



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

FOURTH SECTION

**CASE OF PYRAK v. POLAND**

*(Application no. 54476/00)*

JUDGMENT

STRASBOURG

12 February 2008

**FINAL**

*12/05/2008*

*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 Pyrak v. Poland,**

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

Nicolas Bratza, *President*,

Giovanni Bonello,

Kristaq Traja,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 22 January 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 54476/00) 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 Bogusław Pyrak (“the applicant”), on 7 April 1999.

2. The applicant was represented by Mr A. Rzepliński, of the Polish Helsinki Foundation of Human Rights. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that the length of his detention had been excessive. He further claimed that his appeal against the prolongation of his pre-trial detention had not been examined “speedily”.

4. On 20 February 2007 the Court declared the application partly inadmissible and decided to communicate the complaints under Article 5 § 3 and § 4 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**

5. The applicant, Mr Bogusław Pyrak, is a Polish national who was born in 1940 and lives in Brochów, Poland.

6. The applicant was the president of the Agricultural Co-operative in Troszyn Nowy. In 1993, upon being notified of the commission of an offence, the Gostynin District Prosecutor (*Prokurator Rejonowy*) opened an investigation regarding the alleged embezzlement of the co-operative's funds.

7. On 22 April 1994 the applicant was subjected to police supervision and bail.

8. On 11 July 1995 the Gostynin District Prosecutor lodged a bill of indictment with the Płock Regional Court (*Sąd Okręgowy*). The applicant was indicted on charges of embezzlement of the co-operative's property in the amount of approximately 80,000 PLN [approx. EUR 20,000].

9. On 5 January 1996 the Płock Regional Court returned the case to the prosecution authorities in order to rectify omissions in the investigation. The prosecutor appealed. On 29 February 1996 the Warsaw Court of Appeal (*Sąd Apelacyjny*) quashed this decision and ordered the Regional Court to proceed with the case.

10. The first hearing was held on 3 June 1996.

11. Due to the fact that correspondence sent to the applicant was returned indicating that the applicant had left his place of abode for an indefinite period of time, on 10 February 1997 the Regional Court ordered that the applicant be detained on remand. The court found that the applicant's detention was necessary in order to ensure his appearance in court, as he had failed to appear at hearings scheduled for 9, 17, 22 and 27 January 1997. The decision did not specify the period of the applicant's detention.

12. The applicant appealed. He maintained that he had informed the court that he would not be able to attend hearings and that his absence had been caused by an operation which he had had to undergo. On 4 March 1997 the Warsaw Court of Appeal quashed the decision of the Regional Court and remitted the case for reconsideration. The Court of Appeal observed that the applicant had been hospitalised between 10 and 17 February 1997. He had had a myocardial infarction and had undergone heart surgery. It further held that in view of the applicant's state of health, the Regional Court should reconsider its decision to place him in detention.

13. On 7 April 1997 A.M., an expert cardiologist, submitted his medical report. He had examined the applicant twice and concluded that the applicant could participate in hearings. However, according to A.M. placing the applicant in pre-trial detention could aggravate his state of health and therefore such a measure should only be applied under medical supervision.

14. On 24 April 1997 the court obtained a medical report from another doctor - J.K. (a specialist in forensic pathology and anatomical pathology). The expert considered that it was highly unlikely that the applicant had had a myocardial infarction in February of that year.

15. On 5 June 1997 the Płock Regional Court ordered that the applicant be remanded in custody for a period of six months because he had obstructed the proceedings. The court further refused to accept a personal surety submitted by a member of the upper house of the Polish Parliament Senator J.S. The applicant appealed. He stressed that he had complied with the requirements of police supervision and had reported every week to the police station in Ilawa. He had also paid the bail. On 4 July 1997 the Court of Appeal quashed that decision. It found that keeping the applicant in custody was not necessary to ensure the proper course of the proceedings. Notwithstanding the seriousness of the applicant's heart condition, the Regional Court had failed to consider the appropriateness of applying the other preventive measures already imposed on the applicant i.e. bail and police supervision. In addition, at least since 10 February 1997 there had been no progress in the case, as the proceedings so far had been limited to establishing whether there were valid reasons for placing the applicant in detention.

