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. 20200/02
by Krzysztof KWIATKOWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 18 October 2005 as a Chamber composed of:

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

Having regard to the above application lodged on 3 December 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Krzysztof Kwiatkowski, is a Polish national who was born in 1967 and lives in Gdynia.

A. The circumstances of the case

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

1. The applicant's pre-trial detention

The applicant was arrested on 7 November 1996 on suspicion of homicide. On 9 November 1996 the Gdynia District Court remanded him in custody for a period of three months in view of the reasonable suspicion that he had committed homicide. It held that there was a risk that the applicant might induce witnesses to give false testimonies. It further had regard to the grave nature of the offence in question.

On 28 January 1997 the Gdańsk Regional Court prolonged the applicant's detention until 6 May 1997. It invoked the same grounds as originally given for his detention. In addition, the Regional Court referred to the need to hear witnesses and obtain various expert reports.

On 5 May 1997 the Gdańsk Court of Appeal ordered that the applicant be kept in custody until 6 August 1997. It relied on the reasonable suspicion that the applicant had committed the offence in question and the need to take further evidence.

In August 1997 the applicant was indicted on charges of homicide, aggravated assault and burglary before the Gdańsk Regional Court. The bill of indictment comprised several other charges brought against 3 accused.

On 18 December 1997 the Gdańsk Regional Court ordered that the applicant be held in custody until the first-instance judgment had been given, but not longer than 7 November 1998. It reiterated the grounds previously given for the applicant's detention and added that, given the severity of the anticipated sentence, the prolongation of that measure was also justified by the need to secure the proper course of the trial.

On 6 November 1998 the Gdansk Regional Court convicted the applicant as charged and sentenced him to 9 years' imprisonment. The applicant appealed against that judgment.

On 19 January 1999 the Regional Court extended the applicant's detention pending appeal until 31 May 1999. It considered that the severity of the sentence fully justified the continuation of that measure.

On 5 May 1999 the Court of Appeal quashed the first-instance judgment in respect of the charges of homicide and aggravated assault and remitted the case.

On 26 May 1999 the Court of Appeal prolonged the applicant's detention until 30 June 1999. It relied on the reasonable suspicion that the applicant had committed the offences in question and the severity of the anticipated penalty.

On 29 June 1999 the Court of Appeal ordered that the applicant be kept in custody until 30 September 1999, relying on the same grounds as in its last decision.

On 14 September 1999 the Regional Court prolonged the applicant's detention until 31 December 1999. It relied on the grounds previously given for the applicant's detention.

The Regional Court opened the retrial on 29 December 1999. On the same date it ordered that the applicant be held in custody until 1 April 2000. It appears that the applicant's detention was subsequently prolonged on an unspecified later date.

On 18 September 2000 the Regional Court extended the applicant's detention until 31 December 2000. In addition to the grounds previously given, it observed that there was a risk of pressure being brought to bear on witnesses if the applicant were released.

On 29 December 2000 the Regional Court ordered that the applicant be held in custody until 29 March 2001, considering that it was the only measure which could secure the proper conduct of the trial. The applicant's detention was subsequently prolonged by the Regional Court on 6 March and 19 June 2001 for unspecified periods.

On 21 March 2001 the Court of Appeal upheld the decision of 6 March 2001 extending the applicant's detention. It observed, *inter alia*, that there were significant delays in the proceedings before the Regional Court.

On 4 July 2001 the Court of Appeal upheld the decision of 19 June 2001 on the prolongation of the applicant's detention. It considered, *inter alia*, that the applicant's continued detention was justified under Article 258 § 2 of the Code of Criminal Procedure since that provision established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings. It further observed that it could not be denied that the proceedings were protracted at some stages.

On 26 July 2001 the Gdansk Regional Court delivered its judgment. It convicted the applicant of homicide and aggravated assault and sentenced him to 12 years' imprisonment. The applicant appealed against that judgment.

