



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

FOURTH SECTION

CASE OF PISARKIEWICZ v. POLAND

(Application no. 18967/02)

JUDGMENT

STRASBOURG

22 January 2008

FINAL

22/04/2008

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 Pisarkiewicz v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Lech Garlicki,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 4 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 18967/02) 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 Pisarkiewicz (“the applicant”), on 1 August 2001.

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

3. On 17 October 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the applicant’s pre-trial detention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 31 March 2005 the applicant had expressed a wish to have – in the event of his death – the proceedings in the case continued by his partner Ms Ewa Kocik. After the applicant’s death, on 21 February 2007, Ms Ewa Kocik informed the Court’s Registry that she wished to continue the proceedings before the Court in her partner’s stead. Ms Ewa Kocik is represented by Mr B. Pruszyński, a lawyer practising in Łódź.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1957 and lived in Łódź, Poland.

6. On 14 June 1998 the applicant was arrested on suspicion of attempted murder.

7. On 15 June 1998 the Łódź District Court (*Sąd Rejonowy*) remanded the applicant in custody until 14 September 1998. The court notes that the applicant was suspected of having committed a serious offence and that there was strong evidence against him. There was also the risk that he might attempt to intimidate witnesses, abscond or go into hiding. The court also stressed the likelihood that a heavy penalty would be imposed on him.

8. On 24 June 1998 the Łódź District Prosecutor (*Prokurator Rejonowy*) dismissed the applicant's request for release. The decision was upheld by the Łódź Regional Prosecutor (*Prokurator Okręgowy*) on 7 July 1998. The prosecutor relied on the fact that the applicant, shortly before his arrest, had been wanted by the police in another case and that he had no permanent place of residence.

9. The applicant's detention was subsequently extended pending trial several times by the Łódź Regional Court. Each time, the court repeated the reasons previously given for the applicant's detention and, further, relied on the need to take expert evidence. The court requested that an expert opinion be prepared by the end of November 1998.

10. On 18 December 1998 the Łódź District Prosecutor indicted the applicant for attempted murder.

11. On 2 June 1999 the trial began, the bill of indictment was read and the court began hearing statements from the applicant. In the course of giving explanations the applicant felt unwell and the hearing was adjourned.

12. The applicant's state of health did not prevent him from participating in the proceedings. The next hearing was held on 2 September 1999. Subsequent hearings were held at regular intervals ranging from one to four months. Several hearings were adjourned for different reasons, such as the absence of one of the judges, the need to examine the victim's place of residence and to request expert opinions on biological and chemical examination of tracks.

13. On 5 June 2000 the Łódź Regional Court (*Sąd Okręgowy*) convicted the applicant of attempted murder and sentenced him to 12 years' imprisonment. The applicant appealed on 15 September 2000.

14. On 22 January 2001 the Łódź Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case to the prosecutor for further investigation. The applicant remained in custody.

15. On 30 March 2001 the prosecutor refused an application for release by the applicant. He found that there were no reasons for releasing him.

16. The applicant's detention was extended by the Regional Court on 23 March, 22 June, 17 August and 16 November 2001. Appeals by the applicant against those decisions, and requests for release, were dismissed.

17. On 6 July 2001 the prosecutor lodged a new bill of indictment with the Łódź Regional Court and accused the applicant of attempted murder.

18. The Regional Court held five hearings at regular intervals.

19. On 30 January 2002 the Łódź Regional Court convicted the applicant as charged and sentenced him to 10 years' imprisonment.

20. On 22 October 2002 the Łódź Court of Appeal upheld the first-instance judgment.

21. On 12 December 2002 the applicant's officially appointed lawyer refused to lodge a cassation appeal on his behalf because he had found no grounds for doing so.

22. The applicant died on 6 April 2006. On 30 January 2007 the Government informed the Court that the applicant had died nearly 7 months before the application was communicated to the Government. Furthermore, the Government requested the Court to adjourn the examination of the application until the applicant's successors declared whether they intended to pursue the application. The Court requested Ewa Kocik, the applicant's life partner, mentioned as his successor before the Court in his letter of 31 March 2005, to submit information as to whether she wished to continue the proceedings in her partner's stead. On 21 February 2007 Ewa Kocik informed the Court that she wished to continue the proceedings before the Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "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, §§ 42-46, 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

24. The applicant complained that the length of his pre-trial detention had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, 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."