16. At the hearing on 6 January 1998 the applicant informed the Regional Court that he did not feel well. He was subsequently examined by the court doctor M.W. who confirmed that the applicant was not able to participate in the hearing. The court heard evidence from another doctor, J.K., (who had already delivered an opinion on the applicant's state of health on 22 April 1997). J.K. considered that the applicant could participate in the hearing.

17. At the hearing held on 7 January 1998 the applicant presented a note signed by yet another doctor, W.W., ordering him to undergo a further medical examination in a hospital. On the same day the Regional Court ordered the applicant's detention for 3 weeks. He was to be placed in a prison hospital in Łódź and medically examined. The court held that the applicant was attempting to obstruct the trial. In particular, in view of the expert's opinion of 22 April 1997 the surgery performed on the applicant had not been necessary. There was also a risk that the applicant might again undergo unnecessary surgery, which would only prolong the trial. The Warsaw Court of Appeal upheld that decision on 27 January 1998.

18. Subsequently, the applicant underwent a medical examination in the prison hospital. On 5 February 1998 he was informed by the prison doctors that he was suffering from duodenal ulcers and a stomach inflammation.

19. The applicant's detention was prolonged on 29 January, 27 February, 29 April and 29 July 1998. The court stated that the reasons previously given for applying pre-trial detention were still valid. In particular, the court stated that no reliable documentation had been presented confirming the applicant's health problems. In addition, the applicant seemed to be contributing to the prolongation of the proceedings. The applicant's appeals against those decisions were dismissed. The

decision of the Warsaw Court of Appeal of 13 February 1998 did not contain any reasons.

20. At hearings held on 23 and 27 February 1998 the applicant complained that he felt very ill. On the latter date he was led into the courtroom by police officers, he was shaking and could not answer the court's questions. The court dismissed the applicant's motion for release. It had regard to a medical opinion confirming the applicant's ability to participate in the hearing and again prolonged his detention.

21. During the hearing held on 12 March 1998 the court began to take evidence from a witness. However the hearing could not be continued because of the applicant's state of health.

22. On 6 May 1998 an expert report was submitted to the court. According to that report, the applicant's health was not an obstacle to his detention in a regular detention centre.

23. On 29 July 1998 the applicant submitted a personal surety signed by J.K., an opposition leader and a member of the Polish Parliament.

24. On 8 August 1998 the applicant asked the Plock Regional Court to be released from detention. He also submitted personal sureties signed by W.B., the former Minister of Foreign Affairs, and M.E., a medical doctor and the commander of the Warsaw Ghetto Uprising of 1943.

25. The Regional Court refused the applicant's requests for release upon personal sureties.

26. On 30 October 1998 the Regional Court prolonged the applicant's detention until 31 December 1998. The court found that the applicant had persisted in submitting motions which contributed to the prolongation of the proceedings. At the same time he had been informing the prison authorities about his various health problems in order to obtain a medical certificate confirming that he should be released from prison. On 3 November 1998 the applicant appealed against that decision.

27. On 13 November 1998 the Court of Appeal decided that in order to consider the applicant's appeal against the decision of 30 October 1998 it needed an expert opinion on the applicant's state health. It would appear that the opinion was delivered on 28 December 1998.

28. On 28 December 1998 the Regional Court again prolonged the applicant's detention. On 15 January 1999 the Court of Appeal upheld the last decision. It also decided not to take cognisance of the merits of the applicant's appeal against the prolongation decision of 30 October 1998 as it would not have served any purpose.

29. On 22 January 1999 the Regional Court convicted the applicant as charged and sentenced him to 2 years and 8 months' imprisonment. It also ordered his release from detention.

30. On 19 April 2000 the Court of Appeal quashed that judgment and remitted the case to the District Prosecutor for a further investigation.

