



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

FOURTH SECTION

CASE OF PANKIEWICZ v. POLAND
(Application no. 34151/04)

JUDGMENT

STRASBOURG

12 February 2008

FINAL

12/05/2008

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pankiewicz 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,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović, *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. 34151/04) 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 Władysław Pankiewicz (“the applicant”), on 1 September 2004.

2. The applicant, who had been granted legal aid, was represented by Ms B. Matysek-Szewerniak, a lawyer practising in Legnica. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wolasiewicz of the Ministry for Foreign Affairs.

3. The applicant alleged in particular that he had been unlawfully detained in a regular detention centre pending his transfer to a psychiatric hospital. He further complained about the length of his pre-trial detention.

4. On 9 November 2006 the President of the Fourth Section of the Court 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

5. The applicant was born in 1952 and lives in Lubin.

6. In February 2003 the police instituted an investigation against the applicant. He was suspected of poisoning several pheasants which belonged to his wife's alleged lover. Subsequently, the applicant was also suspected of uttering threats towards his wife and the person with whom she was allegedly in a relationship.

7. On 4 March 2003 the applicant was arrested on suspicion of uttering threats. On 6 March 2003 the Nowa Sól District Court (*Sąd Rejonowy*) heard the applicant and remanded him in custody until 4 June 2003. The court noted that there was a reasonable suspicion that the applicant had committed the offence in question. In addition, the court relied on the risk that he would induce witnesses to give false testimony.

8. On 26 March 2003 the Nowa Sól District Prosecutor obtained information from the psychiatric hospital in Wschowa that the applicant had undergone treatment there.

9. On 25 April 2003 two psychiatrists gave an opinion on the applicant's mental health. They concluded that the applicant had previously been successfully treated in the Cibórz psychiatric hospital and that he was suffering from acute psychotic disorders. He should be placed in a psychiatric hospital for further observation.

10. On 9 May 2003 the prosecutor asked the director of the detention centre where the applicant was detained whether the applicant's stay in custody might endanger his health. The director replied that the applicant was under constant medical care.

11. On 2 June 2003 the District Court ordered the applicant to undergo a six-week psychiatric examination in order to determine whether he could be held criminally responsible in respect of the above-mentioned offence. The court also extended the applicant's detention for three more months. The court referred to the reasons given previously. In addition, it relied on the risk that the applicant might commit yet another offence.

12. On 3 September 2003 the court again extended the applicant's detention until 4 December 2003. The court repeated the grounds given previously. It further stressed that the applicant was undergoing medical observation.

13. The applicant was admitted to a hospital on 12 August 2003 and released on 26 September 2003. On 11 November 2003 two psychiatrists issued a joint medical opinion. They concluded that the applicant suffered from an organic delusional disorder. In view of the fact that there was

a reasonable suspicion that he might commit another crime, they recommended his detention in a psychiatric hospital.

14. On 27 November 2003 the prosecutor lodged a request for discontinuation of the investigation because of the applicant's mental condition. He further requested that the applicant be placed in a psychiatric hospital.

15. On 3 December 2003 the applicant's detention was again extended.

16. On 5 January 2004 the Nowa Sól District Court gave a decision and discontinued the proceedings against the applicant. The court found it established that the applicant had committed the offence in question. However, he should not have been held criminally responsible as he was suffering from an organic delusional disorder. It further referred to the expert's opinion and ordered that the applicant be placed in a psychiatric hospital in Kościan.

17. On 2 March 2004 the court extended the applicant's detention until 4 May 2004. It stressed that the psychiatric hospital had not yet finalised a date for the applicant's admission. In addition, the court considered that this measure was necessary to prevent the applicant from committing another offence.

18. On 26 March 2004 the court ordered that the applicant be placed in a different hospital – the Cibórz Psychiatric Hospital, since the one originally designated was full.

19. The applicant was admitted to the hospital on 30 March 2004 and released on 26 September 2004.

20. On 5 June 2006 the Zielona Góra Regional Court awarded the applicant 17,093 Polish zlotys (PLN) compensation for pecuniary damage and PLN 8,516 as compensation for non-pecuniary damage for unjustified detention. The court relied on the resolution of the Supreme Court of 15 September 1999, according to which the State Treasury was responsible for detention of persons in whose cases proceedings were discontinued due to their mental disorder. However, the sum awarded did not relate to the applicant's detention after 5 January 2004, that is after discontinuation of the proceedings.

21. The applicant appealed, objecting to the amount of compensation granted and the fact that it did not cover the whole period of detention.

22. On 7 September 2006 the Poznań Court of Appeal gave judgment and dismissed the applicant's appeal. The court noted that the applicant's detention had been justified throughout the whole period. However, since the prosecutor had failed to appeal against the first-instance judgment, it could not be amended.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines pre-trial detention as one of the so-called “preventive measures” (*środki zapobiegawcze*).