A. Admissibility

25. The Court notes at the outset that the applicant died after the introduction of his application. The Court was informed of this fact only after notice had been given of the application to the Polish Government (see paragraph 22 above). Subsequently, on 21 February 2007 his life partner Ewa Kocik informed the Court that she wished to pursue the application introduced by her partner.

1. *The Government's objection ratione personae*

26. The respondent Government submitted that the application should be declared incompatible *ratione personae* with the Convention. In their view, the applicant's partner had no legitimate interest in pursuing the application. They referred to the fact that during the applicant's detention his relationship with his life partner had deteriorated, and that this had resulted in a division of their joint property.

27. They further maintained that, under the national law, life partners were not counted as statutory heirs and that E.K. might not be considered as the applicant's legal successor.

28. Finally, the Government disputed the interest of the partner in conducting further proceedings and argued that due to its nature the claim was not transferable. The complaint by its very nature was closely linked with the applicant personally. Therefore, the Government maintained that neither the applicant's heirs nor his life partner could claim to have a sufficient legal interest to justify their claim to proceed with the further examination of the application on their own behalf.

29. The applicant's partner submitted that being the applicant's life partner for many years and the mother of his son she developed strong emotional ties with him. She observed that she was authorised by the applicant to continue proceedings before the Court in case of his death. She maintained that the lengthy detention of her life partner had had a negative impact on her private life and resulted in prolonged moral suffering. Furthermore, she submitted that the detention of her life partner had reduced her income and her financial situation had thereby deteriorated.

2. *The Court's assessment*

30. The Court observes that in various cases in which an applicant has died in the course of the Convention proceedings, including cases raising length of pre-trial detention complaints, it has taken into account the statements of the applicant's heirs or of close family members expressing their wish to pursue the application (see, among other authorities, *Jėčius v. Lithuania*, no. 34578/97, § 41, 31 July 2000; *Kalló v. Hungary*, no. 30081/02, § 24, 11 April 2006, and *Bitiyeva and X. v. Russia*, no. 57953/00, § 92, 21 June 2007).

31. The Court reiterates that when an applicant dies during the proceedings, the widow of the applicant has a legitimate interest which justifies the continuation of the examination of the case (see, for example, *Lukanov v. Bulgaria*, judgment of 20 March 1997, and *Sadik v. Greece*, judgment of 15 November 1996).

32. The Court thus accepts that a person living in a *de facto* marital relationship has a legitimate moral interest in pursuing the application on her partner's behalf and in obtaining a ruling on whether the length of his detention had infringed Convention rights. The Court notes that the applicant's contact with his partner and their son had diminished considerably because of the lengthy pre-trial detention and that, by the nature of things, their separation resulting from his detention was capable of affecting significantly her private and family life.

33. Accordingly, the late applicant's life partner has standing to continue the proceedings before the Court in the applicant's stead, and the Government's preliminary objection should be dismissed.

3. Conclusion as to admissibility

34. As to the substance of the complaint, the Court considers that the application 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

35. The applicant and the Government agreed that the detention lasted from 14 June 1998 to 5 June 2000 and from 22 January 2001 to 30 January 2002. Accordingly, the period to be considered lasted 3 years.

2. The parties' submissions

(a) The applicant

36. The applicant referred to the length of the proceedings as the principal cause of an excessively lengthy detention. He argued that the length of the proceedings had not been caused by him and stressed that the necessity to hear numerous witnesses and experts did not constitute a sufficient reason for such lengthy detention.

(b) The Government

37. The Government considered that the length of the applicant's pre-trial detention satisfied the requirements of Article 5 § 3, in particular as

his pre-trial detention had been duly justified and that during the entire period the authorities had given relevant and sufficient reasons for extending it.

38. They also argued that the applicant's detention served the purpose of ensuring the proper conduct of the investigation, as there had been a risk that he would obstruct the proceedings and intimidate witnesses. Furthermore, they argued that his detention had been justified by the risk of the applicant's absconding or going into hiding.

39. They also maintained that during the proceedings additional circumstances had come to light which justified the continuation of the applicant's detention.