31. On 24 April 2001 the Gostynin District Prosecutor lodged a new bill of indictment with the Płock Regional Court.

32. On 28 November 2005 The Regional Court gave judgment and sentenced the applicant to one year's imprisonment. The prosecutor appealed.

33. On 10 May 2006 the Warsaw Court of Appeal quashed the judgment and remitted the case. It would appear that the proceedings are pending before the first-instance court.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

34. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), 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, §§ 42-46, 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

35. 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 its relevant part, 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 contested that argument.

### **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. Period to be taken into consideration*

38. The period of the applicant's detention to be considered under Article 5 § 3 started on 7 January 1998, when he was arrested on suspicion of embezzlement and ended on 22 January 1999 when the Płock Regional Court convicted him as charged.

39. Accordingly, the period to be taken into consideration amounts to 1 year and 15 days.

#### *2. The parties' submissions*

40. The applicant submitted that he had been kept in detention pending trial for an unjustified period of time. He stressed that the domestic courts had ignored the fact that personal sureties in his case had been given by highly respected and trustworthy persons. In addition, the courts had not given consideration to the use of non-custodial measures.

41. Furthermore, the authorities in their decisions on prolongation of detention had referred only to the applicant's absence at the hearings in January 1997 and no account had been taken of the fact that his absence had been caused by illness.

42. Lastly, the applicant claimed that the domestic courts referred generally to the risk that he might obstruct the proceedings. However, they had not specified which of the medical certificates submitted was untrue and which illnesses had been simulated.

43. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by "relevant" and "sufficient" grounds. These grounds were, in particular, the strong suspicion that the applicant had committed the offences and the genuine risk that he might obstruct the proceedings. Moreover, the Government considered that the case had been complex.

44. The Government further argued that the domestic authorities had shown due diligence, as required in cases against detained persons, and that some delays had been caused by obstacles that could not be attributable to the domestic authorities. The proceedings had been conducted efficiently. In particular, the hearings had been held regularly and at short intervals.

Moreover, the numerous motions lodged by the applicant had contributed to the length of the proceedings and at the same time to the period of the applicant's pre-trial detention.

### 3. *The Court's assessment*

#### (a) **General principles**

45. 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).

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

46. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds, namely (1) the need to secure the proper conduct of the proceedings, (2) the risk that the applicant might go into hiding. As regards the latter, they relied on the fact that the applicant had changed his place of residence and had failed to appear at several hearings.

47. The Court reiterates that Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004 and *Sarban v. Moldova*, no. 3456/05, § 97, 4 October 2005).

48. The Court accepts that the reasonable suspicion against the applicant of having committed a serious offence could initially warrant his detention. Also, the need to secure the proper conduct of the proceedings constituted valid grounds for the applicant's initial detention. However, with the passage of time, those grounds became less relevant and could not justify the entire period of the applicant's detention.

49. The Court observes that in the present case the applicant, a former president of an agricultural co-operative, was 58 years old at the time of his arrest. He did not have a criminal record. In addition, he was charged with a non-violent crime. According to the domestic authorities, the applicant used his various health problems in order to obstruct the trial. They considered that the applicant's behaviour was aimed at prolonging the trial and avoiding criminal responsibility (see paragraphs 17, 19, 26. above).

50. While Article 5 § 3 cannot be read as obliging the national authorities to release a detainee on account of his state of health, the

authorities when deciding whether a person should be released or detained are obliged to consider alternative measures of ensuring his appearance at trial (see *Jabłoński v. Poland*, no. 33492/96, § 82-83, 21 December 2000). In the present case bail and police supervision were imposed on the applicant at the initial stage of the proceedings. After the applicant had failed to appear at several hearings, due to his serious health problems, the authorities considered that pre-trial detention was necessary in order to ensure the proper conduct of the trial (see paragraphs 11 and 12). The trial court refused several petitions for release, although the applicant had produced personal sureties given not just by private individuals, but by two members of the Polish Parliament, the former Minister for Foreign Affairs and the former commander of the Warsaw Ghetto uprising. The authorities did not give consideration to use of other non-preventive measures for ensuring that the applicant would appear for trial. They did not mention why alternative measures would not have secured his presence before the court nor, had the applicant been released, why his trial would not have followed its proper course.

51. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not be considered relevant and sufficient so as to justify the overall period of the applicant's detention.

52. Although, the above finding would normally absolve the Court from assessing whether the proceedings were conducted with special diligence, in the present case the Court cannot but note that even though the applicant was indicted on 11 July 1995, it took the trial court over a year to hold the first hearing (see paragraphs 9 and 10 above). In addition, it is to be noted that on 4 July 1997 the Warsaw Court of Appeal criticised the way in which the Regional Court was conducting the proceedings (see paragraph 15 above).

53. In the circumstances, the Court finds that the authorities failed to act with all due diligence in handling the applicant's case.

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

## II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

55. The applicant complained that his appeal against the prolongation of his arrest of 30 October 1998 was not examined by the Warsaw Court of Appeal until 15 January 1999. He relied on Article 5 § 4 of the Convention, which in its relevant part provides 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.”

56. The Government contested that argument.

## **A. Admissibility**

57. 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*

58. The Court notes at the outset that the applicant's appeal against the decision to prolong his detention of 3 November 1998 was examined by the Court of Appeal only on 15 January 1999 (see paragraphs 26 - 28 above). The period under consideration accordingly lasted 2 months and 2 weeks.

### *2. The parties' submissions*

59. The applicant noted that the authorities had ruled on his appeal against the prolongation of detention after a very substantial delay of two months and two weeks. The fact that he had filed a motion for the judge to step down should not be considered a reason for the failure to examine his application within a reasonable time. He further stressed that, because of the delay in examining his appeal, it had become pointless, since the Regional Court had in the meantime again prolonged his detention.

60. The Government refrained from taking a position on the merits of the complaint. However, they claimed that the applicant had contributed to the delay in the proceedings by filing a motion for the presiding judge to step down.

### *3. The Court's assessment*

61. The Court recalls that Article 5 § 4, in guaranteeing to persons arrested or detained a right to have the lawfulness of their detention reviewed, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and to an order terminating it if proved unlawful (see, for instance, *Baranowski v. Poland* no. 28358/95, § 68, ECHR 2000-III).

62. The finding whether or not the relevant decision was taken "speedily" within the meaning of that provision depends on the particular features of the case. In certain instances the complexity of medical – or other – issues involved in a determination of whether a person should be detained or released can be a factor which may be taken into account when assessing compliance with the Article 5 § 4 requirements. That does not mean, however, that the complexity of a given dossier – even exceptional –

absolves the national authorities from their essential obligation under this provision (see, *mutatis mutandis*, *Baranowski v. Poland* cited above; and *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

63. In that context, the Court also recalls that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see, for instance, *Jabłoński v. Poland* no 33492/96, § 93, 21 December 2000).

64. In the present case the Government suggested that the applicant had contributed to the delay in examining his appeal against the decision of 30 October 1998 as he had lodged a motion for one of the trial judges to step down (see paragraph 60 above).

65. It is true that while the applicant's appeal of 3 November 1998 was pending he had made an application for the judge to step down. In addition, the court needed to obtain a medical opinion on the applicant's state of health (see paragraph 27 above).

66. However, in the Court's view, those circumstances cannot absolve the judicial authorities from conducting the habeas corpus proceedings speedily.

67. Having regard to all the circumstances, the Court considers that the time taken to examine the applicant's request for release, 2 months and 15 days, did not satisfy the speediness requirement of Article 5 § 4.

68. The Court consequently holds that there has been a violation of Article 5 § 4 of the Convention.

### III. 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 20,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government considered that the claim was excessive.

72. The Court considers that the applicant 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 2,500 in respect of non-pecuniary damage.

**B. Costs and expenses**

73. The applicant did not make any claim under this head.

**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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at the date of the settlement;
  - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Nicolas Bratza  
President