



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

FOURTH SECTION

CASE OF KUMENDA v. POLAND

(Application no. 2369/09)

JUDGMENT

STRASBOURG

8 June 2010

FINAL

08/09/2010

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

In the case of Kumenda v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 18 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 2369/09) 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 Stanisław Kumenda (“the applicant”), on 8 January 2009.

2. 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 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 8 June 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). In addition, the application was given priority, in accordance with Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1939 and lives in Raciborz.

6. On 20 October 2007 the applicant was arrested on suspicion of domestic violence. On 22 October 2007 the Wodzisław Śląski District Court

ordered his detention. The court considered that there was a reasonable suspicion that the applicant might commit another offence.

7. On 15 and 26 November 2007 the applicant asked to be released from detention.

8. On 16 November 2007 two expert psychiatrists considered that the applicant should be examined in a psychiatric hospital. On 30 November 2007 the District Court ordered that the applicant be observed for six weeks in a psychiatric hospital. On 18 January 2008 the court again extended the applicant's detention. The court relied on the grounds previously invoked, namely, the reasonable suspicion that the applicant had committed the offence with which he was charged and the need to secure the proper conduct of the proceedings.

9. Between 28 February and 10 April 2008 the applicant was examined in a psychiatric wing of the Wrocław Detention Centre. On 10 April 2008 the experts delivered an opinion and considered that the applicant suffered from a delusional disorder and should be placed in a psychiatric hospital.

10. On 30 April 2008 the Wodzisław District Prosecutor lodged a request with the District Court for the proceedings to be discontinued on the ground that the applicant could not be held criminally liable.

11. On 14 May 2008 the applicant's detention was extended by the Wodzisław Śląski District Court. The court considered that there was a high probability that the applicant had committed the offence with which he was charged. On 18 August 2008 the court again extended the applicant's detention. The court held that there had been a delay in the proceedings resulting from the fact that the expert psychiatrists and the applicant's lawyer had been on holiday and could not have appeared before it.

12. On 16 October 2008 the District Court extended the applicant's detention yet again. The court referred to the difficulties in scheduling a hearing date.

13. On 20 November 2008 the District Court held a hearing and discontinued the proceedings against the applicant. The court found it established that the applicant had committed the offences with which he had been charged. However, he could not be held criminally responsible as he had been suffering from a delusional disorder. It further referred to the experts' opinion and ordered that the applicant be placed in Rybnik Psychiatric Hospital. On the same day the court also refused the applicant's request to be released. The court considered that there was a reasonable suspicion that the applicant might commit another crime.

On a further appeal, the decision to discontinue the proceedings was upheld by the Gliwice Regional Court on 3 February 2009.

14. On 8 December 2008 the Wodzisław District Court extended the applicant's detention until 20 March 2009. The court referred to the reasons given previously. In addition, it relied on the risk that the applicant might commit another offence. It stressed that it was necessary to keep the

applicant in detention until his admission to a psychiatric hospital. The applicant's detention was subsequently extended on 19 March and 17 June 2009.

15. On 23 March 2009 the Commission on Preventive Measures (*Komisja Psychiatryczna ds. środków zabezpieczających*) recommended that the applicant be placed in Rybnik Psychiatric Hospital. On 22 April 2009 the Wodzisław District Court ordered that the applicant be placed in Rybnik Psychiatric Hospital. On 29 April 2009 the hospital replied that owing to a strain on resources and a temporary lack of available beds it would not be possible to admit the applicant before 29 June 2009.

16. The applicant was transferred to Rybnik Psychiatric Hospital on 29 June 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

18. 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).

19. 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

20. The applicant complained that he had been held in a regular detention centre 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

21. 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. The applicant's submissions

22. The applicant stressed that the period of his detention after the proceedings had been discontinued had been unlawful. Since he had not been transferred to a clinic immediately after the proceedings were discontinued, he had not been able to start psychiatric treatment. This situation had led to an aggravation of his mental condition.

23. He was further of the opinion that his detention after the criminal proceedings had been discontinued had not been necessary.

2. The Government's submissions

24. The Government did not submit observations on the admissibility and merits of this complaint. They merely stated that it would have been unrealistic and too rigid an approach to expect the authorities to ensure that a place was immediately available in a selected psychiatric hospital. They further noted that it had been impossible to transfer the applicant into the hospital wing of the detention facility before his transfer to a psychiatric hospital since the applicant had refused to undergo psychiatric treatment while in detention.

3. The Court's assessment

25. The Court reiterates that Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for the 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*, 27 May 1997, § 76, *Reports of Judgments and Decisions* 1997-III, p. 861.).