24. A more detailed rendition of the relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other preventive measures can be found 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).

25. Article 264 § 3 of the Code of Criminal Procedure provides:

“If the proceedings are discontinued by reason of insanity of the accused, preliminary detention may be maintained pending the application of a preventive measure.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

26. The applicant complained that he had been remanded in custody despite being mentally ill. The Court considers that this complaint should be examined under Article 5 § 1 of the Convention, the relevant part of which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...

(e) the lawful detention of ... persons of unsound mind ...”

A. Admissibility

27. The Government submitted that this complaint should be declared incompatible *ratione personae* with the provisions of the Convention. They stressed that the applicant had already been provided with redress amounting to PLN 25,609 as compensation for the pecuniary and non-pecuniary damage resulting from his stay in custody. The decision of the Regional Court had been subsequently upheld by the Court of Appeal on 7 September 2006. Consequently, the applicant had lost his victim status.

28. The applicant replied that it was true that he had received compensation for the unjustified detention. However, the sum awarded had not related to his detention after 5 January 2004, that is after the discontinuation of the proceedings. In particular, it had not covered the period of two months and twenty-five days that he had spent in a regular detention centre pending his admission to a psychiatric hospital. The domestic court had considered this detention justified and therefore the claim for compensation relating to the period after 5 January 2004 manifestly ill-founded.

29. The Court notes that the notion of “victim” within the meaning of Article 34 of the Convention denotes a person directly affected by the act or omission in issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 41 of the Convention. Consequently, a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his “victim” status, unless the national authorities have acknowledged, either expressly or in substance and have afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36).

30. In the present case the applicant received PLN 25,609 as compensation for the pecuniary and non-pecuniary damage resulting from his stay in unjustified custody between 3 March 2003 and 5 January 2004. The authorities further acknowledged that this period of the applicant’s detention had been unlawful. Conversely, they considered that the period of the applicant’s detention after 5 January 2004 had been justified and dismissed the applicant’s claim for compensation in this respect.

31. The Court therefore concludes that the applicant is not a “victim” of the alleged violation as regards his detention before 5 January 2004. It follows that the Government’s objection in this respect is well-founded and this part of the applicant’s complaint must be rejected as incompatible *ratione personae* pursuant to Article 35 §§ 3 and 4 of the Convention.

32. However, as regards his detention after 5 January 2004 the Court notes that it does not appear that the compensation which has in fact been paid to the applicant was based on an acknowledgement, either expressly or in substance, that the applicant’s rights under the Convention have been

disrespected by the authorities. Therefore, it is of the opinion that the compensation at issue had not been sufficient to deprive the applicant of his “victim” status as regards the alleged period of unlawful detention after 5 January 2004.

33. The Court accepts that the applicant can still claim to be a “victim” within the meaning of Article 34 of the Convention with regard to his detention after 5 January 2004.

34. The Court observes that this part of the 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. The applicant’s submissions

35. The applicant stressed that the period of his detention after the proceedings had been discontinued had been unlawful. This situation could not have been justified by the fact that a place in a selected clinic had not been available immediately.

36. He was further of the opinion that his detention after the discontinuation of the criminal proceedings had not been necessary, in particular as his guilt had not been proved. He concluded that there had been a violation of Article 5 § 1 of the Convention.

2. The Government’s submissions

37. The Government replied that the applicant’s detention had been justified and compatible with the provisions of Article 258 of the Code of Criminal Procedure. They stressed that after the discontinuation of the criminal proceedings against the applicant the competent authorities commenced a procedure for selecting the most appropriate hospital for him. He was finally placed in a hospital on 30 March 2004, which was two months and twenty-five days after the court’s decision. In the Government’s opinion there was no delay in the applicant’s admission to a psychiatric hospital. The period of two months and twenty-five days could not be considered excessive. This delay should be regarded as fully acceptable and compatible with the standards worked out by the Court’s case-law.

3. The Court’s assessment

38. The Court reiterates that Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for deprivation of liberty. However, the applicability of one ground does not necessarily preclude that of another; a detention may, depending on the circumstances, be justified

under more than one sub-paragraph (see *Eriksen v. Norway*, judgment of 27 May 1997, *Reports* 1997-III, p. 861, § 76).

39. The Court firstly observes that in the instant case the applicant's deprivation of liberty falls within the scope of Article 5 § 1 (e) (see *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p.1961, § 45, *Mocarska v. Poland*, no. 26917/05, § 42, 6 November 2007).

