



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

FOURTH SECTION

CASE OF PIHLAK v. ESTONIA

(Application no. 73270/01)

JUDGMENT

STRASBOURG

21 June 2005

FINAL

21/09/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pihlak v. Estonia,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSKI,
Mr J. BORRERO BORRERO,
Mr J. ŠIKUTA, *judges*,
Mrs F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 31 May 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 73270/01) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a stateless person, Mr Vitali Pihlak (“the applicant”), on 8 August 2000.

2. The applicant was represented before the Court by Ms K. Mägi, a lawyer practicing in Tallinn. The Estonian Government (“the Government”) were represented by their Agent, Mrs M. Hion, Director of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs, and Mr E. Harremoes, Special Adviser to the Mission of the Republic of Estonia to the Council of Europe.

3. The applicant alleged that the length of his detention on remand had been in breach of Article 5 § 3 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 20 January 2004 the Court declared the application admissible.

6. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), and the case was allocated to the newly composed Fourth Section of the Court.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1972 and lives in Harjumaa.

1. The applicant's detention and release on bail in 1997

9. In April and May 1997 the Tartu Police instituted six criminal investigations relating to several offences of burglary, the forgery of a passport and the unlawful keeping of a firearm. The applicant, one of the suspects, could not be found. On 26 May 1997 the police declared him to be a wanted person. On 7 July 1997 a judge of the Tallinn City Court (*Tallinna Linnakohus*) authorised the police to take the applicant into custody for two months when he was located. On 27 October 1997 the applicant was caught and taken into custody. On 23 December 1997 the City Court authorised the applicant's detention until 20 January 1998. However, on 29 December 1997 the City Court granted his request for release on bail. The amount of the bail was set at 42,000 *kroons* (€ 2,684).

2. The applicant's detention from 1998 to 2000

10. On 12 September 1998 the applicant was taken into police custody on suspicion of having on the same day committed a burglary with three other persons.

11. The next day the applicant's arrest was approved by a judge of the Tallinn City Court who authorised the applicant's detention for 10 days, i.e. until 22 September 1998. The court noted that the applicant had a prior criminal conviction and that he was suspected of having committed a new crime at a time when he had been released on bail in another criminal case (see paragraph 9 above) against him, which was pending before it.

12. On 22 September 1998 the applicant was formally charged with burglary. On the same day the City Court prolonged his detention until 22 November 1998 on the ground that he had a prior criminal conviction and could re-offend, if released.

13. In his appeal against the decision the applicant argued that the reasons referred to by the court were inadequate to justify his detention. He had a fixed place of residence and there was no reason to believe that he could commit new offences. Moreover, the reference to his prior conviction was irrelevant, since it was no longer on his criminal record.

14. On 13 October 1998 the Tallinn Court of Appeal (*Tallinna Ringkonnakohus*) dismissed the applicant's appeal. It considered that, although the applicant's criminal record had been expunged, the fact of his conviction of theft in 1995 was still a factor relevant to his character. It also

found it significant that the applicant had allegedly committed a new offence while he had been released on bail in other charges.

15. On 19 November 1998 the City Court extended the applicant's detention until 22 January 1999 for reasons identical to those contained in its previous prolongation order of 22 September 1998.

16. Following the completion of the preliminary investigation on 13 January 1999, the City Court, by a decision of 20 January 1999, committed the applicant for trial and left unchanged the preventive custody measure. It joined to this case another criminal case against the applicant which concerned further acts of burglary, committed in a group of persons, as well as falsification of a document and unlawful possession of a firearm.

17. At a hearing before the City Court on 19 February 1999 the applicant requested his release from custody, arguing that his health had deteriorated and that he had difficulty eating without proper dentures which had been broken by a police officer at the time of his arrest. His request was refused on the ground of the danger of his re-offending if released.

As one of the co-defendant's had fallen ill, the City Court adjourned the trial hearing.

18. At a hearing on 12 April 1999 the City Court refused another request by the applicant for release from custody, referring to the applicant's prior criminal conviction and his continued criminal activity when he had been released on bail in another criminal case against him. There was thus reason to believe that the applicant would commit further offences if released. The court adjourned the trial hearing due to the ill-health of one of the co-defendants which prevented him from attending.

19. The applicant's further requests for release were rejected by the City Court on the same grounds by decisions of 26 May 1999, 22 September 1999, 1 December 1999, 2 February 2000, 30 March 2000 and 31 May 2000. On these dates the trial hearing was adjourned due to the absence of victims, witnesses, defence counsel or co-defendants.

20. On 4 October 2000 the City Court granted the applicant's request for release, noting that the applicant had already been in custody for over two years, that he had a fixed place of residence and that the parties had not agreed to sever the charges against the applicant from the rest of the case.

