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. 67016/01
by Jerzy DUDA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 13 September 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 26 April 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jerzy Duda, is a Polish national who was born in 1959 and is presently serving a prison sentence in Olsztyn prison, Poland.

A. The circumstances of the case

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

On 5 June 1997 the police started an investigation into the murder of a certain Z.K. It appears that between June and July 1997 the applicant had been arrested in connection with this investigation but was released under police supervision.

On 12 February 1998 the applicant was again arrested by the police on suspicion of having killed Mr Z.K. with whom he had been drinking alcohol on the night of the crime.

On 19 February 1998 the Biskupiec District Court (*Sąd Rejonowy*) decided to detain the applicant on remand in view of the reasonable suspicion that he had committed a homicide. The court further found that the applicant, who had been previously placed under police supervision, had violated the conditions of this preventive measure; therefore, there was a real risk that he might abscond.

On 26 February 1998 the applicant was indicted before the Olsztyn Regional Court (*Sąd Wojewódzki*).

On 6 March 1998 the Olsztyn Regional Court dismissed the applicant's appeal against the decision ordering his pre-trial detention. The court further prolonged the applicant's detention relying in particular on the fact that the applicant had previously been in hiding.

In November and December 1998 the trial court held hearings. The court ordered that an expert opinion should be prepared. Subsequently, the applicant was ordered to undergo psychiatric observation in order to prepare the expert opinion.

On 18 December 1998 and 14 May 1999 the Olsztyn Regional Court prolonged the applicant's detention considering that there was a strong suspicion that he had committed the offence in question. The court further noted that the fact that the applicant had been in hiding in the past justified the need to keep him in custody in order to secure the proper conduct of the proceedings.

In October 1999 the trial court held hearings. Subsequently, in November 1999 the court allowed the applicant's motion to adduce evidence from the DNA test.

Afterwards the applicant's pre-trial detention was prolonged on 28 October 1999. The trial court established that the criminal proceedings

against the applicant were pending and that most probably they would not finish before the end of 1999. The court then added:

> The Regional Court cannot find any reason for [releasing the applicant from custody].

Subsequently, as the length of the applicant's detention reached the statutory time-limit of 2 years as laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*) the Regional Court made applications to the Supreme Court (*Sąd Najwyższy*) asking for the applicant's detention to be prolonged beyond that term. On 8 February 2000 the Supreme Court granted such request.

> "The prolongation of the pre-trial detention is justified as a delay was caused by allowing the evidence from the DNA test that was very important for the case. However, the detention should not be prolonged without justification. Therefore, the Supreme Court finds that it is possible to end the proceedings before 31 August 2000."

The applicant's numerous applications for release were to no avail. The applicant also submits that he was not informed about the scheduled court sessions at which his detention on remand was prolonged and that he was prevented from attending any of them.

The trial court held hearings on 20 June and 6 July 2000. On the latter date the Olsztyn Regional Court gave judgment. The court convicted the applicant and sentenced him to twelve years' imprisonment.

The applicant appealed.

On 19 June 2001 the Warsaw Court of Appeal partly amended the impugned judgment. The applicant did not lodge a cassation appeal with the Supreme Court and the judgment is final.

In February 2005 the applicant lodged a complaint alleging that the length of the criminal proceedings in his case had been excessive. On 24 June 2005 the Warsaw Court of Appeal rejected the complaint as it found that the applicant had no right to lodge this complaint.

B. Relevant domestic law

1. 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; or

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".

2. The Code of Criminal Procedure 1997

The Code of Criminal Procedure of 1997, 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:

> "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 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 justified fear 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 margin of discretion as to 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 on which the first conviction at first instance is imposed 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, 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 with the court of appeal within whose jurisdiction the offence in question has been committed.

Article 249 § 5 of the Code that concerns procedure for prolongation of pre-trial detention provides as follows:

> "Defence counsel shall be notified of the date of the court session, regarding the extension of the pre-trial detention and examining the appeal against the application or extension of this preventive measure. A failure to appear by a defence counsel who has been properly notified of the date shall not prevent the examination of the case".

COMPLAINTS

1. The applicant complained under Article 5 § 1 of the Convention that his detention on remand ordered on 19 February 1998 was illegal.

2. He further complained, invoking Article 5 § 3 of the Convention about the length of his pre-trial detention.

3. The applicant alleged that the procedure for the prolongation of his detention on remand was not adversarial in that he was not notified about the court sessions at which his detention on remand had been prolonged and was prevented from attending them.

4. Finally, he complained that the length of proceedings in his case exceeded a reasonable time in violation of Article 6 § 1 of the Convention.

THE LAW

1. The applicant complained that his deprivation of liberty was illegal in violation of Article 5 § 1 of the Convention.

However, the Court notes that the applicant's detention on remand was ordered on 19 February 1998 and his appeal against this decision was dismissed on 6 March 1998 and thus more than six months before the date on which the applicant submitted his application to the Court.

It follows that this complaint is introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The applicant further complained about the length of his pre-trial detention.

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 also complained that the proceedings concerning prolongation of his detention were not adversarial as he was prevented from attending the relevant court sessions. The applicant submitted that this violated the principle of equality of arms.

The Court notes that this complaint falls to be examined under Article 5 § 4 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.

4. Finally, the applicant complained about the unreasonable length of the criminal proceedings in his case.

The Court notes that the 2004 Act, which entered into force on 17 September 2004, provides an effective domestic remedy in respect of complaints about the excessive length of the judicial proceedings in Poland (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42). However, the Court would leave aside the question of exhaustion of the domestic remedies as for the reasons indicated below the applicant's complaint under Article 6 § 1 of the Convention is in any event manifestly ill-founded.

The Court reiterates, that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

The proceedings in question started on 12 February 1998, when the applicant was arrested by the police, and ended on 19 June 2001 with the final judgment of the Warsaw Court of Appeal. It follows that they lasted three years and four months. During this period the case had been examined at two instances. The Court finds that the case was one of some complexity as the charge against the applicant was serious and necessitated taking expert evidence derived from psychiatric observations and DNA tests.

In consequence, the Court considers that in the particular circumstances of the instant case, the length of proceedings did not exceed a reasonable time.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning length of his pre-trial detention and alleged violation of principle of equality of arms in the proceedings concerning prolongation of the detention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President