40. They further pointed out that the applicant's detention had been reviewed at regular intervals. On each occasion the decisions and the applicant's appeals against the decisions had been reasoned in a sufficient and relevant manner.

41. With regard to the conduct of the domestic authorities the Government agreed with the Court's assessment in the partial decision of 17 October 2006 that the proceedings in all instances had progressed at an acceptable pace. The courts had heard numerous witnesses. Hearings had been scheduled at regular intervals. Except for a delay in the initial stage of the proceedings, there had been no substantial periods of inactivity for which the domestic authorities could be held responsible.

3. The Court's assessment

(a) General principles

42. 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, have been stated in a number of its previous judgements (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).

(b) Application of the above principles in the present case

43. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the likelihood that a heavy sentence would be imposed on him, (3) the need to ensure the proper conduct of the proceedings in view of the risk that he might intimidate witnesses and (4) the risk of the applicant's absconding or going into hiding.

44. The Court accepts that the suspicion that the applicant had committed the offence might initially justify his detention. However, with

the passage of time, this ground became less relevant and cannot justify the entire period of three years during which the most serious preventive measure against the applicant had been imposed (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006).

45. Moreover, the authorities relied on the likelihood that a heavy sentence would be imposed on the applicant given the serious nature of the offence 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 reoffending (see paragraph 7 above). However, the Court has repeatedly held that the seriousness of the charges alone cannot serve to justify long periods of detention (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

46. As regards the risk that the applicant would intimidate witnesses, the Court is not persuaded that it constituted a valid ground for the entire length of the applicant's pre-trial detention. Firstly, it notes that the Łódź District Court, when originally remanding the applicant in custody, referred to the risk that the applicant would intimidate witnesses only in general and in the context of his criminal past. Secondly, the Court notes that in the other relevant decisions of the judicial authorities no specific substantiation of the risk that the applicant would intimidate witnesses emerged. In the absence of any other factor capable of showing that the risk relied on actually existed, the Court cannot accept that argument.

47. Moreover, as regards the authorities' reliance on the risk of the applicant's absconding or going into hiding, the Court observes that throughout the entire relevant period the judicial authorities based their findings on the fact that the applicant, shortly before his arrest, had been wanted by the police in another case and that he had no permanent place of residence. The Court agrees that, assuming that the applicant had been wanted in a different case and that he had no place of residence, this factor justified keeping him in custody in the initial stages of the proceedings. However, the Court considers that that ground gradually lost its force and relevance as the proceedings progressed. In particular, given the absence of any further attempt on the part of the applicant to obstruct the proceedings, it is difficult to accept that this single incident could justify the conclusion that the risk of his going into hiding persisted during the entire period that he spent in custody (see *Harazin v. Poland*, no. 38227/02, § 42, 10 January 2006).

48. It is true that the applicant was detained on charges of attempted murder but he was believed to have acted without accomplices. 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 it would undoubtedly have done if the proceedings had concerned organised crime (see *Celejewski v. Poland*,

no. 17584/04, § 37, 4 May 2006, and *Dudek v. Poland*, no. 633/03, § 36, 4 May 2006).

49. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” or “sufficient” to justify the applicant’s being kept in detention for three years. In these circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 150,000 Polish zlotys (PLN) (equivalent to 54,000 euros (EUR)) in respect of non-pecuniary damage.

53. The Government asked the Court to rule that a finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to reject the just satisfaction claim as exorbitant.

54. The Court accepts that the applicant may have suffered some non-pecuniary damage as a result of the protracted period of detention, which is not sufficiently compensated by the finding of a violation of the Convention. In the circumstances of this particular case and deciding on an equitable basis, it awards the applicant 1,500 euros under the head of non-pecuniary damage.

B. Costs and expenses

55. The applicant’s lawyer claimed costs and expenses of an unspecified amount in respect of the proceedings before the Court. However, the Court observes that he failed to produce any documents in support of the claim. In those circumstances, the Court rejects the claim for costs and expenses (see, *Adamiak v. Poland*, no. 20758/03, § 49, 19 December 2006).

C. Default interest

56. 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 Mrs Ewa Kocik, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred 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 22 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President