



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

FOURTH SECTION

CASE OF KROWIAK v. POLAND

(Application no. 12786/02)

JUDGMENT

STRASBOURG

16 October 2007

FINAL

16/01/2008

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 Krowiak 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 S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

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

Having deliberated in private on 25 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 12786/02) 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 Artur Krowiak (“the applicant”), on 30 July 2001.

2. The applicant was represented by Mr A. Braum, a lawyer practising in Krakow. The Polish Government were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 3 July 2006 the President of the Fourth Section of the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was 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 Kraków, Poland.

1. Criminal proceedings against the applicant.

5. On 16 January 1998 the Cracow District Court (*Sąd Rejonowy*) ordered the applicant's detention on remand, on charges of attempted murder. The court also issued a wanted notice in respect of the applicant.

6. On 25 February 1998 the applicant was arrested and placed in custody.

7. On 2 March 1998 the Cracow District Court prolonged the applicant's detention until 25 May 1998. The court referred to the reasonable suspicion that the applicant had committed the offence in question and the need to continue the investigation.

8. On 19 March 1998 the Cracow Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal against this decision. The court referred to the reasons given by the District Court. It also stressed that the applicant's detention had been necessary to secure the proper conduct of the proceedings.

9. On 21 May and 14 July 1998 the applicant's pre-trial detention was further prolonged. The court found that keeping the applicant in custody was justified by the strong suspicion that he had committed the offence in question and the severe sentence that might be imposed on him. In addition, the court referred to the fact that the applicant had been sought by means of a wanted notice.

10. The applicant appealed against this decision. He asked the court to consider imposing alternative measures - such as bail or police supervision - to secure the proper conduct of the criminal proceedings. He further claimed that he needed to take care of his disabled parents and his child.

11. On 13 July 1998 the applicant was indicted before the Cracow Regional Court.

12. On 30 July 1998 the Cracow Court of Appeal (*Sąd Apelacyjny*) upheld the first-instance decision. The court referred to the reasons given by the Regional Court. It further stressed that in view of the applicant's going into hiding at the initial stage of the proceedings, it was justified to keep him in custody to secure the proper conduct of the proceedings.

13. On 27 October 1998 and 16 February 1999 the applicant's detention was again prolonged by the Regional Court. On the latter date, the court found:

“The fact that [the applicant] has been charged with attempted murder is a sufficient ground to impose the most severe preventive measure, that is detention on remand.”

14. The applicant's detention was further prolonged on 14 May and 16 August 1999. The court relied on the strong probability that the applicant had committed the offence with which he had been charged and the advanced stage of the trial.

15. On 15 September 1999 the Cracow Court of Appeal dismissed the applicant's appeal against the decision to prolong his detention.

16. It appears that in 1999 the trial court held in total thirteen hearings.

17. At the hearing held on 27 December 1999 the Regional Court again prolonged the applicant's detention.

18. On 10 January 2000 the Cracow Regional Court gave judgment. The applicant was convicted as charged and sentenced to fifteen years' imprisonment. The court also prolonged the applicant's detention.

19. The applicant lodged an appeal. On 13 April 2000 the Cracow Court of Appeal allowed the appeal, quashed the impugned judgment and remitted the case.

20. On 27 July 2000 the Regional Court held the first hearing at which it prolonged the applicant's detention. The court referred to the reasons given previously, in particular to the reasonable suspicion that the applicant had committed the offence in question and the severity of the penalty that could be expected.

21. The applicant's detention was further prolonged on 30 January 2001, and at public hearings held on 29 March, 13 June, 27 September and 13 December 2001. The applicant and his lawyer were present at these hearings. On each occasion the Regional Court repeated the grounds for detention given previously: the reasonable suspicion that the applicant had committed the offence with which he had been charged and the severity of the penalty that could be expected. In addition, it stressed the fact that a wanted notice had had to be issued in order to find the applicant. All these decisions were upheld on appeal by the Cracow Court of Appeal.

22. The applicant's numerous applications for release were to no avail.

23. On 6 February 2002 the Cracow Regional Court gave judgment. The applicant was convicted as charged and sentenced to fifteen years' imprisonment. The applicant lodged an appeal against this judgment.

24. On 19 September 2002 the Cracow Court of Appeal gave judgment. The applicant was convicted of causing bodily harm and his sentence was reduced to five years' imprisonment.

