



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

FOURTH SECTION

CASE OF KWIATKOWSKI v. POLAND

(Application no. 20200/02)

JUDGMENT

STRASBOURG

12 April 2007

FINAL

12/07/2007

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 Kwiatkowski v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 20 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 20200/02) 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 Krzysztof Kwiatkowski (“the applicant”), on 3 December 2001.

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

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the excessive length of 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 1967 and lives in Gdynia.

5. The applicant was arrested on 7 November 1996 on suspicion of homicide. On 9 November 1996 the Gdynia District Court remanded him in custody for a period of three months in view of the reasonable suspicion that he had committed homicide. It held that there was a risk that the applicant might induce witnesses to give false testimonies. It further had regard to the

gravity of the offence in question. That decision was upheld on appeal on 25 November 1996.

6. On 28 January 1997 the Gdańsk Regional Court prolonged the applicant's detention until 6 May 1997. It invoked the same grounds as originally given for his detention. In addition, the Regional Court referred to the need to hear witnesses and obtain various expert reports.

7. On 5 May 1997 the Gdańsk Court of Appeal ordered that the applicant be kept in custody until 6 August 1997. It relied on the reasonable suspicion that the applicant had committed the offence in question and the need to take further evidence.

8. On 1 August 1997 the prosecution filed a bill of indictment with the Gdańsk Regional Court. The applicant and two co-defendants were charged with homicide and burglary. He was also charged with assault occasioning minor bodily harm. The bill of indictment specified that the applicant was subject to the rules on recidivism. The prosecution requested to hear more than one hundred witnesses.

9. On 18 December 1997 the Gdańsk Regional Court ordered that the applicant be held in custody until the first-instance judgment had been given, but not longer than 7 November 1998. It reiterated the grounds previously invoked for the applicant's detention and added that, given the severity of the anticipated sentence, the prolongation of that measure was also justified by the need to secure the proper course of the trial.

10. The trial court held 10 hearings on the following dates: 19 February, 11 and 12 March, 6 and 7 May, 29 June, 26 August, 5 and 7 October and 5 November 1998. On 6 November 1998 it convicted the applicant as charged and sentenced him to 9 years' imprisonment. The applicant and the prosecution appealed.

11. On 19 January 1999 the Regional Court extended the applicant's detention pending the outcome of the appeal until 31 May 1999. It considered that the severity of the sentence fully justified the continuation of that measure.

12. On 5 May 1999 the Court of Appeal quashed the first-instance judgment in respect of the charges of homicide and assault occasioning minor bodily harm and remitted the case.

13. On 26 May 1999 the Court of Appeal prolonged the applicant's detention until 30 June 1999. It relied on the reasonable suspicion that the applicant had committed the offences in question and the severity of the anticipated penalty.

14. On 29 June 1999 the Court of Appeal ordered that the applicant be kept in custody until 30 September 1999, relying on the same grounds as in its previous decision.

15. On 14 September 1999 the Gdansk Regional Court prolonged the applicant's detention until 31 December 1999. It relied on the gravity of the charges and held that the initial reasons for his detention were still valid.

16. The Regional Court opened the retrial on 29 December 1999. On the same date it ordered that the applicant be held in custody until 1 April 2000. On 19 June 2000 his detention was prolonged until 30 September 2000.

17. On 18 September 2000 the Regional Court extended the applicant's detention until 31 December 2000. In addition to the grounds previously given, it observed that there was a risk of pressure being brought to bear on witnesses if the applicant were released.

18. On 29 December 2000 the Regional Court ordered that the applicant be held in custody until 29 March 2001, considering that it was the only measure which could secure the proper conduct of the trial. The applicant's detention was subsequently prolonged by the Regional Court on 6 March (until 29 June 2001) and 19 June 2001 (until 29 July 2001).

19. On 21 March 2001 the Court of Appeal upheld the decision of 6 March 2001 extending the applicant's detention. It observed, *inter alia*, that there had been significant delays in the proceedings before the Regional Court.

20. On 4 July 2001 the Court of Appeal upheld the decision of 19 June 2001 on the prolongation of the applicant's detention. It considered, *inter alia*, that the applicant's continued detention was justified under Article 258 § 2 of the Code of Criminal Procedure since that provision established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings. It further observed that it was clear that the proceedings had been protracted at various stages.

21. The Gdańsk Regional Court held about 18 hearings. On 26 July 2001 it delivered its judgment and convicted the applicant of homicide and assault occasioning minor bodily harm and sentenced him to 12 years' imprisonment. The applicant appealed.

