



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

FOURTH SECTION

CASE OF KWIATEK v. POLAND

(Application no. 20204/02)

JUDGMENT

STRASBOURG

6 February 2007

FINAL

06/05/2007

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 Kwiatek 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,

Ms L. MIJOVIĆ, *judges*,

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

Having deliberated in private on 16 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 20204/02) 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 Dariusz Kwiatek (“the applicant”), on 19 November 2001.

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 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Dąbrowa Górnicza.

5. On 22 February 2000 the applicant was arrested by the police. On 23 February 2000 the Katowice District Court (*Sąd Rejonowy*) ordered that he be detained on remand in view of the reasonable suspicion that he had committed two burglaries.

6. On 28 April 2000 the Katowice Regional Court (*Sąd Okręgowy*) prolonged the applicant’s detention until 9 July 2000. It held that there was

a strong suspicion that he had committed the offences with which he had been charged and that keeping him in custody was necessary to secure the proper conduct of the proceedings. The Katowice Court of Appeal (*Sąd Apelacyjny*) upheld that decision on 24 May 2000. It found, invoking Article 258 § 2 of the Code of Criminal Procedure, that the applicant had been charged with two burglaries committed as a recidivist offender and thus he was liable to a statutory maximum sentence of at least 8 years' imprisonment.

7. On 3 July 2000 the Regional Court extended the applicant's detention until 22 August 2000. In addition to the grounds previously invoked, it also relied on the severity of the anticipated penalty. That decision was upheld on appeal on 2 August 2000.

8. On 9 August 2000 the Court of Appeal prolonged his detention until 30 September 2000 pending the outcome of the investigation on the grounds that there was a reasonable suspicion that he had committed the offences in question and that he was potentially liable to a severe penalty, which justified the fear that he would obstruct the proper conduct of the proceedings. The court also held that due to the close links between the suspects there was a risk that, if released, they might interfere with the course of the investigation. Thus it was justified to keep them in custody pending the termination of the investigation. That decision was upheld on appeal by the Supreme Court (*Sąd Najwyższy*) on 31 August 2000.

9. The investigation was terminated on 14 September 2000. On 15 September 2000 the prosecution filed a bill of indictment with the Katowice Regional Court. The applicant was charged with 2 burglaries. The bill of indictment comprised 19 charges (nearly each of them consisted of several counts of burglary) brought against 11 defendants (including the applicant). Five of them were remanded in custody. The prosecution asked the court to hear evidence from 34 witnesses. The case file comprised at that time some 32 volumes. The prosecution had obtained voluminous evidence, including various expert reports.

10. On 25 September 2000 the Regional Court ordered that the applicant be kept in custody until 23 February 2001, relying on the same grounds as in the previous decisions.

11. On 13 November 2000 the Regional Court ordered that the case be joined to that of a certain M.K.

12. On 15 January 2001 the Katowice Regional Court prolonged the applicant's detention until 15 May 2001. It found that the nature of the offences with which the applicant had been charged, the defendants' modus operandi and the severity of the likely penalty justified the prolongation of the detention. It further held that there was a risk that the applicant would obstruct the proceedings, given, inter alia, that he had not confessed. The Regional Court found that the prolongation of the applicant's detention was necessary in order to secure the proper conduct of the proceedings for the

time needed for the examination of the case. It held that no other measures could prevent the applicant from attempting to interfere with the proceedings or even from going into hiding.

13. The first hearing was listed for 22 March 2001 but it was cancelled.

14. On 14 May 2001 the Regional Court ordered that the applicant be held in custody until 15 October 2001, relying on the same grounds as previously. In addition, it observed that so far the trial court had not commenced an examination of the merits due to reasons that were beyond the court's control, such as the failure of some of the co-defendants or their counsel to appear before the court or the police's failure to bring the detained co-defendants from prison for trial. The Regional Court noted that the continued detention of the applicant and some of his co-defendants was necessary in order to secure the proper conduct of the proceedings in the case. That decision was upheld on appeal on 13 June 2001.