25. On 19 December 2002 the Cracow Regional Court imposed a cumulative sentence (*wyrok łączny*).

26. On 23 December 2002 the applicant was released from detention.

2. Facts relating to the conditions of the applicant's detention.

27. The applicant submitted that the conditions of his detention on remand were inhuman and degrading. In particular, he maintained that he had not been provided with vegetarian food.

28. It appears that during the period of the applicant's detention on remand, he changed detention centres on several occasions. In the first five centres in which he had been kept he had been either provided with a vegetarian diet, or he had been allowed to prepare his own vegetarian meals. In February 2002 the applicant was transported to Tarnów Prison where he stayed until his release in December 2002. The prison authorities refused to provide the applicant with a vegetarian diet, or to allow him to prepare his own meals on the grounds of technical difficulties and safety regulations. The applicant's numerous complaints were dismissed by the prison

administration. All these decisions were further upheld by the Tarnów Regional Penitentiary Court (*Sąd Okręgowy Wydział Penitencjarny*).

II. RELEVANT DOMESTIC LAW

29. 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.

30. 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.

31. The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings are stated in the Court's decisions in cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained under, *inter alia*, Article 3 of the Convention about the conditions of his detention, and in particular that he had not been provided with vegetarian food while in custody.

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

33. However, the Court recalls that in order to fall within the scope of Article 3, the alleged treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc (see, for example, *Kudła v. Poland* [GC], no. 30210/96, §§ 91-99, ECHR 2000-XI). The suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

34. In the present case, it appears from the evidence provided by the applicant that while in detention since 1998 he was provided with a vegetarian diet except for a period of several months in 2002 when he had been detained in the Tarnow Prison. Regard being had to the duration and type of the alleged ill-treatment and given the practical demands of imprisonment, the Court considers that there is no evidence that the treatment complained of has reached the threshold of severity required to bring the matter within the ambit of Article 3 of the Convention.

It follows that this complaint is manifestly ill-founded under Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

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

35. 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.”

36. The Government refrained from expressing an opinion on whether the applicant's pre-trial detention satisfied the requirements of Article 5 § 3.

A. Admissibility

37. 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

38. The Court recalls that the general principles regarding the right “to trial within a reasonable time or to release pending trial”, as guaranteed by Article 5 § 3 of the Convention, were stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

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

39. The Court first notes that the applicant was detained on remand on 25 February 1998 and that the first-instance judgment was given on 10 January 2000. Subsequently, on 13 April 2000, the appeal court quashed the judgment and remitted the case. The applicant's detention on remand lasted until 6 February 2002 when the trial court again convicted him. The detention thus lasted 3 years, 8 months and 10 days.

40. The Court observes that in the present case the authorities relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and on the severity of the sentence that might be imposed. They further considered that there existed the risk that the applicant might go into hiding relying on the fact that he had been in hiding before his arrest in 1998 and that a warrant had been issued for his arrest. They repeated those grounds in all their decisions. The authorities failed to advance any other justifications for prolonging the applicant's detention.

41. The Court accepts that the suspicion against the applicant of having committed the offences and the need to secure the proper conduct of the proceedings, might initially justify his detention, particularly since he had gone into hiding before his arrest. However, with the passage of time, these grounds became less relevant and cannot justify the entire period of 3 years and 8 months during which the most serious preventive measure had been imposed on the applicant (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006 and *Depa v. Poland*, no. 62324/00, § 38, 12 December 2006 *Czajka v. Poland*, no. 15067/02, § 46, 13 February 2007).

42. Moreover, the authorities relied heavily on the likelihood that a severe sentence would be imposed on the applicant given the serious nature of the offences at issue. In this respect, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. 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 *Ilykov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

43. The Court further observes that the applicant was detained on charges of, *inter alia*, attempted homicide and was finally convicted of causing bodily harm. Moreover, even though the applicant had committed these crimes with the help of accomplices, there is no indication that he was a member of an organised criminal group. It does not appear therefore that his case presented particular difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the perpetrator, as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v. Poland*, no. 17584/04, § 37, 4 May 2006; *Dudek v. Poland*, no. 633/03, § 36, 4 May 2006).

44. Finally, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained,

are obliged to consider alternative measures of ensuring his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jablonski*, cited above, § 83).

