



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

FOURTH SECTION

CASE OF PIOTR KUC v. POLAND

(Application no. 37766/02)

JUDGMENT

STRASBOURG

19 December 2006

FINAL

19/03/2007

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 Piotr Kuc 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 K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mrs L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 28 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 37766/02) 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 Piotr Kuc (“the applicant”), on 1 October 2002.

2. The applicant was represented by Ms A. Krukowska Konik, a lawyer practising in Katowice, Poland. 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 1976 and lives in Mysłowice, Poland.

A. The applicant's detention on remand

1. *Proceedings concerning the charges of burglary and handling stolen goods*

5. On 25 September 2000 the applicant was arrested by the police on suspicion of having committed burglary and having handled stolen goods. On 26 September 2000 the Katowice District Court (*Sąd Rejonowy*) ordered that he be remanded in custody in view of the reasonable suspicion that he had committed the offences in question while acting in an organised criminal group, the severity of the anticipated sentence and the need to secure the proper conduct of the proceedings. The latter ground was based on the risk that, once released, he might tamper with evidence. The applicant's appeal against the decision was dismissed on 11 October 2000 by the Katowice Regional Court (*Sąd Okręgowy*).

6. On 15 January 2001 the District Court prolonged the applicant's detention. It reiterated the grounds originally given for keeping him in custody.

7. On 12 March 2001 the applicant and 8 co-accused were indicted before the Katowice District Court. On 18 May 2001 the trial court held the first hearing.

8. Subsequently, the applicant's detention was on several occasions prolonged. The relevant decisions were given on, *inter alia*, 26 June, 28 September and 28 December 2001 and 29 January, 20 May and 10 September 2002. The court considered that the proper course of the proceedings could only be secured by keeping the applicant in detention given the fact that he had been charged with membership of an organised, armed criminal group. Furthermore, the trial court had actively been taking evidence from co-accused, witnesses and expert witnesses, the process of which could have been disturbed by the applicant's release.

9. During the proceedings the applicant made repeated, but unsuccessful, applications for release. He also appealed, likewise unsuccessfully, against refusals to release him and decisions prolonging his detention.

10. On 27 September 2002 the Katowice District Court informed the detention centre that it would not make an application to the Court of Appeal to prolong further the applicant's detention on the ground that it had found no exceptional circumstances under Article 263 of the Code of Criminal Procedure to justify such a request. The applicant, however, was not released as he was still required to remain in pre-trial detention on the charge of armed robbery (see below).

11. This set of proceedings is apparently still pending.

2. Proceedings concerning the charges of armed robbery, arson and burglary

12. On 13 August 2001 the Katowice District Court ordered that the applicant be remanded in custody in view of the reasonable suspicion that he had committed armed robbery while acting in an organised criminal group. The court relied in particular on the gravity of the charges against the applicant and the likelihood that a heavy prison sentence might be imposed on him if found guilty.

13. The Katowice District Court and the Katowice Regional Court several times prolonged his detention pending the conclusion of the investigation. The relevant decisions were given on 16 September and 18 November 2002 and on 3 February 2003. The last of those decisions extended the applicant's detention until 31 May 2003. The courts considered that, given that there was a reasonable suspicion that the applicant had committed serious offences, voluminous expert evidence needed to be obtained. For that reason, he should be kept in detention in order to secure the proper conduct of the investigation. They also held that that measure was justified by the severity of the sentence that might be imposed and the complex nature of the charges.

14. Meanwhile, on 2 January 2003, the applicant had been indicted on charges of armed robbery, arson and burglary. The bill of indictment comprised more than 200 charges brought against 26 accused. The two main accused were charged with 124 and 99 offences respectively.

15. On 3 March 2003 the Regional Court severed the charges against the accused, holding that they should be determined in 2 separate trials. One of the reasons given was that the court did not have at its disposal a court room to try 26 accused at the same time. The charges concerning burglary and arson were examined by the Katowice District Court.

16. On 5 May 2003 the Regional Court made an application under Article 263 § 4 of the Code of Criminal Procedure (*Kodeks postępowania karnego*) to the Katowice Court of Appeal (*Sąd Apelacyjny*), asking that the applicant's detention be prolonged beyond the statutory time-limit of 2 years – until 31 December 2003. The Regional Court relied on the complexity of the case and the fact that, following the severance order, 12 accused were to be tried simultaneously.

17. The Court of Appeal granted that application on 14 May 2003, fully upholding the grounds given for it. It added that the applicant's detention was particularly justified by the severity of the sentence that might be imposed.

18. On 3 July 2003 the Katowice Regional Court held the first hearing.

19. On 1 September 2003 the Katowice Regional Court dismissed the applicant's request for release.

20. Subsequently, the applicant's pre-trial detention was prolonged on 17 December 2003.

21. On 24 May 2004 the applicant was convicted by the Katowice District Court in the proceedings concerning the charges of burglary and arson and was given a three-year prison sentence. On 4 June 2004 the Katowice Regional Court convicted the applicant of armed robbery and sentenced him to six and half years' imprisonment.

22. Afterwards the applicant's detention was prolonged. It appears that the he lodged appeals against both judgments. On 17 February 2005 the Katowice Court of Appeal dismissed his appeal against the judgment of 4 June 2004.

B. Censorship of the applicant's correspondence

23. On 9 December 2002 the applicant complained that a letter from the Court, dated 21 October 2002, which included an application form, had been opened and controlled by the Katowice Regional Prosecutor. That letter had been delivered to him at the end of November 2002. The front part of the envelope provided by the applicant bears a handwritten note: "censored" (*cenzurowano*) and an illegible signature.

II. RELEVANT DOMESTIC LAW

24. 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*).