15. On 8 October 2001 the Regional Court prolonged the applicant's detention until 17 January 2002. It reiterated the grounds given in its previous decisions and stressed that since the principal defendants (including the applicant) had not confessed, there was a risk that, once released, they might interfere with the proceedings. The Regional Court also noted that all of the 8 hearings scheduled to date had had to be cancelled for various reasons such as: the illness of the trial judge or one of the co-defendants, the unwarranted absence of some of the co-defendants, the absence of the legal-aid lawyer of one of the co-defendants, the fact that one of the lawyers had left the courtroom when the bill of indictment was being read out and the failure of the police to bring the detained co-defendants from prison for trial. The applicant and two other co-defendants appealed against that decision.

16. On 30 October 2001 the Court of Appeal upheld the decision. It found that there was a real risk that the defendants, including the applicant, would obstruct the proceedings by exerting pressure on P.S. (a co-defendant who had incriminated them), given the fact that they had resorted to very aggressive language in their correspondence when referring to P.S. Further, there was a risk of their going into hiding.

17. Two hearings had to be cancelled due to the police's failure to bring the detained co-defendants from prison (18 October and 8 November 2001).

18. On 22 November 2001 the trial began. However, the Regional Court was only able to hear two defendants. Two subsequent hearings had to be cancelled due to the absence of one of the defence counsel (29 November 2001) and the illness of one of the defence counsel (20 December 2001).

19. On 28 December 2001 the Regional Court ordered that the applicant be held in custody until 22 February 2002. It reiterated the grounds given in its earlier decisions.

20. On 28 December 2001 the Regional Court made an application under Article 263 § 4 of the Code of Criminal Procedure to the Katowice

Court of Appeal for prolongation of the applicant's detention until 15 June 2002, since the statutory 2-year time-limit of detention pending trial was soon to be exceeded (Article 263 § 3 of the CCP). It emphasised that the grounds originally given for his detention were still valid and that the court was not able to proceed with the hearing of evidence due to reasons that could not be attributed to it. It noted that out of 13 hearings scheduled to date 12 had had to be cancelled. In addition to the reasons specified in the decision of 8 October 2001, the Regional Court also mentioned the illness of one of the defence counsel and the police's failure to bring the detained co-defendants from prison (on two occasions). It also observed that the continued detention of the applicant was necessary in order to secure the proper conduct of the trial and that no other measures would prevent the applicant and his co-accused from obstructing the proceedings or going into hiding.

21. On 9 January 2002 the Court of Appeal granted the Regional Court's application. In addition to the reasons previously given, it held that the case was particularly complex. It also emphasised that the trial court should take all necessary measures to organise the proceedings in a diligent manner so as to hold hearings at reasonable intervals and terminate the trial by 15 June 2002. The applicant appealed against that decision, but to no avail.

22. On 20 May 2002 the Regional Court made another application to the Katowice Court of Appeal, requesting an extension of the applicant's detention until 1 October 2002. It stressed that, despite some progress in the trial (all the co-defendants and 23 out of 34 witnesses called by the prosecution had been heard), there were still prosecution witnesses (11) and witnesses called by the co-accused (20) to be heard.

23. On 29 May 2002 the Court of Appeal granted that application. It held that the applicant was charged with armed robbery, a serious offence for the commission of which an offender was liable to a minimum sentence of 3 years' imprisonment; however, in reality the charges of armed robbery were brought against other defendants and the applicant had been, and still was, charged with 2 burglaries. The Court of Appeal considered that the serious nature of the offences, the complexity of the case as well as the fact that the original grounds for keeping him in custody were still valid warranted a further prolongation of his detention.

24. On 16 September 2002 the trial court made yet another application to the Court of Appeal for an extension of the applicant's detention until 4 November 2002. It referred to the necessity to hear witnesses called by the co-defendants and to obtain an expert report as to the mental health of one of the co-defendants. On 25 September 2002 the Court of Appeal granted that application. Another similar application of the trial court of 18 October 2002 was granted by the Court of Appeal on 30 October 2002. The latter court considered that the proceedings had not been terminated due to

reasons beyond the trial court's control. The applicant's detention was prolonged until 20 December 2002.

