



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

FOURTH SECTION

CASE OF BUTA v. POLAND

(Application no. 18368/02)

JUDGMENT

STRASBOURG

28 November 2006

FINAL

28/02/2007

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 Buta v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 7 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 18368/02) against the Republic of Poland lodged with the Court on 30 October 2001 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by the applicant Mr D. Buta (“the applicant”).

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

3. On 25 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant’s pre-trial detention 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.

4. By a decision of 26 May 2006 the applicant was granted legal aid in the proceedings before the Court and he appointed Mr L. Cyrson, advocate, as his representative.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Poznań.

6. On 14 April 1999 the applicant was detained on suspicion of robbery and deprivation of liberty with aggravated violence.

7. On 15 April 1999 the Wałcz District Prosecutor's Office requested the Wałcz District Court to remand the applicant in custody. He indicated that the crimes the applicant was charged with had been committed with exceptional cruelty and that there was a risk that he would influence the witnesses and his co-accused if released.

8. On 15 April 1999 the Wałcz District Court remanded the applicant in custody for 3 months. In its decision the court underlined that there was a strong likelihood that the applicant had committed the crimes and, moreover, had done so soon after he had been released from prison. In addition, since the applicant was charged with a crime against a person who had refused to testify in his favour, the court considered that there was a reasonable fear that the applicant would obstruct the proceedings.

9. On 9 July 1999 the District Court prolonged the applicant's detention. In its reasons for this decision it stated, *inter alia*, that there was a need to extend the scope of the investigation in the applicant's case and at the same time to prevent him from contacting other suspects. The applicant's appeal against this decision was dismissed on 21 July 1999. The Poznań Regional Court found that the applicant's detention pending trial was fully justified bearing in mind the severity of the charges, the likely penalty and the applicant's recidivism. The court agreed with the District Court's view that there was a possibility that the applicant would collude with his co-accused or try to influence witnesses. No grounds for release listed in the Code of Criminal Procedure were established by the court.

10. In the course of the investigation the suspects and 18 witnesses were heard.

11. On 29 October 1999 the investigation was closed and a bill of indictment against the applicant and four other persons was lodged with the Wałcz District Court. The applicant was charged with six offences. The prosecutor named 25 witnesses to be summoned for the hearing and 6 persons were identified as victims of the crimes. A local inquiry (*wywiad środowiskowy*) was concluded.

12. By decisions of 7 December 1999 and 12 April 2000 the applicant's detention pending trial was further prolonged. The courts stated, *inter alia*, that the grounds for applying this measure remained valid. They found that there was a need to secure the proper conduct of the proceedings, bearing in mind the severity of the charges against the applicant, his recidivism and the fact that he had committed the offences within two months of his release from prison. The circumstances of one of the offences - deprivation of liberty - pointed to the risk that the applicant would attempt to pervert the course of justice. No special circumstances dictated the lifting of the detention. The court also took into account the complicated nature of the case, which related to numerous persons and criminal acts. On 24 May 2000 the decision of 12 April 2000 was upheld by the Poznań Regional Court. The court considered that the evidence gathered in the proceedings indicated

a strong likelihood that the applicant had committed the crimes with which he had been charged. In addition, the applicant's continued detention pending trial was found to be necessary, bearing in mind the seriousness of the charges, the severity of the anticipated penalty and the applicant's criminal record. His attempts to influence the testimonies of a witness in another case and the fear of the applicant expressed by some of the victims justified the perceived risk of collusion. At the same time the Poznań Regional Court underlined that the trial court should make every effort to conduct the proceedings promptly and swiftly.

13. In a subsequent decision of 5 October 2000 prolonging the applicant's detention the District Court indicated, *inter alia*, that despite the fact that the victims had already been heard there was still a risk of collusion and unlawful obstruction of the proceedings by the applicant, bearing in mind in particular his behaviour during the previous hearing. The court considered that police supervision would not be enough to secure the proper conduct of the proceedings.