40. It must further be established whether the applicant's detention in an ordinary detention centre between 5 January 2004 and 30 March 2004 was "in accordance with a procedure prescribed by law" and "lawful" within the meaning of Article 5 § 1 of the Convention. The Convention here refers essentially to national law and states the obligation to conform to the substantive and procedural rules thereof. Reiterating that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Bouamar v. Belgium*, judgment of 29 February 1988, Series A no. 129, p. 21, § 49) the Court accepts the parties' arguments that the applicant's detention during the period under consideration was based on Article 264 § 3 of the Code of Criminal Procedure and was therefore lawful under domestic law.

41. However, for the purposes of Article 5 of the Convention, the lawfulness under domestic law of the applicant's detention is not in itself decisive. It must also be established that his detention during the relevant period was in conformity with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Witold Litwa v. Poland*, no. 26629/95, §§ 72-73, ECHR 2000-III).

42. The Court notes that the length of detention pending transfer to a psychiatric hospital is not specified by any statutory or other provision. Nevertheless, it must determine whether the continuation of detention for almost three months after the proceedings had been discontinued can be regarded as lawful.

43. The Court observes that in the present case the Nowa Sól District Court ordered the applicant's placement in a psychiatric hospital in Kościan. Until 2 March 2004, when the applicant's detention was again extended, the hospital had not yet indicated a date for the applicant's admission. On 26 March 2004 the District Court changed its order and decided that the applicant should be placed in a different hospital - the hospital in Cibórz. Throughout that time the applicant was detained in a regular detention centre, and it is not clear whether he was provided with adequate medical treatment there (see paragraphs 16-19 above).

44. The Court accepts the Government's arguments that it would be unrealistic and too rigid an approach to expect the authorities to ensure that a place is immediately available in a selected psychiatric hospital. However, a reasonable balance must be struck between the competing interests involved. Having regard to the balancing of interests the Court attaches

weight to the fact that the applicant was held in a regular detention centre without the adequate medical facilities. The delay in admission to a psychiatric hospital and thus the beginning of the treatment was obviously harmful to the applicant, in view of the expert's opinions recommending him for psychiatric treatment (see paragraphs 9, 13 and 16 above). In addition, the Court notes that the Government failed to advance any detailed explanation for the delay in the applicant's admission to the hospital.

45. The Court cannot find that, in the circumstances of the present case, a reasonable balance was struck. The Court is of the opinion that even though the delay of two months and twenty five days in the admission of the applicant to a psychiatric hospital may not at first glance seem particularly excessive, it cannot be regarded as acceptable (see *Morsink v. the Netherlands*, no. 48865/99, §§ 61-70, 11 May 2004; *Brand v. the Netherlands*, no. 49902/99, §§ 58-67, 11 May 2004; and *Mocarska*, cited above, § 48). To hold otherwise would entail a serious weakening of the fundamental right to liberty to the detriment of the person concerned and thus impair the very essence of the right protected by Article 5 of the Convention.

46. There has accordingly been a violation of Article 5 § 1 of the Convention.

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

47. The applicant complained that the length of his detention 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.”

48. The Government contested that argument.

49. The Government stated that this part of the application should be declared incompatible *ratione personae* with the provisions of the Convention as the applicant had already received compensation in the amount of PLN 25,609 for the pecuniary and non-pecuniary damage resulting from his stay in custody.

50. The applicant disagreed.

51. The Court considers that, to the extent the applicant obtained redress from the Zielona Góra Regional Court in respect of his complaint of the excessive length of his detention, he can no longer claim to be a victim of a violation of this provision of the Convention. The relevant part of this complaint must be rejected as incompatible *ratione personae* pursuant to Article 35 §§ 3 and 4 of the Convention.

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

52. The applicant further complained of the unfairness of the proceedings. He relied on Article 6 § 1 of the Convention, which reads in its relevant part:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

53. The Government contested that argument.

54. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with the matter after all domestic remedies have been exhausted.

55. The Court observes that the applicant failed to lodge an appeal against the decision of the Nowa Sól District Court of 5 January 2004. It follows that this complaint 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

56. 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

57. The applicant claimed 10,000 euros (EUR) in respect of pecuniary and EUR 15,000 in respect of non-pecuniary damage.

58. The Government contested the claim.

59. 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 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

60. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought EUR 2,000 for costs and expenses incurred in the proceedings before the Court.

61. The Government considered that the sum was excessive. They asked the Court to make an award, if any, only in so far as the costs and expenses concerned were actually and necessarily incurred and were reasonable as to

quantum. They further stressed that the applicant's lawyer had not submitted any invoices, receipts or other documents proving the claimed expenses.

62. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court observes that the applicant 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

63. 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 applicant's complaint concerning his alleged unlawful detention between 5 January 2004 and 30 March 2004 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 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, 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;
4. *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