21. From the end of the year 2000 until the end of year 2003 the trial hearing was adjourned on several occasions for various reasons.

22. On 22 December 2003, in summary proceedings, the City Court convicted the applicant of burglary, unlawful possession of a firearm and falsification of a document and sentenced him to 2 years, 2 months and 27 days' imprisonment. The sentence was considered as having been served during the two periods the applicant had spent in pre-trial detention.

II. RELEVANT DOMESTIC LAW

23. According to Article 35-1 §§ 1 and 2 and Article 37 § 2 of the Code of Criminal Procedure of 1961, as in force at the material time, the accused and his defence lawyer have the right to submit applications and file appeals relating to the criminal proceedings.

24. Article 68 § 1 of the Code stipulates that in the choice of preventive measure, there shall be taken into account the seriousness of the committed criminal offence, the personality of the suspect, accused, or accused at trial, the possibility that the suspect, accused, or accused at trial may abscond from the investigation or from the court proceedings or may impede the establishment of the truth, and the state of health, age, marital status and other facts concerning the suspect, accused or accused at trial which may be relevant to the application of a preventive measure.

25. Article 69 of the Code provides that a prohibition on leaving a place of residence may be imposed on a suspect, accused or accused at trial, i.e. he or she may be obliged to give a written commitment not to leave his or her permanent or temporary residence without the permission of a preliminary investigator, prosecutor or court. If the suspect, accused or accused at trial violates such a commitment, a more severe preventive measure may be applied with regard to him or her, a consequence of which the suspect, accused or accused at trial shall be warned upon the obtaining of his or her signature.

26. Article 71-1 § 1 of the Code stipulates that a judge may, at the request of an accused, replace the preventive custody measure with bail.

27. According to Article 73 of the Code, a preventive custody measure may be applied in respect of a suspect, accused or accused at trial in order to prevent them from evading the criminal proceedings or committing a new offence, as well as to ensure the enforcement of a court judgment (§ 1).

Permission to take a suspect or accused into custody is given by a county or city court judge on the basis of a reasoned request from an investigator (§ 2).

28. A person taken into custody has the right to request his or her interrogation by a county or city court judge with the participation of defence counsel (§ 4).

29. A county or city court judge must give a reasoned ruling on the grant or refusal of a preventive custody measure. The judge must sign the ruling and certify it with the court seal (§ 5).

30. Extensions of the period of custody are effected under the provisions which regulate the taking of a person into custody (§ 5-1).

31. Article 78 of the Code stipulates that an investigator, prosecutor or court may annul a preventive measure if there is no further need for its application, or may alter the preventive measure and choose a new preventive measure (§ 1).

A preventive measure applied in respect of an accused at trial may be altered or annulled by the trial court or a higher court (§ 3).

32. Under Article 189 of the Code, when committing the accused for trial, a court must examine whether a preventive measure has been correctly applied.

33. Article 222 of the Code empowers a court to amend or annul, in the course of the court proceedings, preventive measures previously applied with regard to the accused at trial.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

34. The applicant complained that the length of his pre-trial detention was in breach of Article 5 § 3 of the Convention, which provides:

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Period to be taken into consideration

35. The Court notes that the applicant was arrested on 12 September 1998. He was kept in detention until 4 October 2000, when the City Court granted his request for release. Thus, the applicant’s detention on remand lasted for 2 years and 22 days.

B. Reasonableness of the length of detention

1. The parties’ arguments

36. The applicant was of the opinion that the length of his detention on remand was excessive.

37. The Government contested this allegation. They submitted that, besides the fact that the authorities had a persisting and reasonable suspicion that the applicant had committed the offences with which he had been charged, there were several other grounds on which the authorities had based their decision for his continued detention.

The applicant had been previously convicted. Furthermore, he had absconded from May to October 1997 and had been declared as wanted.

Thereafter, when he had been arrested and taken into custody, the court still released him on bail. Despite that, the applicant continued to commit offences and had thus violated the conditions of the bail. Therefore, there was a realistic possibility that, if at liberty, the applicant could commit further offences.

The Government concluded that the grounds given by the judicial authorities to justify the continued deprivation of the applicant's liberty had been relevant and sufficient.

38. The Government pointed out that the criminal case had been voluminous, involving several accused. It had been necessary to hear many victims and witnesses. Therefore, the pre-trial investigation of the case had been complicated.

For the sake of speedy and fair proceedings, the City Court had joined several criminal cases involving the same accused. Thus, the criminal case before the City Court had been complex, involving different criminal offences and numerous counts. The applicant had been charged with the commission of three different criminal offences – forgery of a document, illegal possession of a firearm and nine counts of theft. Altogether there had been six accused involved in the case.