14. In the reasons for the decision of 9 January 2001 prolonging the applicant's detention for a further three months, the court underlined, *inter alia*, that there was a risk that the applicant would influence witnesses, especially bearing in mind his aggressive attitude during the hearings, and that no other preventive measure would sufficiently secure the proper conduct of the proceedings. The court also stressed the need to examine the witnesses requested by the applicant's defence counsel. The applicant appealed against this decision on 19 January 2001. On 31 January 2001 the Poznań Regional Court upheld the decision and ruled that the District Court had correctly indicated both the general and specific circumstances which justified the extension of the applicant's detention pending trial. At the same time the appellate court drew the trial court's attention to the need to accelerate the proceedings.

15. On 27 March 2001 the District Court granted the co-accused's request to undergo a psychiatric examination and at the same time decided to request the Poznań Court of Appeal to prolong the applicant's detention until 12 October 2001. Since the applicant had reacted violently and declared that he too was mentally ill and should therefore be examined by a psychiatrist, the court decided to order a psychiatric expert opinion to be prepared on him.

16. In the reasons for the decision of 3 April 2001 on prolongation of the applicant's detention the Poznań Court of Appeal considered, *inter alia*, that the conditions laid down in Article 263 § 4 of the Code of Criminal Procedure were met and that the prolongation of the detention pending trial was necessary in order to allow for the completion of the complicated procedure for the taking of evidence. It was also necessary because the applicant and the co-accused had deliberately prolonged the proceedings by requesting a psychiatric examination at a time when the proceedings had

almost been concluded. The court also noted other important obstacles beyond the court's control, such as the illness of the referring judge and the need to conduct the proceedings again. In the court's opinion, the Wałcz District Court could not be held responsible for the excessive length of the proceedings. The applicant's defence counsel appealed on 18 April 2001. On 8 May 2001 the Poznań Court of Appeal upheld the impugned decision.

17. In the course of the proceedings, the applicant lodged several applications for the lifting of his detention pending trial or the imposition of a more lenient preventive measure. His applications were dismissed by the court on 24 May, 2 September and 27 September 1999, 28 October, 30 November 2000, 14 February and 28 June 2001. The applicant unsuccessfully appealed against these decisions.

18. The hearings in the proceedings were held on 27 January, 15 May, 12 June, 21 August, 20 September 2000, 14 February, 27 March, 18 September, 25 October, 26 November 2001, 7 January, 6 February, 11 March, 23 May, 25 June, 5 September 2002, and 28 January, 4 March and 28 August 2003.

19. At a hearing held on 15 May 2000 three of the co-accused did not appear and in consequence it had to be adjourned. The court decided to remand the co-accused in custody for 3 months. In addition, the court received information that one of the witnesses had moved away and it ordered that her new whereabouts be established. The court also refused to allow the motions of the applicant's and the co-accused's counsel to have their cases examined separately. It observed that all the offences were closely linked and that the co-accused had acted together and in concert. Consequently, conducting the proceedings separately for each of the co-accused would be contrary to the principle of promptness of proceedings.

20. The applicant was released from detention on 12 October 2001.

21. On 6 September 2005 the Wałcz District Court found the applicant guilty of three of the four robberies with which he had been charged and one of the two kidnappings and acquitted him of the charge of drug trafficking. The applicant was sentenced to three years and six months' imprisonment.

II. RELEVANT DOMESTIC LAW

22. The relevant domestic law concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) are stated in the Court's judgments in cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

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

23. The applicant complained that the length of his pre-trial detention was in breach of Article 5 § 3, which, in so far as relevant, provides:

“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

24. The Government submitted in the first place that the applicant had not exhausted the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention, in that he had failed to appeal against the decision of 15 April 1999 remanding him in custody and against the decisions of 6 October 1999, 7 December 1999 and 5 October 2000 prolonging his detention.

25. The Court reiterates that it is well established in its case-law that an applicant must make normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Yaşa v. Turkey* judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 71).