22. On 23 May 2002 the Court of Appeal upheld the judgment of the Regional Court of 26 July 2001.

23. In the course of the proceedings the applicant made numerous, unsuccessful applications for release. He appealed, likewise unsuccessfully, against the refusals to release him and the decisions prolonging his detention.

II. RELEVANT DOMESTIC LAW

24. 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 *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-45, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

THE LAW

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

25. 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.”

26. The Government contested that argument.

A. Admissibility

27. 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*

28. The Court observes that the applicant was arrested on 7 November 1996 and remanded in custody on 9 November 1996. On 6 November 1998 the Gdańsk Regional Court convicted him of homicide, assault occasioning minor bodily harm and burglary. 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*, cited above, § 104). On 5 May 1999 the Court of Appeal partly quashed the applicant's conviction. Following that date his detention was covered by Article 5 § 3. It continued until 26 July 2001, when the trial court again convicted the applicant. Consequently, the period to be taken into consideration lasted 4 years, 2 months and 20 days.

2. *The reasonableness of the length of detention*

(a) **The parties' arguments**

29. The Government argued that the applicant's detention had been duly justified by relevant and sufficient reasons during the entire period in question. Although not expressly mentioned in every decision refusing the

applicant's release, the circumstances of his case had been duly taken into account by the judicial authorities when finding that only detention on remand could secure the proper conduct of the proceedings. The Government submitted that the applicant's detention had been justified by the gravity of the charges against him and the existence of substantial evidence of his guilt. They further referred to the fact that the applicant had been subject to the rules on recidivism.

30. The Government also argued that the proceedings against the applicant had been complex, having regard to the need to obtain various expert reports. Lastly, they maintained that the authorities had displayed due diligence in dealing with the applicant's case.

31. The applicant disagreed with the Government's submissions and contended that the length of his detention had been excessive.

(b) The Court's assessment

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

32. 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-...).

33. 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*, cited above, §§ 110-111 with further references, ECHR 2000-XI).

34. 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).

35. 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 of Judgments and Decisions* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

36. 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*

37. The Court observes that the judicial authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds, namely (1) the serious nature of the charges against him and the severity of the penalty to which he was liable and (2) the risk that the applicant might interfere with witnesses. In respect of the latter, the Court notes however that the courts did not specify the grounds for such risk. The judicial authorities also relied on the significant volume of evidence to be examined. Furthermore, the Government submitted that the applicant's detention was additionally justified by the complexity of the case and the fact that he had been a recidivist offender.

38. 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.

39. 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. 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 and *Lachowski v. Poland*, no. 27556/03, § 34, 5 December 2006).

40. As regards the risk of interfering with witnesses or obstructing the proceedings by other unlawful means, the Court cannot accept that it constituted relevant and sufficient grounds for the entire period in question. Firstly, it notes that the judicial authorities appeared to presume such risks, based on the likelihood of a severe penalty being imposed on the applicant and on the nature of the offences in question (see, in particular, the Court of Appeal's decision of 4 July 2001, paragraph 20 above). It notes however that the relevant decisions did not put forward any argument capable of showing that these fears were well-founded. The Court considers that such a generally formulated risk flowing from the nature of the offences with which the applicant was charged may possibly be accepted as the basis for his detention at the initial stages of the proceedings. Nevertheless, in the absence of any other factor capable of showing that the risk of interfering with witnesses actually existed, the Court cannot accept that ground as a justification for holding the applicant in custody for the entire period in question.

41. As regards the Government's argument that the applicant had been a recidivist offender, the Court observes that, although this might have been a potentially relevant argument, the judicial authorities had not relied on it in their decisions regarding the applicant's detention.

42. In the circumstances of the present case, the Court finds that the severity of the likely sentence and the risk of interfering with witnesses 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 4 years and over 2 months.

43. The Court further observes that the applicant was detained on charges of homicide and burglary committed together with two accomplices and assault occasioning minor bodily harm. 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).

44. 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).

45. 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 the criminal proceedings.

46. 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. Nor did they mention any factor indicating that there was a real risk of his absconding or obstructing the proceedings. 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 one of long-term 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).

47. The Court hence 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 4 years, 2 months and 20 days. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government did not comment.

52. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under the head of non-pecuniary damage.

B. Costs and expenses

53. The applicant submitted no claim for costs and expenses.

C. Default interest

54. 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 remainder of the application admissible;
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 2,000 (two thousand 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 12 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President