39. The Government submitted that the trial hearing had been repeatedly adjourned due to the failure of the accused persons, defence counsel or witnesses and victims to appear in court because of illness or for other reasons. They were of the opinion that the investigative and judicial authorities for their part had demonstrated sufficient diligence in investigating the criminal case.

In consequence of the delay in the judicial proceedings for the above reasons and the impossibility of severing the applicant's criminal trial from that of his co-accused (neither the prosecutor nor the applicant's defence counsel having agreed to such a course), the City Court had replaced the initial preventive measure. Detention had been replaced by a signed undertaking not to leave his residence, since otherwise the period of pre-trial detention of the applicant would indeed have become unreasonably long.

40. In conclusion, the Government were of the view that the national authorities were not unreasonable in fearing that the applicant could reoffend if released and in the circumstances of the case a genuine public interest outweighed the applicant's right to liberty. The Government admitted that the period of custody had been relatively long, but considering the personality of the applicant and the circumstances of the case, its length had not exceeded the limits of a reasonable time.

2. The Court's assessment

41. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. The reasonableness of the detention of an accused has to be assessed in each

individual case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention.

It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and any well-documented facts stated by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

42. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

43. The Court accepts that the suspicion against the applicant of having committed the offences with which he was charged initially warranted his detention. The detention was, moreover, justified by the fact that the applicant was suspected of having committed further offences during his release on bail (see paragraphs 9 and 10 above).

44. However, the Court observes that the judicial orders authorising the applicant’s detention on remand were based on a brief standard formula that the detention was justified, namely that the applicant had committed new offences while his earlier criminal case was pending in the City Court. In most of the court orders reference was also made to his previous convictions. In all instances it was concluded that he could commit further offences while at liberty. No more elaborate reasons were put forward to justify the need for the protracted detention of the applicant.

45. In this context the Court recalls that under Article 5 § 3 the authorities, when deciding on the continuing detention of a person, are

obliged to consider alternative measures of ensuring his appearance at trial. The provision concerned proclaims not only the right to “trial within a reasonable time or to release pending trial” but also lays down that “release may be conditioned by guarantees to appear for trial” (see, for example, *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 3, § 3, and *Iłowiecki v. Poland*, no. 27504/95, § 63, 4 October 2001).

In the present instance, the judicial authorities had, indeed, released the applicant on bail after the first period of detention (see paragraph 9 above). However, the applicant committed a further offence thereafter.

Therefore, the Court agrees that the grounds for detention could initially be considered “relevant” and “sufficient” so as to justify the applicant’s being again taken into custody under Article 5 § 3. However, the Court has doubts as to whether the grounds for the applicant’s detention, as reflected in the perfunctorily reasoned court orders, retained their sufficiency for the whole period of the pre-trial detention. In this connection the Court notes that the Government have furnished no information to the effect that the applicant reoffended after he was released on 4 October 2000.

46. Furthermore, the Court finds, in any case, that the authorities cannot be said to have displayed “special diligence” in the conduct of the court proceedings. The preliminary investigation of the case was concluded on 13 January 1999 and on 20 January 1999 the applicant was committed for trial by the City Court. Thereafter, there was little, if any, progress in the handling of the case until the applicant was released on 4 October 2000. The Court agrees that the case was not a minor one, involving several accused and many counts of burglary. A number of victims and witnesses had to be heard. However, the authorities failed to hold hearings in the City Court for a considerable period of time. Having regard to the numerous occasions on which the trial hearing was adjourned while the applicant was kept in detention (from February 1999 to October 2000, the hearings were adjourned for various reasons – absence of victims, witnesses, defence counsel or co-defendants – on eight occasions) the Court is unable to conclude that the authorities met the “special diligence” requirement.

47. Article 5 § 3 of the Convention has therefore been violated.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

49. The applicant did not make any claim for costs and expenses but claimed the sum of 1 million Estonian *kroons* (63,898 euros (EUR)) in compensation for the deterioration in his health condition and suffering and distress caused by the prolonged period of detention on remand.

50. The Government submitted that since the applicant's complaint under Article 3 concerning alleged ill-treatment had been declared inadmissible on 20 January 2004, the claim for damages for ill-treatment could not be considered at this stage of the proceedings.

As regards the claim for compensation for suffering and distress caused by his detention, the Government noted that the time spent by the applicant in detention on remand had been fully taken into account by the Tallinn City Court when imposing a sentence upon the applicant.

If the Court were to find a violation of Article 5 § 3, the Government were of the opinion that the finding of a violation would in itself constitute sufficient just satisfaction.

51. The Court agrees that the claim for compensation can be dealt with only in so far as it concerns the violation of Article 5 § 3. It finds that the applicant has suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards him EUR 1,500.

B. Default interest

52. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Estonian *kroons* at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President