



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

FOURTH SECTION

CASE OF KUBICZ v. POLAND

(Application no. 16535/02)

JUDGMENT

STRASBOURG

28 March 2006

FINAL

28/06/2006

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 Kubicz v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Ms F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 7 March 2006,

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

PROCEDURE

1. The case originated in an application (no.16535/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Andrzej Kubicz ("the applicant"), on 8 April 2002.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołosiewicz, of the Ministry of Foreign Affairs.

3. On 4 May 2004 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1959 and lives in Chrzanów, Poland. He is represented before the Court by Mr T. Marek, a lawyer practising in Oświęcim, Poland.

5. On 16 March 2001 the Chrzanów District Court (*Sąd Rejonowy*) ordered that the applicant be detained on remand in view of the reasonable suspicion that he had committed armed robbery. The court considered that the applicant's detention was justified in view of the gravity of the charges against him. There was also a risk that he could go into hiding.

6. On 21 May 2001 the applicant asked for release from detention. The Chrzanów District Prosecutor (*Prokurator Rejonowy*) refused on 29 May 2001. He considered that there was a reasonable suspicion that the applicant had committed the offence in question and a risk that he might obstruct the proper conduct of the proceedings. He found also that there were no grounds on which to release the applicant, as defined in Article 259 of the Code of Criminal Procedure. Furthermore, he underlined the gravity of the charges brought against him.

7. On 30 May 2001 the applicant was indicted on 3 counts of armed robbery committed together with 2 accomplices before the Katowice Regional Court (*Sąd Okręgowy*).

8. On 11 July 2001 the Katowice Regional Court ordered that the applicant be held in custody until 30 October 2001. The court repeated the reasons previously given for his detention.

9. On 23 July 2001 the Katowice Regional Court referred the case to the Cracow Regional Court, considering that that court had jurisdiction over the matter. The Cracow Regional Court disagreed and, on 24 September 2001, referred the case to the Cracow Court of Appeal (*Sąd Apelacyjny*) for a ruling determining which court was to deal with it. On 17 October 2001 the Court of Appeal ordered that the case be tried before the Katowice Regional Court.

10. The applicant's detention was further extended on 25 October and 10 December 2001, despite the applicant's requests for release.

11. The first hearing was to be held on 19 April 2002 but the trial was adjourned for procedural reasons.

12. During the proceedings the applicant's detention was prolonged on several occasions. The last decision was taken on 11 October 2002, when the Katowice Regional Court ordered that he be held in custody until 15 March 2003.

13. The applicant made many unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention. He maintained that his detention was excessive and that other measures, such as bail or police supervision could secure the proper conduct of the trial. All decisions dismissing his applications repeated the same grounds for the applicant's detention: the reasonable suspicion against him and the severity of the anticipated sentence and the fear that he might tamper with evidence.

14. On 10 March 2003 the Katowice Regional Court convicted the applicant as charged and sentenced him to 3 years' imprisonment.

15. The Katowice Court of Appeal upheld the first-instance judgment on 6 November 2003.

16. 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.

17. The applicant did not lodge a complaint under the 2004 Act.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including detention on remand

18. 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*).

19. 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.”

20. 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.”

21. 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.”

22. 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.”

23. 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.

24. 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. The court of appeal within whose jurisdiction the offence in question has been committed 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.”

B. Length of proceedings

25. 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).”

26. 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. ...”

27. 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.”

28. 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.

...”

29. 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.

THE LAW

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

30. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention was excessive. Article 5 § 3 reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article 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. Admissibility

31. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

32. The Court observes that the applicant was remanded in custody on 16 March 2001. His detention ended on 10 March 2003 when he was convicted. Accordingly, the total period of his detention amounted to approximately 2 years.

2. The reasonableness of the length of detention

(a) The parties' arguments

33. The Government maintained that the length of the applicant's detention was not excessive. In their opinion, there had been valid reasons for holding him in custody for the entire period in question. It was necessary to ensure the proper course of the proceedings, especially in view of the gravity of the charges and the severe penalty. There was also a serious risk of the applicant's tampering with the evidence or attempting to influence witnesses.