26. The Court firstly observes that in the instant case the applicant's deprivation of liberty between 3 February 2009 and 29 June 2009 falls within the scope of Article 5 § 1 (e) (see *Aerts v. Belgium*, 30 July 1998, § 45, *Reports of Judgments and Decisions* 1998-V, p. 1961, and *Mocarska v. Poland*, no. 26917/05, § 42, 6 November 2007).

27. It must further be established whether the applicant's detention in an ordinary detention centre between 3 February 2009 and 29 June 2009 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*, 29 February 1988, § 49, Series A no. 129, p. 21) the Court accepts 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.

28. 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 compliance 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).

29. 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 over seven months after the proceedings had been discontinued can be regarded as lawful.

30. The Court observes that in the present case the proceedings were discontinued on 20 November 2008 and the decision was upheld on 3 February 2009 (see paragraph 13 above). However, as late as on 22 April 2009 the Wodzisław District Court ordered the applicant's placement in Rybnik Psychiatric Hospital (see paragraph 15 above). Despite the fact that the hospital immediately informed the court that it would not be possible to admit the applicant in the next two months, the District Court had not changed its order and had not decided to place the applicant in a different hospital. 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.

31. The Court accepts 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. In addition, the Court notes that the Government failed to provide any argument explaining the delay in the applicant's admission to the hospital.

32. The Court cannot find that, in the circumstances of the present case, a reasonable balance was struck. The Court is of the opinion that the delay in admitting the applicant to a psychiatric hospital in the present case 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.

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

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

34. The applicant complained that the overall length of his detention in a regular detention centre 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.”

A. Admissibility

1. *The period before 3 February 2009*

35. In so far as the applicant refers to the period before 3 February 2009, 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.

2. *The period after 3 February 2009*

36. The Court considers that the applicant's detention after 3 February 2009 was based on final court's decision discontinuing the proceedings against the applicant on account of his mental illness. In these circumstances, the Court is of the opinion that the applicant's detention after that date cannot be regarded as a form of pre-trial detention, within the

meaning of Article 5 §§ 1 (c) and 3 of the Convention, but is to be considered as detention “of persons of unsound mind”, within the meaning of Article 5 § 1 (e) of the Convention. Consequently, the facts complained of do not give rise to an issue under Article 5 § 3 of the Convention.

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

B. Merits

1. The applicant's submissions

38. The applicant submitted that the overall length of his detention in a regular detention centre had been too long. He further stressed that it had taken the trial court several months, after termination of his psychiatric observation in April 2008, to schedule a hearing and finally discontinue the proceedings.

2. The Government's submissions

39. The Government did not submit observations on the admissibility and merits of this complaint.

3. The Court's assessment

40. The applicant's detention started on 22 October 2007 when he was arrested on suspicion of domestic violence. On 20 November 2008 the proceedings against him were discontinued. This decision was upheld on 3 February 2009. Accordingly, the period to be taken into consideration amounts to one year and three months and twelve days.

41. The Court reiterates 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, § 110 et seq., and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

42. The Court further 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).

43. 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.

44. The Court observes that in the present case the applicant was charged with domestic violence. It does not appear therefore that his case presented particular difficulties for the investigation authorities, especially since it had been committed in a family setting, and for the courts to determine the facts and mount a case against the perpetrator, as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski*, cited above, § 37). As early as in April 2008 the expert psychiatrists concluded that the applicant suffered from a delusional disorder and should be placed in a psychiatric hospital. However, the District Court finally scheduled a hearing in November 2008, that is, seven months later (see paragraphs 9 and 13 above). During that time, the applicant was kept in a regular detention centre

45. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention: one year, three months and twelve days. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

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

47. The applicant further complained of the unfairness of the proceedings.

48. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

49. In the present case the applicant did not allege any particular failure on the part of the relevant courts to respect his right to a fair hearing. Indeed, the complaint is limited to challenging the outcome of the proceedings. The Court finds no indication that the proceedings were conducted unfairly.

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

IV. OTHER ALLEGED VIOLATIONS

51. The applicant further complained of the fact that he was detained in prison for an offence he had not committed. He relied on Article 7 of the Convention.

52. The Court finds that the facts of the case do not disclose any appearance of a violation of the above-mentioned provision. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 30,000 Polish zlotys in respect of non-pecuniary damage.

55. The Government contested this claim.

56. The Court awards the applicant 1,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

57. The applicant did not ask for reimbursement of costs and expenses.

C. Default interest

58. 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 complaints under Articles 5 § 1 and 5 § 3 (in respect of the period before 3 February 2009) of the Convention 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* that there has been a violation of Article 5 § 3 of the Convention in respect of the period before 3 February 2009;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable on the date of 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 8 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President