The Regional Court prolonged the applicant's detention pending appeal on 26 July 2001 (until 26 October 2001), on 25 October 2001 (until 26 January 2002) and on 15 January 2002 (until 26 April 2002). On

17 April 2002 the Court of Appeal ordered his continued detention until 26 July 2002.

On 23 May 2002 the Court of Appeal upheld the judgment of the Regional Court of 26 July 2001.

In the course of the proceedings the applicant made numerous, unsuccessful applications for release. He appealed, likewise unsuccessfully, against the refusals to release him and the decisions prolonging his detention.

2. The applicant's complaint about the unreasonable length of proceedings

On 1 November 2004 the applicant filed with the Gdańsk Court of Appeal a complaint seeking compensation for the unreasonable length of the proceedings before the Gdansk Regional Court. In the grounds of his complaint he claimed that the Regional Court had violated his rights under Articles 5 § 3 and 6 § 1 of the Convention and stated that the evidence pointing to the undue length of the impugned proceedings was to be found in the case-file of those proceedings. He further asked to be granted compensation. He appeared to rely on the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time ("the 2004 Act") which entered into force on 17 September 2004.

On 5 January 2004 the Court of Appeal rejected the applicant's complaint, finding that the applicant had not complied with the statutory requirements attached to that remedy. In particular, he had not thought a declaration about the unreasonable length of the impugned proceedings and had not provided any arguments in order to substantiate his 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 set out the general grounds justifying imposition of the preventive measures. That provision read:

> "Preventive measures may be imposed in order to ensure the proper conduct of proceedings if the evidence against the accused sufficiently justifies the opinion that he has committed a criminal offence."

Article 217 § 1 defined grounds for detention on remand. At the relevant time it provided:

> "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 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 course of proceedings by any other unlawful means."

Paragraph 2 of Article 217 provided:

"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."

The Code set out the margin of discretion in maintaining a specific preventive measure. Articles 213 § 1, 218 and 225 of the Code were based on the precept that detention on remand was the most extreme preventive measure and that it should not be imposed if more lenient measures were adequate.

Article 213 § 1 provided:

"A preventive measure [including detention on remand] shall be immediately lifted or varied, if the basis for it has ceased to exist or new circumstances have arisen which justify lifting a given measure or replacing it with a more or less severe one."

Article 225 stated:

"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 those measures, are considered adequate."

Until 4 August 1996, when the Code of Criminal Procedure was amended, the law did not set any time-limits on detention on remand in the court proceedings.

Article 222 of the Code of Criminal Procedure in the version applicable after 4 August 1996 provided, in so far 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 is liable to a sentence of a statutory minimum of at least three 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 out 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."

On 28 December 1996, by virtue of the Law of 6 December 1996, paragraph 4 of that Article was amended and the grounds for prolonging detention beyond the statutory time-limits included also:

"... other significant obstacles, which could not be overcome by the authorities 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:

"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 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 the 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, 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 with the court of appeal within whose jurisdiction the offence in question has been committed.

3. Remedies against unreasonable length of the 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

1. For a more detailed rendition of the relevant domestic legal provisions see *Charzyński v Poland* (dec.) no. 15212/03, §§ 12-23; and *Michalak v. Poland* (dec.) no. 24549/03, §§ 12-23, to be published in ECHR 2005-…; also available on the Court's Internet site: www.echr.coe.int.

> ... 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. 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 the 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 § 3 of the Convention about a breach of his right to trial within a reasonable time or to release pending trial.

2. The applicant also complains under Article 6 § 1 of the Convention about the undue length of the criminal proceedings against him.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention about a breach of his right to trial within a reasonable time or to release pending trial.

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 6 § 1 of the Convention about the undue length of the criminal proceedings against him.

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 ..."

The Court notes that the applicant's complaint about a breach of his right to a trial within a reasonable time submitted under the 2004 Act was rejected for failure to comply with the statutory requirements.

It follows that this complaint 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 complaint concerning the length of his detention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President