26. In the present case the applicant lodged appeals against most of the decisions prolonging his detention, including the decisions taken in the final stage of the proceedings, when the length of the detention had reached its most critical point. He also lodged requests for the detention measure to be lifted or for a more lenient preventive measure to be imposed, and appealed against the relevant refusals. The Court considers that the purpose of the remedies used by the applicant was to obtain a review of his detention pending trial. In the circumstances of the case these remedies constituted adequate and effective remedies within the meaning of Article 35 of the Convention as their aim was to obtain his release.

27. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in a previous case against Poland (see *Grzeszczuk v. Poland*, no. 23029/93, Commission decision of 10 September 1997) and that the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

28. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

29. The applicant and the Government agreed that the detention lasted from 14 April 1999 to 12 October 2001, that is almost 2 years and 6 months.

30. The Government were of the opinion that the whole period of the applicant's detention had been justified. They stressed that the domestic courts dealing with the applicant's case had found his detention to be compatible with the provisions of Article 258 of the Code of Criminal Procedure and that no grounds warranting the applicant's release from detention, as provided for by Article 259 of the Code, had been established. The evidence obtained in the proceedings indicated that there was a strong likelihood that the applicant had committed the crimes with which he had been charged.

31. The Government further pointed out that the charges against the applicant had concerned several serious crimes, in respect of which he faced a heavy sentence, and that some of those crimes had been committed in co-operation with other persons and as a result of the applicant's relapse into crime. There existed, in the Government's opinion, a genuine public interest requirement which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty and justified the applicant's continued detention. They noted that the applicant was eventually sentenced to three years and six months' imprisonment.

32. The Government also argued that the applicant's detention had been aimed at securing the proper conduct of the investigation as there had been a risk that he would obstruct the proceedings and influence witnesses, in particular since one of the crimes had been committed against a witness who had refused to testify in the applicant's favour in another set of proceedings.

33. According to the Government's submissions, prolongation of the detention had, firstly been justified by the need to extend the scope of the investigation, a need which had emerged during the preparatory proceedings and thus to prevent contact between the suspects during the investigation. Secondly, the applicant's behaviour during the hearings indicated that he would obstruct the proceedings and jeopardise them. When subsequently prolonging the detention on 9 January 2001, the court also referred to the applicant's aggressive attitude during the hearings, which pointed to the risk that he would intimidate witnesses. Finally, the need to conduct a psychiatric examination of the applicant (at his request) and of two other co-accused constituted a ground for the final decision of 3 April 2001 prolonging the detention. The Government also underlined that the applicant

was released during trial, when the objective grounds for his detention had ceased to exist.

34. As regards the review of the applicant's detention, the Government pointed out that on each occasion the decisions extending it or dismissing the applications for release had been sufficiently reasoned and in a detailed manner. The courts had considered not only the conditions for further detention but also developments in the applicant's situation. The courts had not relied solely on the reasons given in the first decision on detention but had also taken into account new elements which had emerged in the course of the proceedings. The appellate courts had examined the need for the continuation of the detention as well as the conduct of the trial court. On two occasions they had reminded the trial court of the need to conduct the proceedings speedily. These facts, in the Government's opinion, proved that the Polish courts had been diligent in reviewing the necessity of keeping the applicant in detention. The proceedings had been very complex: they had concerned many persons and acts and both the prosecutor and the trial court had engaged in an extensive search for evidence. During the investigation 18 witnesses had been heard and the suspects had been heard on 8 occasions in all.

35. The applicant contested the Government's arguments and maintained that the courts had not given sufficient and relevant reasons for his detention. According to him, there had been no reasons to believe that he would obstruct the proceedings.

36. In the applicant's opinion, the suspicion that he had committed the offences in question had been a sufficient basis for his detention only at the early stage of the proceedings. Subsequently, the courts had relied on the gravity of the charges and the need to secure the proper conduct of the investigation. These grounds had not been "relevant" and "sufficient" and in fact his temporary arrest had turned into an actual term of imprisonment.

