



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

FOURTH SECTION

CASE OF KUBIK v. POLAND

(Application no. 12848/03)

JUDGMENT

STRASBOURG

29 January 2008

FINAL

29/04/2008

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 Kubik v. Poland,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 12848/03) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Piotr Kubik (“the applicant”), on 24 March 2003.

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

3. On 7 April 2006 the President of the Fourth Section decided to give notice of 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 1967 and lives in Ziębice.

5. On 23 January 2001 the applicant was arrested by the police on suspicion of having committed several burglaries.

6. On 26 January 2001 the Ząbkowice Śląskie District Court (*Sąd Rejonowy*) ordered that the applicant be remanded in custody in view of the reasonable suspicion that he had committed the offences in question. It further considered that there was a fear that he would induce witnesses to

give false testimony or would otherwise obstruct the proper course of the proceedings. It also stressed that a heavy penalty might be imposed on him.

7. On 15 February 2001, following an appeal by the applicant, the Świdnica Regional Court (*Sąd Okręgowy*) upheld that decision.

8. His further appeals against decisions extending his detention and all his subsequent, repeated applications for release were also unsuccessful. In his applications and appeals, he maintained that, given his bad health, detention was putting a severe strain on him. He also relied on his family's situation.

9. On 20 February 2001 the Ząbkowice Śląskie District Prosecutor (*Prokurator Rejonowy*) refused the applicant's motion for release as unsubstantiated. His appeal against the decision was to no avail.

10. On 22 March 2001 the applicant was indicted before the Ząbkowice Śląskie District Court. He was charged with fifteen counts of attempted or actual burglary and three counts of receiving stolen goods. The bill of indictment concerned four defendants. In all, fifty-two charges were brought against them. The prosecution asked the court to hear evidence from some forty-seven witnesses.

11. On 23 March 2001 the applicant lodged with the Ząbkowice Śląskie District Court an application for release. He relied on his family situation.

12. On 26 March 2001 the Ząbkowice Śląskie District Court refused the applicant's application. The court stated that the reasons for his detention were still valid and that there was a fear that the applicant would attempt to influence witnesses or co-defendants. It referred to the likelihood that a severe penalty would be imposed on the applicant, as he had been charged with an offence attracting a statutory maximum sentence of at least 8 years' imprisonment. The court did not accept the applicant's argument that since the date of his arrest his children had been living below the poverty line. It observed that the applicant's wife had a job and a steady income.

13. On 10 April 2001 the Ząbkowice Śląskie District Court asked the director of the detention centre where the applicant was being held for an opinion concerning the applicant's state of health.

14. On 17 April 2001 the applicant lodged a motion to hear evidence from seven witnesses.

15. On 18 April 2001 the authorities of the Kłodzko Detention Centre stated that the applicant could be held in detention and that his detention did not impose any threat to his health.

16. On 19 April 2001 the Ząbkowice Śląskie District Court extended the applicant's detention until 23 July 2001. The court gave the following reasons for its decision:

“The reasons for his [the applicant's] detention are still valid. There is still a fear that he will attempt to influence [witnesses or co-defendants]; in addition there is a likelihood that a severe penalty will be imposed on the [applicant], because he has been charged with an offence for which he may be liable to a statutory maximum

sentence of at least 8 years' imprisonment. Special reasons to the contrary, as referred to in Article 259 of the CCP [Code of Criminal Procedure], have not been found in the case. The possibility of applying another preventive measure could be reconsidered when information from the Kłodzko Detention Centre on his [the applicant's] health has been obtained".

17. On 11 May 2001 the Świdnica Regional Court, upon the applicant's appeal, upheld the decision of 19 April 2001. It repeated the grounds previously given for the applicant's detention. It stated that according to the information obtained from the Deputy Director of the Kłodzko Detention Centre the applicant had been examined by a doctor and would be examined in the near future by a urologist. It further pointed out that the applicant's health was not an impediment to his continued detention.

18. During the court proceedings the authorities extended the applicant's detention on many occasions.

19. The relevant decisions were given on the following dates.

20. On 17 July 2001 the Ząbkowice Śląskie District Court extended the applicant's detention until 23 October 2001. The court gave the following reasons for its decision:

"The reasons for his [the applicant's] detention are still valid; at the present stage of the criminal proceedings, and taking into account the attitude of [the applicant] and the evidence obtained, there still exists a justified fear that [the applicant] may, in view of the likelihood that a severe penalty will be imposed on him, attempt to obstruct the proper course of proceedings by unlawful means, *inter alia*, by attempts to induce [witnesses or co-defendants] to give false testimony; taking into consideration that none of the grounds for release, as referred to in Article 259 of the CCP [Code of Criminal Procedure], are present in the case and that any other less severe preventive measure will not guarantee the proper conduct of the proceedings, the court has decided as above."