25. The trial court held hearings on the following dates: 31 January, 15 and 21 March, 11 and 25 April, 16 May 2002, 3 and 27 June, 31 July, 29 August and 12 September 2002. Four hearings were cancelled for the following reasons: the absence of some of the co-defendants and defence counsel (24 January 2002); the trial judge's illness (22 February 2002); the failure of one of the co-defendants to appear (26 September 2002) and the failure of the defence counsel to appear (17 October 2002).

26. All of the applicant's applications for release on bail or under police supervision, likewise his appeals against decisions prolonging his detention, were to no avail.

27. On 3 December 2002 the Regional Court closed the trial. On 10 December 2002 it gave judgment. The applicant was convicted of one burglary and sentenced to 2 years' and 10 months' imprisonment, which was nearly (less 12 days) the period he had spent in detention on remand. In sentencing the applicant the trial court took into account his two earlier convictions for similar offences.

28. The applicant appealed against the first-instance judgment. On 23 October 2003 the Katowice Court of Appeal upheld the Regional Court's judgment in respect of the applicant.

II. RELEVANT DOMESTIC LAW

29. The relevant domestic law and practice concerning the imposition of detention on remand (*tymczasowe aresztowanie*), 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 the 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

30. The applicant complained that the length of his detention on remand had been excessive. 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."

31. The Government contested that argument.

A. Admissibility

32. 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. Period to be taken into consideration

33. The Court observes that the applicant was arrested on 22 February 2000 and remanded in custody on 23 February 2000. On 10 December 2002 the Katowice Regional Court convicted the applicant and sentenced him to 2 years' and 10 months' imprisonment. As from that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). Consequently, the period to be taken into consideration under Article 5 § 3 lasted 2 years, 9 months and 18 days.

2. The reasonableness of the length of detention

(a) The parties' arguments

34. The Government argued that there had been valid reasons for holding the applicant in detention for the entire period in question. They stressed that the applicant's detention had been justified by the persistence of a reasonable suspicion that he had committed the offences with which he had been charged and the fact that the charges against him attracted a heavy sentence. The domestic courts had also relied on the risk that the applicant and other defendants might interfere with the proceedings. The Government further justified the length of the applicant's detention by the particular complexity of the case. They submitted that the investigation concerned several counts of burglary and armed robbery which the applicant and other suspects had allegedly committed in various locations throughout the country to the detriment of 30 victims. They also referred to the significant volume of evidence obtained and examined in the course of the proceedings. Lastly, the Government maintained that the authorities displayed adequate diligence in dealing with the applicant's case.

35. The applicant expressed his wish to pursue the examination of the case, but did not submit any comments.

(b) The Court's assessment

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

36. 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-...).

37. Continued detention therefore 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 with further references, ECHR 2000-XI).

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, 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 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 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

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. 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).

40. In sum, domestic courts are under an obligation to review the continued detention of persons pending trial with a view to ensuring release

when circumstances no longer justify continued deprivation of liberty. For at least an initial period, the existence of reasonable suspicion may justify detention but there comes a moment when this is no longer enough. As the question whether or not a period of detention is reasonable cannot be assessed in the abstract but must be assessed in each case according to its special features, there is no fixed time-frame applicable to each case (see *McKay*, cited above, § 45).

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

41. The Court observes that the judicial authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds, namely (1) the severity of the penalty to which he was liable, given the serious nature of the charges against him and (2) the risk of obstruction of the proceedings. In respect of the latter, they referred to the fact that the applicant had not confessed and to the close links between the co-defendants. The domestic courts further considered that there had been a risk that the applicant, if released, might exert pressure on P.S., a co-defendant who had incriminated him (see paragraph 16 above). They also invoked the risk of the applicant going into hiding, without however specifying the grounds for such suspicion. Lastly, the judicial authorities referred to the complexity of the case and the significant volume of evidence to be examined at the trial.