1. Principles established under the Court's case-law

37. Under the Court's case law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed 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 (see, among other authorities, the *W. v. Switzerland* judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30).

38. 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 examine all the facts arguing for or against the existence of a genuine requirement of public

interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established 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 of the Convention (see the *Contrada v. Italy* judgment of 24 August 1998, *Reports* 1998-V, p. 2185, § 54, *Mc Kay v. the United Kingdom*, [GC], no. 543/03, judgment of 6 October 2006, § 43).

39. 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. In such cases, the Court must 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 ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV, § 153).

2. Application of the principles to the circumstances of the present case

40. The Court notes that a detention pending trial was imposed on the applicant in view of the severity of the charges against him, the fact that he had relapsed into crime and the risk that he would obstruct the proceedings and exert unlawful pressure on witnesses, in particular since the case concerned a crime against a witness refusing to testify in the applicant’s favour in another set of proceedings.

41. The applicant’s detention was subsequently supervised by the courts at regular intervals. In their decisions prolonging the detention the domestic authorities further relied on a reasonable suspicion that the applicant had committed the offences concerned and on the severity of the likely penalty. However, they also took into account new elements that emerged in the course of the proceedings as well as the conduct of the trial court. In particular, the courts pointed to the risk of trickery and obstruction of the proceedings by the applicant, who had influenced the testimony of a witness in another case. Finally, the applicant’s aggressive attitude during the subsequent hearings and the persistent risk of collusion and unlawful obstruction of the proceedings justified the courts’ findings that no other preventive measure would sufficiently secure the proper conduct of the proceedings.

42. The Court therefore considers that, in the particular circumstances of the instant case, the grounds given by the judicial authorities for the applicant’s detention satisfied the requirement of being “relevant” and “sufficient”.

43. The Court agrees with the Government's opinion that the case was complex, regard being had to the nature of the charges against the accused and the scope of the evidence to be taken. The Court's attention has been drawn in particular to the significant number of witnesses questioned in the course of the investigation and by the first-instance court.

44. The Court notes that hearings were held regularly and that in the early stage of the proceedings the appellate court had advised the trial court to make every effort to conduct the proceedings promptly and swiftly (see paragraph 12 above). The court also took necessary steps to resolve difficulties in hearing witnesses in the course of the proceedings and applied adequate disciplinary measures. It dismissed the motion to examine the charges against the accused in separate proceedings, having considered that it would be contrary to the principle of a prompt examination of the case (see paragraph 19 above). The applicant was eventually released from detention on 12 October 2001 and the proceedings were terminated on 6 September 2005.

45. Concluding, the Court takes note of the seriousness of the charges against the applicant and his conduct in the course of the proceedings, as well as the number of other persons charged and the amount of evidence examined. The complexity of the case undoubtedly prolonged its examination and contributed to the length of the applicant's detention on remand.

It is to be recalled that the applicant was charged with a crime committed against a witness who had refused to testify in his favour in another set of proceedings. It must be noted that the domestic courts in ordering the prolongation of the applicant's remand addressed themselves to the continuing need for that measure and did not merely rely on the grounds previously given. In this connection, the Court notes that the domestic courts gave due consideration to the use of less severe preventive measures (for example, police supervision) but were not persuaded that such measures were appropriate in the circumstance of the applicant's case (see paragraphs 13 and 14 above).

The Court finally notes that there were no significant periods of inactivity on the part of the prosecution authorities and the trial court. It observes that the investigations were completed by the Regional Prosecutor within a relatively short period of time and the trial court held hearings at regular intervals. For these reasons, it considers that the domestic authorities cannot be criticised for a failure to observe "special diligence" in the handling of the applicant's case.

46. There has, accordingly, been no violation of Article 5 § 3 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention.

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

T.L. EARLY
Registrar

Nicolas BRATZA
President