21. A subsequent decision was taken by the Ząbkowice Śląskie District Court on 15 October 2001. It extended the applicant's detention until 23 January 2002. On 22 January 2002 his detention was extended until 23 April 2002. The next decision was given on 22 April 2002, extending the applicant's detention until 23 July 2002. It was followed by a decision of 19 July 2002 whereby the Ząbkowice Śląskie District Court extended his detention until 23 October 2002. In all those decisions, the Ząbkowice Śląskie District Court relied on the grounds previously given for the applicant's detention and repeated the wording of its decision given on 17 July 2001.

22. It appears that during the first-instance proceedings the Ząbkowice Śląskie District Court held 13 hearings, two of which had to be cancelled because of the absence of a defence lawyer and witnesses. At the hearing held on 25 February 2002 the court heard evidence from twenty-three witnesses.

23. All the applicant's appeals and applications for release lodged in the meantime were to no avail.

24. In the meantime, on 14 August 2001 the Świdnica Regional Court, having regard to a medical certificate dated 6 August 2001, dismissed the applicant's appeal against the decision of the Ząbkowice Śląskie District Court of 17 July 2001. The court repeated the grounds given in the decision of the first-instance court. It also stated that the applicant had access to appropriate medical care in detention.

25. On 12 February 2002, the Świdnica Regional Court dismissed the applicant's request for release on health grounds, finding his complaints about his deteriorating health to be unsubstantiated. It stated that his medical records had been examined and his allegations did not find any support in the information contained therein.

26. On 20 March 2002 the Ząbkowice Śląskie District Court again dismissed the applicant's request for release on health grounds. It emphasised that on numerous occasions the applicant's health had been examined and it was found to be compatible with his continued detention.

27. On 6 September 2002 the Ząbkowice Śląskie District Court gave judgment. The applicant was convicted as charged. He was sentenced to 6 years' imprisonment. The applicant appealed. His detention was subsequently extended on two occasions.

28. On 22 October 2002 the Ząbkowice Śląskie District Court extended the applicant's detention until 23 January 2003. It relied on the grounds previously given.

29. On 16 January 2003 the Świdnica Regional Court extended the applicant's detention until 23 April 2003.

30. On 4 March 2003 the Świdnica Regional Court quashed the first-instance judgment and remitted the case.

31. On 18 April 2003 the Ząbkowice Śląskie District Court decided to extend the applicant's detention until 23 July 2003. It relied on the grounds previously given and the need to re-examine the evidence.

32. On 27 May and 17 June 2003 the Ząbkowice Śląskie District Court held hearings.

33. On 8 July 2003 the Ząbkowice Śląskie District Court convicted the applicant as charged. He was sentenced to 6 years' imprisonment. The applicant appealed.

34. On 18 July 2003 the Ząbkowice Śląskie District Court further extended the applicant's detention until 23 October 2003. The next decision was given on 22 October 2003 whereby the court extended his detention until 23 January 2004. The court reiterated the grounds originally given for his detention.

35. On 23 December 2003 the Świdnica Regional Court heard the appeal, quashed the first-instance judgment and remitted the case.

36. On the same day the Świdnica Regional Court released the applicant from detention.

37. On 1 March, 23 March and 20 April 2004 the Ząbkowice Śląskie District Court held hearings.

38. On 11 May 2004 the Ząbkowice Śląskie District Court gave judgment. It again convicted the applicant as originally charged and sentenced him to 6 years' imprisonment.

39. On 9 June 2004 the applicant appealed.

40. On 14 January and 10 May 2005 the Świdnica Regional Court held hearings on the applicant's appeal.

41. On 10 May 2005 the Świdnica Regional Court gave judgment and reduced his sentence to 4 years' imprisonment.

42. The applicant did not lodge a cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

43. The relevant domestic law and practice concerning the imposition of detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other, so-called “preventive measures” (*środki zapobiegawcze*) are described 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 3 OF THE CONVENTION

44. The applicant complained under Article 3 of the Convention that he had not received adequate medical treatment while in detention.

Article 3 of the Convention provides:

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

45. The Court recalls that this provision cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite

medical assistance (*Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-X).

On the basis of the available material, the Court finds no indication of any shortcomings on the part of the authorities in providing adequate medical treatment to the applicant. Consequently, it cannot be said that the applicant was subjected to ill-treatment that attained a sufficient level of severity to come within the scope of Article 3 of the Convention.

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

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

47. The applicant complained that the length of his detention on remand had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads:

“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.”

48. The Government contested that argument.

A. Admissibility

49. 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*

50. The applicant's detention started on 23 January 2001, when he was arrested on suspicion of having committed several burglaries. On 6 September 2002 the Ząbkowice Śląskie District Court convicted him of several counts of burglary, attempted burglary and receiving stolen goods (see paragraphs 5, 6 and 27 above). From that date he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a) and, consequently, that period of his detention falls outside the scope of Article 5 § 3 (see, among many other authorities, *Kudła*, cited above, § 104).

On 4 March 2003 the Świdnica Regional Court quashed the applicant's conviction. Following that date his detention was again covered by

Article 5 § 3. It continued until 8 July 2003 when the applicant was again convicted (see paragraph 33 above).

