

On 11 September 1998 the Supreme Court allowed an application made by the Prosecutor General under Article 263 of the 1997 Code of the Criminal Proceedings ("1997 Code") and further prolonged the applicant's detention on remand. The Supreme Court considered that the reasonable suspicion of his having committed the offences in question and the risk of collusion justified keeping the applicant in custody to secure the proper conduct of the proceedings. The court also considered that the investigation could not be terminated earlier due to circumstances for which the authorities could not be held responsible such as the complexity of the case and the severity of the offences.

It appears that at an unspecified later date the applicant and 14 co-accused were indicted before the Bydgoszcz Regional Court (*Sąd Okręgowy*).

On 11 January 1999 the Częstochowa Regional Court prolonged the applicant's detention until 30 June 1999 reiterating the grounds previously given for the applicant's detention.

On 23 June 1999 the Bygodszcz Regional Court decided to prolong until 30 September 1999 the detention on remand with respect to the applicant and his 14 co-accused. It considered, for the same reasons as previously given, that only keeping the applicant in the detention would secure the proper conduct of the proceedings. The applicant appealed.

The applicant's trial started on 24 August 1999 and continued for three days. It appears that subsequently the hearing was adjourned.

On 27 August 1999 the Bygdoszcz Regional Court examined the applicant's appeal against its own decision of 23 June 1999 and partly allowed it. The court considered that the pre-trial detention of the applicant should be prolonged only until 17 September 1999. It established that in assessing the length of the applicant's detention with respect to the present case, for the purpose of the time-limits provided by Article 263 of the 1997 Code, the period between 9 July and 12 August 1996 should have been added.

Subsequently, as the length of the applicant's detention would soon reach the statutory time-limit of 2 years, as laid down in Article 263 § 3 of the 1997 Code, the Regional Court made applications to the Supreme Court asking for the applicant's detention to be prolonged beyond that term.

On 16 September 1999 the Bydgoszcz Detention Centre asked the Supreme Court whether any decision had been given in the applicant's case. On the same date the President of Chamber III of the Supreme Court informed the Detention Centre by fax that the session on prolongation of the applicant's detention had been scheduled for 1 October 1999. The President further noted that on the basis of the transitional provisions introducing the 1997 Code, the applicant's detention should be *ipso jure* prolonged until the date of the Supreme Court's session.

On 22 September 1999 the applicant's lawyer submitted pleadings to the Supreme Court in which he argued that the applicant had been illegally detained as the detention order given on 27 August 1999 had expired on 17 September 1999 and therefore after this date he should have been released. In particular he maintained that the transitional provisions were not applicable in the applicant's case and that the 1997 Code did not contain a provision which would allow detention on the basis of a fax sent by the Supreme Court.

On 1 September 1999 the Supreme Court held the session and prolonged the applicant's detention until 27 February 2000 relying on the strong

suspicion against the applicant, the complexity of the case and the need to continue the process of gathering the evidence.

On 10 February and 24 May 2000 the Supreme Court further prolonged the applicant's detention reiterating the grounds previously given. In the first of those decisions the Supreme Court added:

> "...There is no evidence that could prove [the applicant's] assertion that his wife and children 'would soon have nothing to eat'.
>
> Moreover, it should be noted that there is a particular ground for which the pre-trial detention with respect to [the applicant] should not be lifted. From the information obtained by the Presiding Judge it appears that [the applicant] might obstruct the proceedings."

Subsequently, the Bydgoszcz Regional Court made several applications to the Court of Appeal asking that the applicant's detention be prolonged as, following an amendment to the 1997 Code the Supreme Court, it was no longer competent to prolong the detention beyond the statutory time-limit of 2 years as laid down in Article 263 § 3 of the Code.

On 27 September 2000 the Gdansk Court of Appeal granted the application and prolonged the applicant's detention on remand until 30 December 2000. The court relied in particular on the complexity of the case and the conduct of the accused who contributed to the prolongation of the proceedings. The court established as follows:

> "Of course, the applicant's detention for over three years in this case requires particular attention to the process of gathering evidence, above all, to examine without further delay the defence motions concerning evidence. However, in the light of the proceedings as a whole the conduct of the Regional Courts should be assessed positively".

On 21 December 2000 as well as 25 April and 20 June 2001 the Gdańsk Court of Appeal prolonged the applicant's detention. In addition to the strong probability that he had committed the offences, the court considered that the proceedings had been conducted diligently and only the applicant's detention would guarantee the proper conduct of the final stage of the proceedings.

Between 15 February and 15 October 2001 the applicant served a prison sentence ordered by the Inowrocław District Court in another set of criminal proceedings against him.

During his pre-trial detention the applicant lodged several hundreds of applications for release. However, these applications and his appeals against the decisions to prolong the detention on remand were to no avail.

On 27 September 2001 the Bydgoszcz Regional Court gave judgment. The trial court convicted the applicant and sentenced him to eight years' imprisonment. The applicant and prosecutor appealed.

