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. 31246/02
by Piotr OSUCH
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,
Mrs L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 29 July 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Piotr Osuch, is a Polish national who was born in 1976 and lives in Kamińsk, Poland.

A. The circumstances of the case

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

On 10 March 1999 the applicant was arrested on suspicion of robbery.

On 12 March 1999 the Warsaw District Court (*Sąd Rejonowy*) ordered that the applicant be detained until 9 June 1999.

The applicant's detention was subsequently prolonged several times by the District Court.

From the date of indictment until 6 March 2001 the District Court scheduled 20 hearings, most of which were adjourned for various reasons.

On 6 March 2001 the Warsaw Court of Appeal (*Sąd Apelacyjny*), at the District Court's request, extended the applicant's detention until 30 June 2001. The court upheld its decision on 6 April 2001.

The court held 17 further hearings, scheduled at regular intervals ranging from several days to 2 months.

On 26 June 2001 the Court of Appeal prolonged the applicant's detention until 30 September 2001. On 17 August 2001, upon the applicant's appeal, the Court of Appeal upheld that decision.

On 28 September 2001 the Warsaw Court of Appeal prolonged the applicant's detention until 30 November 2001.

The Warsaw Court of Appeal upheld that decision on 9 November 2001.

On 30 November 2001 the Warsaw Court of Appeal prolonged the applicant's detention until 31 January 2002.

On 16 January 2002 the Warsaw District Court convicted the applicant as charged and sentenced him to 9 years' imprisonment.

The Warsaw Regional Court (*Sąd Okręgowy*) upheld the first-instance judgment on 6 February 2003.

On 28 October 2003 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant's cassation appeal.

On 29 July 2002, the date on which the application was lodged with the Court, the proceedings were pending before the Warsaw Regional Court.

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.

The applicant maintained that he had lodged such a complaint. He nevertheless asked the Court to find that his right to a hearing within a reasonable time had been violated.

B. Relevant domestic law and practice

1. Preventive measures, including detention on remand

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 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, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, 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.

2. Length of proceedings

The 2004 Act 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. 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 § 3 of the Convention about the excessive length of his detention.

2. He further complains under Article 6 § 1 about the length of the proceedings against him.

3. Finally, he complains under Article 6 §§ 1 and 3 (d) about the unfairness of the proceedings and objects to their outcome.

THE LAW

1. The applicant complains under Article 5 § 3 of the Convention his detention on remand exceeded a "reasonable time".

The Court considers that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

2. The applicant complains under Article 6 § 1 of the Convention that the length of the proceedings in his case had exceeded a "reasonable time" within the meaning of this provision.

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 observes that in the present case the applicant made use of the remedy provided for by the 2004 Act and that his case is pending.

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).

Accordingly, it is premature for the Court to determine the substance of the applicant's complaint about the breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

It follows that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

3. The applicant further complains under Article 6 § 1 of the Convention about the unfairness of the proceedings. He alleges that the courts committed errors of fact and law when dealing with his case and that their judgments were unjust.

The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, ECHR 1999-I, § 28).

The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing. In the light of the material in its possession, the Court finds no indication that the impugned proceedings were unfairly conducted.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of his pre-trial detention;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President