51. Accordingly, the period to be taken into consideration under Article 5 § 3 lasted one year, eleven months and seventeen days.

2. The parties' submissions

(a) The applicant

52. The applicant maintained that the length of his detention had been unreasonable, and thus in breach of Article 5 § 3 of the Convention. He submitted that his detention had in effect been a prison sentence without the possibility of applying for parole.

(b) The Government

53. The Government submitted that the applicant's detention was not unreasonably lengthy. They argued that there had been valid reasons for holding him in detention for the entire period in question. The domestic courts had on each occasion given relevant and sufficient reasons justifying the applicant's detention and had regularly reviewed it.

54. The applicant's detention had been justified by the strong suspicion that he had committed the offences with which he had been charged and the fact that the seriousness of the charges against him and the scale of the criminal activity involved attracted a heavy sentence. In this connection, the Government submitted that the applicant was charged with the commission of several burglaries in which he had played a leading role. They maintained that the domestic courts had also relied on the risk that the applicant might obstruct the proper conduct of the proceedings, in particular by tampering with evidence.

55. The Government further justified the length of the applicant's detention by the complexity of the case, which stemmed from the number of defendants and offences. The complexity was also shown by the volume of evidence and the fact that the trial court had had to obtain several expert opinions. They argued that his detention had been based on the grounds specified in the Code of Criminal Procedure. They further maintained that his medical records had been examined several times and his detention had not exposed his health to any risk.

3. The Court's assessment

(a) General principles

56. 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*, cited above; and *McKay v. the United Kingdom*, [GC], no. 543/03, §§ 41-44).

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

57. The Court observes that, as the Government maintained, the applicant's detention was indeed reviewed by the courts at regular intervals. However, in their decisions extending the applicant's detention, they limited themselves exclusively to reiterating the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case (see paragraphs 12, 16, 20 and 21 above). In addition to the reasonable suspicion against the applicant, they relied principally on two grounds: (1) the serious nature of the offence with which he had been charged and the likely severity of his sentence; and (2) the risk that the applicant might tamper with evidence, in particular intimidate witnesses.

58. The Court accepts that the strong suspicion of the applicant having committed a serious offence could initially warrant his detention.

59. However, with the passage of time, that ground became less and less relevant. The Court must then establish whether the other grounds adduced by the courts were "relevant" and "sufficient" (see, *Kudła*, cited above, § 111).

60. In this connection, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending. However, the seriousness of the charges cannot by itself justify long periods of pre-trial detention (see, for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001), which in this case amounted to nearly two years.

61. The Court is not persuaded by the Government's argument that the risk that the applicant might tamper with evidence constituted a valid ground for the entire length of the applicant's pre-trial detention. Although the Government have argued that the applicant had played a leading role in the commission of the offences with which he had been charged, the domestic courts did not refer to this in their decisions; nor did they give any indications as to why they believed that the applicant, if released, might obstruct the proceedings. The Court cannot therefore accept that ground as a justification for holding the applicant in custody for the entire period.

62. Moreover, the Court notes that the reasons relied upon by the domestic courts in their decisions to remand the applicant in custody and to prolong his detention were limited to paraphrasing the reasons for detention provided for by the Code of Criminal Procedure, without explaining how they applied in the applicant's case. Firstly, the Court observes that the Ząbkowice Śląskie District Court, when extending the applicant's detention, only repeated the wording of the decisions previously given (see paragraphs 12, 16, 20 and 21 above). Secondly, the Court notes with concern that the Ząbkowice Śląskie District Court limited itself to reiterating the relevant

provision of the Code of Criminal Procedure. Accordingly, the Court does not consider that the instant case can be distinguished from *Castravet v. Moldova*, (no. 23393/05, § 34, 13 March 2007) in what concerns the relevance and sufficiency of reasons for detention.

63. It is true that, as the Government submitted, the case was of considerable complexity given the number of defendants and offences as well as the volume of evidence. However, it would appear that the courts never relied on this as a factor militating against the applicant's release.

64. The Court recalls that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (*Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004, and *Castravet v. Moldova*, § 33, cited above). In this case, the Court finds that the grounds given by the domestic authorities were not “relevant” and “sufficient” to justify the applicant's being kept in detention for nearly two years.

In these circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence.

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

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

66. The applicant complained in general terms under Article 6 §§ 1 and 3 (c) of the Convention about the outcome of the criminal proceedings against him, maintaining that the courts had wrongly assessed the evidence and that his defence rights had not been respected.

67. However, the Court notes that the applicant failed to lodge a cassation appeal against the judgment of the Świdnica Regional Court given on 10 May 2005.

68. Accordingly, these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government considered this claim exorbitant. They asked the Court to rule that a finding of a violation would constitute in itself sufficient just satisfaction.

72. The Court, making its assessment on an equitable basis, awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

73. The applicant did not claim reimbursement of the costs and expenses incurred before the domestic courts and the Court.

C. Default interest

74. 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 length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at a 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 29 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President