On 17 June 2003 the Gdansk Court of Appeal allowed the appeals and quashed the impugned judgment. The case was remitted to the Bydgoszcz

Regional Court which on 14 January 2004 stayed the proceedings because the other set of criminal proceedings before the Zielona Góra Regional Court were pending and the applicant could not have been transported to the Bygdoszcz Detention Centre.

On 25 May 2005 the Bydgoszcz Regional Court resumed the proceedings. The proceedings are pending before that court.

2. Second set of criminal proceedings ("the Zielona Góra case")

On 11 September 1991 the applicant was arrested by the police in connection with criminal proceedings pending against him. On the same date the Zielona Góra Regional Prosecutor decided to detain him on remand.

On 12 July 1994 the Zielona Góra Regional Court acquitted the applicant.

On 14 December 1994 the applicant was released from detention.

On 24 January 1996 the Poznań Court of Appeal quashed the impugned judgment and remitted the case to the Regional Prosecutor.

Between December 1997 and November 1999 the prosecutor stayed the proceedings.

On 30 January 2001 the Poznań Court of Appeal decided to detain the applicant on remand in view of the reasonable suspicion that he had committed, with an accomplice, robbery and three offences of homicide.

The applicant appealed, but on 13 January 2001 the Poznań Court of Appeal dismissed it.

On 19 April, 24 July and 25 October 2001 and 24 April, 23 July and 24 October 2002 as well as on 22 January 2003 the Poznań Court of Appeal further prolonged his detention. The court held that the reasonable suspicion that the applicant had committed the offences with which he had been charged, the severity of the anticipated sentence and the need to secure the proper conduct of investigation justified keeping the applicant in the custody.

On an unspecified date in 2003 the applicant was indicted before the Zielona Góra Regional Court.

On 26 March 2003 the Poznań Court of Appeal further prolonged the applicant's detention. It appears that, subsequently, the applicant's detention was prolonged.

On 28 April 2005 the trial court gave judgment. The applicant was convicted as charged and sentenced to twenty-five years' imprisonment.

The applicant requested that the written reasons for the judgment be prepared by the trial court with the intention to lodge an appeal.

B. Relevant domestic law

1. Preventive measures, including detention on remand

(a) The Code of Criminal Procedure 1969

The Code of Criminal Procedure 1969, which remained in force until 1 September 1998, 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 § 1 of the Code, in the version after 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 abode [in Poland]; or
>
> (2) there is a reasonable risk that an accused will attempt to induce witnesses to give false testimony or to obstruct the proper conduct of proceedings by any other unlawful means."

Paragraph 2 of Article 217 then read:

> "If an accused has been charged with a serious offence or an intentional offence [for the commission of which he may be] liable to a sentence of a statutory maximum of at least eight years' imprisonment, or if a court of first instance has sentenced him to at least three years' imprisonment, the need to continue detention in order to secure the proper conduct of proceedings may be based upon the likelihood that a heavy penalty will be imposed."

Article 218 provided:

> "If there are no special reasons to the contrary, detention on remand should be lifted, in particular, if:
>
> (1) it may seriously jeopardise the life or health of the accused; or
>
> (2) it would entail excessively burdensome effects for the accused 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 offences. In cases concerning serious offences [offences for the commission of which a person was liable to a sentence of a statutory minimum of at least 3 years' imprisonment] this period may not exceed two years.
>
> 4. In particularly justified cases the Supreme Court may, on an application made by the court competent to deal with the case, ... prolong detention on remand for a further fixed period exceeding the time-limits set 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, paragraph 4 was extended to include also "other significant circumstances, which could not be overcome by the organs conducting the proceedings".

(b) The Code of Criminal Procedure 1997

The Code of Criminal Procedure of 1997 ("1997 Code"), which entered into force on 1 September 1998, defines detention on remand as one of the so-called "preventive measures" (środki zapobiegawcze). The other measures are bail (poręczenie majątkowe), police supervision (dozór policji), guarantee by a responsible person (poręczenie osoby godnej zaufania), guarantee by a social entity (poręczenie społeczne), temporary

ban on engaging in a given activity (zawieszenie oskarżonego w określonej działalności) and prohibition to leave the country (zakaz opuszczania kraju).

Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

> "1. Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused's committing another, serious offence; they may be imposed only if the evidence gathered shows a significant probability that an accused has committed an offence."

Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

> "1. 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 when he has no permanent abode [in Poland];
>
> (2) there is a reasonable risk that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;
>
> 2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him to at least 3 years' imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed."

The Code sets out the conditions governing the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

> "1. Detention on remand shall not be imposed if another preventive measure is sufficient."

Article 259, in its relevant part, reads:

> "1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:
>
> (1) seriously jeopardise his life or health; or
>
> (2) entail excessively harsh consequences for the accused or his family."

The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

> "1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on an application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date of the first conviction at first instance may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, 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 stay of the proceedings, for the purpose of a prolonged psychiatric observation of the accused or a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad or when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome."