Article 249 § 5 provides that the lawyer of a detained person should be informed of the date and time of court sessions at which a decision is to be taken concerning the prolongation of detention on remand.

25. A more detailed rendition of the relevant domestic law provisions is set out in the Court's judgment in *Kudła v. Poland* [GC], no. 30210/96, § 75, ECHR 2000-XI, *Celejewski v. Poland*, no. 17584/04, §§ 22 and 23, 4 May 2006.

THE LAW

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

26. The applicant complained that the length of his detention on remand had been unreasonable. He relied on Article 5 § 3 of the Convention, which 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."

27. The Government contested that argument. They considered that the entire period of the applicant's pre-trial detention satisfied the requirements of Article 5 § 3, particularly having regard to the fact that the applicant had been detained in connection with two different sets of proceedings which concerned organised criminal groups. The applicant was a habitual offender and had been charged and convicted of crimes committed within five years of his conditional release from prison in 1996. The Government further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case.

A. Admissibility

28. The Court notes that this complaint 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. Principles established under the Court's case-law

29. 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, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI)

30. The presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, p.37, § 4), the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...).

31. 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 mentioned 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 *McKay*, cited above, § 43).

32. 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, § 153, ECHR 2000-IV, and *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

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

33. The Court first notes that the applicant complains about his pre-trial detention in two sets of criminal proceedings. In the first set the applicant had been detained between 25 September 2000, when he was arrested, and 27 September 2002, when the period for which his detention had been ordered expired. The detention thus lasted 2 years.

As regards the second set of criminal proceedings the applicant was detained on remand on 13 August 2001 and on 24 May 2004 he was convicted by the first-instance court. His detention thus lasted 2 years and over 9 months.

34. The Court firstly observes that in both sets of criminal proceedings the domestic courts initially relied on the reasonable suspicion that the applicant had committed the offences, the severity of the sentence that might be imposed and a risk that he might interfere with the conduct of the proceedings, in particular since he had been charged with being a member of organised, armed criminal groups. The judicial authorities also considered that in view of the complexity of both cases, which involved numerous co-accused and multiple charges, the applicant's detention was necessary to secure the proper conduct of the proceedings.

In the first set of proceedings the domestic court decided not to prolong the detention on remand against the applicant beyond two years. As regards the second set of proceedings, the Court considers that with the passage of time, the authorities had failed to invoke any new grounds justifying the applicant's detention.

35. The Court accepts that the suspicion against the applicant of having committed the offences might initially have justified his detention, in particular in the light of the fact that the applicant was subsequently sentenced to a term of imprisonment.

36. In addition, the judicial authorities appeared to presume the risk of the applicant absconding or obstructing the proceedings basing themselves on the severity of the penalty that might be imposed given the serious nature of the offences. In this respect, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (*Górski v. Poland*, no. 28904/02, § 57, 4 October 2005). The Court also acknowledges that in view of the seriousness of the accusations against the applicant the authorities could justifiably consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

37. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of organised, armed criminal groups. In this regard, the Court considers that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings and in some circumstances also for subsequent prolongations of the detention (see *Drabek v. Poland*, no. 5270/04, § 49, 20 June 2006). In this regard, the Court reiterates its case-law according to which in cases concerning organised crime a relatively longer period of detention on remand could be justified given the particular difficulties in dealing with those cases by the trial courts (see *Celejewski v. Poland*, no. 17584/04, § 36, 4 May 2006). However, it does not give the authorities unlimited power to prolong this preventive measure (see *Pasiński v. Poland*, no. 6356/04, § 44, 20 June 2006). Firstly, with the passage of time, the initial grounds for pre-trial detention become less and less relevant and the domestic courts should rely on other “relevant” and “sufficient” grounds to justify the deprivation of liberty (see, among many other authorities, *I.A. v. France*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2979, § 102; *Labita v. Italy* [GC], cited above, § 153). Secondly, even if due to the particular circumstances of the case, detention on remand is extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be required to justify this.

38. In the circumstances of the present case, the Court takes into account the particular difficulty in dealing with cases concerning organised criminal group and the fact that in the first set of proceedings the authorities decided not to prolong the detention beyond the two-year period. However, the applicant's detention on remand in connection with the second set of

proceedings reached 2 years and 9 months. Thus, with the passage of time the grounds repeatedly relied on by the authorities cannot be accepted as “relevant” and “sufficient” justification for holding the applicant in detention for such a long period.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant further complained under Article 8 of the Convention that his correspondence with the Court had been censored. This Article, in its relevant part, reads:

“1. Everyone has the right to respect for his ... correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

40. The Government argued that there was no evidence that the applicant's correspondence with the Court had been censored by the authorities.

41. The Court notes that the applicant submitted one side of the envelope in which the Court's letter of 21 October 2002 was delivered to him. That envelope bears a handwritten note “censorship” (*cenzurowano*) and an illegible signature. The envelope bears no stamp of the detention centre or of any other authority which would make it possible to establish who had made the note on the envelope. In consequence, it is impossible to establish to any degree of certainty whether the envelope had been opened by the domestic authorities. The applicant failed to submit any other evidence of censorship of his correspondence with the Court by the authorities.

42. In view of the above, the Court finds that in the particular circumstances of the case that the complaint has not been substantiated and does not disclose any appearance of a violation of Article 8 of the Convention (see *Płoski v. Poland* (dec.), no 26761/95, 4 December 2001).

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 in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 200,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

45. The Government submitted that this claim was exorbitant.

46. The Court awards the applicant 1,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

47. The applicant, who was represented by a lawyer, did not claim any sum for the costs and expenses incurred before the Court.

C. Default interest

48. 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 unreasonable length of the pre-trial detention 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 1,000 (one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (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 19 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President