In the present case the Court notes that there is no express indication that during the entire period of the applicant's pre-trial detention the authorities envisaged any other means of guaranteeing his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

45. The Court is, therefore, not satisfied that the reasons given to justify the applicant's detention for 3 years and 8 months were “relevant” and “sufficient”, as required under Article 5 § 3.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

46. The applicant complained about the procedure relating to the prolongation of his pre-trial detention, in particular that he and his lawyer did not attend the sessions at which his detention was prolonged. The Court will examine this complaint under Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

47. The Government submitted that, taking into consideration all the proceedings devoted to the review of the lawfulness of the applicant's pre-trial detention, the principles guaranteed in Article 5 § 4 of the Convention had been respected in the present case.

48. The Court recalls that the principles relevant in the present case which emerge from the Court's case law on Article 5 § 4 were stated in a number of its previous judgments (see for instance, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998 and *Telecki v. Poland*, (dec.), no. 56552/00, 3 July 2003 and *Celejewski v. Poland*, no. 17584/04, § 47, 4 May 2006; *Depa v. Poland*, no. 62324/00, § 49, 12 December 2006).

49. Turning to the circumstances of the instant case, the Court firstly notes that it cannot examine events complained of by the applicant which took place before 30 January 2001, that is more than six months before the date on which this complaint was submitted to the Court (see *Depa v. Poland*, cited above, § 46).

50. The procedure for the prolongation of the applicant's pre-trial detention during the period under consideration was based on Article 249 § 5 of the Code of Criminal Procedure which required the domestic courts to inform the lawyer of a detained person of the date and time of court sessions at which a decision was to be taken concerning prolongation of detention on remand, or an appeal against a decision to impose or to prolong detention on remand was to be considered. It was open to the lawyer to attend such sessions.

51. The Court observes that, during the period under consideration, all decisions to prolong the applicant's detention, with one exception, were given at public hearings at which the applicant was present and was legally represented (see paragraph 21 above). He was therefore able to personally support his applications for release.

As regards the remaining session at which his detention was prolonged, the Court notes that the applicant has not advanced any evidence that would establish that the authorities departed from the general rule and failed to summon his lawyer so to enable him to participate and to ensure respect for equality of arms in those proceedings. In this connection the Court reiterates that in cases where characteristics pertaining to the applicant's personality and level of maturity and reliability are of importance in deciding on his dangerousness, Article 5 § 4 requires an oral hearing in the context of an adversarial procedure involving legal representation (see *Waite v. the United Kingdom*, no. 53236/99, § 59, 10 December 2002). On the basis of the material before it the Court considers, however, that in the present case the questions of assessment of the applicant's character or mental state did not arise and that his personal attendance at all of the sessions at which his detention on remand had been prolonged was therefore not required.

52. In view of the above, the Court is of the opinion that the proceedings in which the prolongation of his detention was examined satisfied the requirements of Article 5 § 4 (see *Telecki v. Poland*, (dec.) cited above and *Kozimor v. Poland*, no. 10816/02, § 41, 12 April 2007).

53. It follows that this complaint must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

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

54. The applicant complained under Article 6 § 1 of the Convention that the length of the criminal proceedings had exceeded a "reasonable time" within the meaning of this provision and that he had not had a "fair trial".

55. However, pursuant to Article 35 § 1 of the Convention:

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law..."

56. As regards the complaint about the unreasonable length of the proceedings, the Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic courts.

57. It further observes that, pursuant to section 18 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act"), it was open to an applicant whose case was pending before the Court to lodge, within six months from 17 September 2004, a complaint about the unreasonable length of the proceedings with the relevant domestic court, provided that his application to the Court had been lodged in the course of the impugned proceedings and had not yet been declared admissible. The applicant in the present case satisfied these requirements.

58. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-V).

59. However, the applicant, despite having been informed by the Registrar of the possibility of lodging a complaint about the length of the proceedings under the 2004 Act, has chosen not to avail himself of this remedy. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

60. With regard to the applicant's assertion that the proceedings in his case were unfair, the Court notes that it is not clear whether the applicant lodged a cassation appeal with the Supreme Court. However, even assuming that the applicant had exhausted domestic remedies, the Court reiterates that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

61. The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing. Assessing the criminal proceedings against the applicant as a whole, it finds no indication that they were conducted unfairly.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 25,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

64. The Government considered that the claim was exorbitant and unsubstantiated.

65. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant, who was represented before the Court by a lawyer, did not submit any claim for the costs and expenses incurred before the domestic courts or before the Court.

C. Default interest

67. 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 applicant's detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys 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 16 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President