On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested in the court of appeal within whose jurisdiction the offence in question has been committed.

2. The remedy for unreasonable length of proceedings[1]

On 17 September 2004 the Law 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") entered into force. It lays down various legal means designed to counteract and/or redress the undue length of judicial proceedings.

Section 2 of the 2004 Act reads, in so far as relevant:

"1. Parties to proceedings may lodge a complaint that their right to a trial within a reasonable time has been breached [in the proceedings] if the proceedings in the case last longer than is necessary to examine the factual and legal circumstances of the case ... or longer than is necessary to conclude enforcement proceedings or other proceedings concerning the execution of a court decision (unreasonable length of proceedings)."

Section 5 reads, in so far as relevant:

"1. A complaint about the unreasonable length of proceedings shall be lodged while the proceedings are pending. ..."

Section 12 provides for measures that may be applied by the court dealing with the complaint. It reads, in so far as relevant:

1. For a more detailed rendition of the relevant domestic legal provisions see *Michalak v. Poland* (dec.), no. 24549/03, §§ 12-23, to be published in ECHR 2005-... – also available on the Court's Internet site (http://www.echr@coe.int).

"1. The court shall dismiss a complaint which is unjustified.

2. If the court considers that the complaint is justified, it shall find that there was an unreasonable delay in the impugned proceedings.

3. At the request of the complainant, the court may instruct the court examining the merits of the case to take certain measures within a fixed time-limit. Such instructions shall not concern the factual and legal assessment of the case.

4. If the complaint is justified the court may, at the request of the complainant, grant ... just satisfaction in an amount not exceeding PLN 10,000 to be paid by the State Treasury. If such just satisfaction is granted it shall be paid out of the budget of the court which conducted the delayed proceedings."

Section 18 lays down transitional rules in relation to the applications already pending before the Court. It reads, in so far as relevant:

"1. Within six months after the date of entry into force of this law persons who, before that date, had lodged a complaint with the European Court of Human Rights ... complaining of a breach of the right to a trial within a reasonable time guaranteed by Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ..., may lodge a complaint about the unreasonable length of the proceedings on the basis of the provisions of this law if their complaint to the Court had been lodged in the course of the impugned proceedings and if the Court has not adopted a decision concerning the admissibility of their case.

..."

On 18 January 2005 Supreme Court (*Sąd Najwyższy*) adopted a resolution (no. III SPP 113/04) in which it ruled that while the 2004 Act produced legal effects as from the date of its date of entry into force (17 September 2004), its provisions applied retroactively to all proceedings in which delays had occurred before that date and had not yet been remedied.

COMPLAINTS

1. The applicant complains, under Article 5 § 1 of the Convention, that between 17 September and 1 October 1999, in the criminal proceedings before the Bydgoszcz Regional Court, he had been deprived of his liberty without any court order.

2. He further complains under Article 5 § 3 of the Convention that the courts have prolonged his pre-trial detention beyond a reasonable term and that the reasons given for those decisions were identical.

3. The applicant complains that the length of both sets of criminal proceedings have been unreasonable. Finally, he complains that the proceedings in his cases have been unfair in breach of Article 6 § 1 of the Convention.

THE LAW

1. The applicant complains that his detention on remand between 17 September and 1 October 1999 was unlawful in breach of Article 5 § 1 of the Convention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant also complains under Article 5 § 3 of the Convention that the length of his pre-trial detention was unreasonable and that the courts failed to give sufficient reasons for their decisions.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. He further complains under Article 6 § 1 of the Convention that the length of both sets of criminal proceedings exceeded a "reasonable time" within the meaning of this provision and that in both cases he did not have a "fair trial".

However, 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..."

With regard to the complaint concerning alleged unfairness of the proceedings, the Court notes that the first set of criminal proceedings against the applicant is pending before the Bydgoszcz Regional Court and the second set before the Court of Appeal. Accordingly, the applicant still can, and should, put the substance of the complaint before the domestic authorities and ask for appropriate relief.

As regards the complaint about the unreasonable length of the proceedings, the Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic court and that both sets of criminal proceedings are still pending following the applicant's appeals.

It further observes that, pursuant to section 18 of the 2004 Act, it was open to persons such as the applicant in the present case whose case was pending before the Court to lodge, within six months from 17 September 2004, a complaint about the unreasonable length of the proceedings with the relevant domestic court, provided that their application to the Court had been lodged in the course of the impugned proceedings and that it had not yet been declared admissible. Moreover, given that both sets of proceedings

complained of are still pending, nothing prevents the applicant from lodging such a complaint even after the expiry of the time-limit set by the transitional rule, in accordance with the general provisions of the 2004 Act.

The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was 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).

However, the applicant, despite having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under the 2004 Act, has chosen not to avail himself of this remedy.

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.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning unlawfulness of his detention on remand and the length of the pre-trial detention;

Declares the remainder of the application inadmissible.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President