34. The Government stressed that the applicant's detention had been subject to a frequent review by the domestic courts. All decisions concerning his custody contained detailed reasons. The courts had examined his applications for release thoroughly and with respect for the applicant's rights guaranteed under Article 5 § 3.

35. In conclusion, the Government maintained that there had been no breach of Article 5 § 3.

36. The applicant maintained that the period of 2 years he had spent in detention was not compatible with the "reasonable time" requirement. The applicant argued that the authorities had failed to give valid reasons for holding him in custody for the relevant period.

37. He argued that his case was not treated with due diligence. The ground relied on by the courts prolonging his detention, namely the reasonable suspicion that he had committed the impugned offence, had not been based on any concrete, true circumstance. He maintained his applications for release had never been seriously considered by the courts.

The applicant concluded that there had been a breach of Article 5 § 3.

(b) The Court's assessment

(i) Principles established under the Court's case-law

38. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered in each 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 (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

39. Under Article 5 § 3 the national judicial authorities must ensure that 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 a departure from the rule in Article 5 and must set them out in their decisions on the applications for release.

40. The persistence of 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 (see, for instance, *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

(ii) Application of the principles to the circumstances of the present case

41. The Court observes that in the present case the judicial authorities relied on three principal grounds, namely the reasonable suspicion that the applicant had committed the offence with which he had been charged, the serious nature of that offence and the risk of his tampering with evidence if released. Those arguments were repeated in nearly all the decisions concerning the applicant's detention (see paragraphs 5-6 and 13 above).

42. The Court agrees that the strong suspicion against the applicant of his having committed a serious offence could have initially warranted his detention.

43. However, with the passage of time those grounds inevitably became less and less relevant. Nevertheless, when prolonging the applicant's detention and rejecting his requests for release the domestic courts still relied on the same reasons (see paragraph 13 above).

44. The Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed,

that provision 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 the *Jabłoński* judgment cited above, § 83).

45. The Court would note that during the entire period of the applicant’s pre-trial detention, and despite his repeated applications for release, the authorities did not consider the possibility of imposing on him other preventive measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

46. Furthermore, the Court is not persuaded by the argument that the applicant might attempt to tamper with evidence if released. It notes that the courts did not indicate any circumstance capable of showing that the risk relied on actually persisted during the entire relevant period. Moreover, it appears that there was no indication that in reality the applicant tampered with evidence or obstructed justice in any other manner.

47. The Court observes further that the applicant was sentenced to 3 years’ imprisonment, and therefore, it appears that the actual time spent in prison – if the applicant had been paroled after serving half of his sentence – could have been shorter than the time spent in detention on remand.

48. In the circumstances, the Court finds that the grounds given for the applicant’s pre-trial detention were not “relevant” and “sufficient” to justify holding him in custody for the whole period in question.

49. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

50. The applicant further complained that the length of the proceedings in his case had exceeded a “reasonable time” within the meaning of Article 6 § 1, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

51. The Government maintained that the applicant had failed to exhaust domestic remedies, as he had not lodged a complaint about the breach of the right to a trial within a reasonable time under the 2004 Act.

52. The applicant, for his part, submitted that this remedy was not effective and stated that he had no wish to lodge a complaint under the relevant provisions.

53. 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...”

54. The Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic court.

55. 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.

56. 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).

57. However, the applicant has chosen not to avail himself of this remedy.

58. It follows that the complaint under Article 6 § 1 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 25,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage.

61. The Government considered that the claim was excessive. They requested the Court to rule that the finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

62. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant has suffered non-pecuniary

damage – such as distress resulting from the excessive length of his detention – which is not sufficiently compensated by the finding of a violation of the Convention and awards the applicant 2,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

63. The applicant did not seek to be reimbursed for any costs or expenses.

C. Default interest

64. 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. *Declares* the complaint concerning the excessive length of detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President