42. The Court accepts that the reasonable suspicion that the applicant had committed the offences with which he had been charged may have warranted his detention in the early stage of the proceedings. However, with the passage of time that ground inevitably became less relevant. In particular, the Court considers that that ground cannot suffice to justify the entire period in issue. It must then establish whether the other grounds advanced by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of the applicant’s liberty.

43. The Court notes that the judicial authorities continuously relied on the likelihood that a heavy sentence might be imposed on the applicant given the serious nature of the offences with which he had been charged and the fact that he had been a recidivist offender. In this respect, the Court recalls that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. It acknowledges that in view of the seriousness of the charges against the applicant the authorities could justifiably consider that such a risk existed. 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).

Furthermore, the Court observes that a hypothetical sentence ranging from 1 to 10 years’ imprisonment must, with the passage of time, inevitably have called for a reassessment of the applicant’s detention in the light of the

evidence that was progressively obtained by the trial court (see *Klamecki v. Poland* (no. 2), no. 31583/96, § 111, 3 April 2003). In reality, the applicant was convicted of one burglary and the actual sentence, which was 2 years' and 10 months' imprisonment (see paragraph 27 above), was at the lower end of the applicable scale. What is more, the sentence imposed on the applicant was nearly equivalent to the period which he had spent in pre-trial detention. That practice, i.e. of holding an accused in pre-trial detention for a period which practically corresponds to the sentence subsequently imposed on him appears questionable for the Court. In this respect, it recalls that continuation of detention cannot be used to anticipate a custodial sentence (*Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51).

44. As regards the risk of the obstruction of the proceedings, the Court notes that in its decisions of 15 January and 8 October 2001 the Katowice Regional Court held that such risk was justified by the fact that the applicant had not confessed. In so far as the domestic courts appear to have drawn adverse inferences from the fact that the applicant had not confessed, the Court considers that their reasoning showed a manifest disregard for the principle of the presumption of innocence and cannot, in any circumstances, be relied on as a legitimate ground for deprivation of the applicant's liberty (see *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005; *Leszczak v. Poland*, no. 36576/03, § 48, 7 March 2006). Secondly, the judicial authorities considered that there had been a risk that the applicant might interfere with the course of the proceedings by exerting pressure on P.S., a co-defendant who had testified against them. The Court observes that it was legitimate for the authorities to consider that factor as capable of justifying the applicant's detention at the initial stages of the proceedings. However, the Court considers that that ground gradually lost its force and relevance as the proceedings progressed and it cannot accept it as a justification for holding the applicant in custody for the entire pertinent period.

45. In the circumstances of the present case, the Court finds that the severity of the likely sentence and the risk of interfering with the proceedings alone, or in conjunction with the other grounds relied on by the authorities, cannot constitute a "relevant and sufficient ground" for holding the applicant in detention for a period of 2 years, 9 months and 18 days.

46. The Court further observes that the applicant was detained on charges of burglary (2 counts) committed together with a number of accomplices. The defendants had not been formally charged with acting in an organised criminal group. In these circumstances, the Court is not persuaded that the instant case presented particular difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the perpetrators as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, no. 17584/04, § 37, 4 May 2006).

47. The Court would also 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 *Neumeister*, cited above, p. 36, § 3; and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

48. In the present case the Court notes that there is no specific indication that during the entire period in question the authorities gave consideration to the possibility of ensuring the applicant’s presence at trial by imposing on him other “preventive measures” expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

49. What is more, it is not apparent from the relevant decisions why the judicial authorities considered that those other measures would not have ensured the applicant’s appearance before the court or in what way the applicant, had he been released, would have obstructed the course of the trial. In that regard the Court would also point out that, although such a potential danger may exist where an accused is charged with a serious offence and where the sentence faced is a long term of imprisonment, the degree of that risk cannot be gauged solely on the basis of the severity of the offence and the anticipated sentence (see *Muller v. France*, judgment of 17 March 1997, *Reports* 1997-II, p. 388, § 43).

50. The Court accordingly concludes that the reasons relied on by the courts in their decisions were not sufficient to justify the applicant’s being held in custody for 2 years, 9 months and 18 days. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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.”

53. The applicant did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 6 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President