

# EUROPEAN COURT OF HUMAN RIGHTS

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26.10.2000

Press release issued by the Registrar

## JUDGMENT IN THE CASE OF KUDŁA v. POLAND (no. 30210/96)

In a judgment delivered at Strasbourg on 26 October 2000 in the case of Kudła v. Poland (no. 30210/96), the European Court of Human Rights held unanimously that there had been **no violation of Article 3** (prohibition of torture or inhuman or degrading treatment or punishment) of the European Convention on Human Rights; that there had been a **violation of Article 5 § 3** (right to trial within a reasonable time or release pending trial) and that there had been a **violation of Article 6 § 1** (right to a hearing within a reasonable time). By 16 votes to 1 the Court held that there had also been a **violation of Article 13** (right to an effective remedy) in that the applicant had had no domestic remedy to enforce his right to a hearing within a “reasonable time”. Under Article 41 (just satisfaction), the Court awarded the applicant 30,000 Polish zlotys (PLN) for non-pecuniary damage and PLN 20,000 for legal costs and expenses.

### 1. Principal facts

The applicant, Andrzej Kudła, a Polish national, was born in 1962 and lives in Kraków, Poland.

On 8 August 1991 Mr Kudła was charged with fraud and forgery and detained on remand. During his detention, he suffered from chronic depression and twice tried to commit suicide. He also went on hunger strike. On more than 70 occasions, he requested his release or appealed against decisions to hold him in detention.

On 1 June 1995 the Kraków Regional Court convicted him of fraud and forgery and sentenced him to six years’ imprisonment and a fine of 5,000 Polish zlotys (PLN). On 22 February 1996 the Kraków Court of Appeal quashed this judgment on the ground that the court had been incorrectly composed and that there had been serious breaches of procedure. The case was remitted to the Regional Court on 11 April.

On 29 October 1996 the applicant was released as his family had paid bail of PLN 10,000.

On 4 December 1998 the Kraków Regional Court convicted the applicant as charged and sentenced him as before. On 27 October 1999, on his appeal, the Kraków Court of Appeal reduced his sentence to five years’ imprisonment. The proceedings are pending before the Supreme Court following his cassation appeal.

## 2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 12 April 1995 and registered on 15 February 1996. Having declared the application partly admissible, the Commission adopted a report on 26 October 1999 in which it expressed the opinion that there had been a violation of Article 3 of the Convention (by 14 votes to 13), a violation of Article 5 § 3 (unanimously) and a violation of Article 6 § 1 (unanimously). Furthermore, the Commission expressed the opinion that it was not necessary to examine whether there had been a violation of Article 13 (by 18 votes to 9). It referred the case to the Court on 30 October 1999. The applicant also brought the case before the Court on 2 December 1999.

On 6 December 1999 the panel of the Grand Chamber decided that the case would be heard by the Grand Chamber. A hearing was held on 7 June 2000.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,  
Elisabeth **Palm** (Swedish),  
Jean-Paul **Costa** (French),  
Antonio **Pastor Ridruejo** (Spanish),  
Giovanni **Bonello** (Maltese),  
Jerzy **Makarczyk** (Polish),  
Pranas **Kūris** (Lithuanian),  
Riza **Türmen** (Turkish),  
Françoise **Tulkens** (Belgian),  
Viera **Strážnická** (Slovakian),  
Peer **Lorenzen** (Danish),  
Marc **Fischbach** (Luxemburger),  
Josep **Casadevall** (Andorran),  
Hanne Sophie **Greve** (Norwegian),  
András **Baka** (Hungarian),  
Snejana **Botoucharova** (Bulgarian),  
Mindia **Ugrekhelidze** (Georgian), *judges*,

and also Paul **Mahoney**, *Deputy Registrar*.

## 3. Summary of the judgment<sup>1</sup>

### Complaints

Mr Kudła complained that when in detention he had not been given adequate psychiatric treatment, contrary to Article 3 of the Convention. He further submitted that his right to trial within a reasonable time or to release pending trial, guaranteed by Article 5 § 3, had not been respected and that the criminal proceedings against him had lasted an unreasonably long time, in breach of Article 6 § 1. Lastly, he complained that he had had no effective domestic remedy available to challenge the length of the proceedings against him, in violation of Article 13.

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1. This summary by the Registry does not bind the Court.

## **Decision of the Court**

### Article 3 of the Convention

The Court observed that the medical evidence which the Government had produced to the Court (but not the Commission) showed that, during his detention, the applicant had regularly sought, and obtained, medical attention. He had been examined by doctors of various specialisms and frequently received psychiatric assistance.

After his first suicide attempt, an event which in the light of the evidence before the Court did not appear to have resulted from or have been linked to any discernible shortcoming on the part of the authorities, the applicant had been given specialist treatment in the form of psychiatric observation in the Wrocław Prison Hospital (lasting two months) and had later undergone two follow-up psychiatric examinations.

Admittedly, that had not prevented him from making a second attempt to take his life in January 1995. However, the Court, while it did not consider it necessary to express a view on whether that attempt had been, as the authorities had asserted, of an attention-seeking character or a manifestation of the suffering caused by his disorder, did not find on the material before it anything to show that the authorities could be held responsible for what had happened. Nor did the Court discern any subsequent failure on their part to provide the applicant with psychiatric observation. On the contrary, it found that from the beginning of 1995 to his release on 29 October 1996 the applicant had received such assistance at least once a month.

The Court accepted that the very nature of the applicant's psychological condition had made him more vulnerable than the average detainee and that his detention might have exacerbated to a certain extent the feelings of distress, anguish and fear in him, especially as from 11 June to 29 October 1996 he had been kept in custody despite a psychiatric opinion that continuing detention could jeopardise his life because of a likelihood of attempted suicide. However, the Court did not find it established that the applicant had been subjected to ill-treatment that attained a sufficient level of severity to come within the scope of Article 3.

### Article 5 § 3 of the Convention

The period to be considered under Article 5 § 3 was two years, four months and three days.

The relevant courts examined whether the applicant should remain in detention on numerous occasions and, in refusing to release him, had relied on two principal reasons: the reasonable suspicion that he had committed the offences with which he had been charged and the risk of his absconding. That risk was based on the fact that, in February and March 1993, the applicant had failed to appear before the trial court and had later failed to comply with the time-limit for submitting a medical certificate justifying his absence and to indicate an address at which summonses could be served on him during the medical treatment he had been receiving in another town.

The Court accepted that those reasons could initially suffice to warrant his detention. However, the Court also considered that with the passage of time those grounds had inevitably become less relevant. Given that before being redetained on 4 October 1993 the applicant had already spent in detention nearly a year (falling outside the Court's jurisdiction *ratione temporis*), the Court considered that only very compelling reasons would have persuaded it that his further detention for two years and four months had been justified under Article 5 § 3.

The Court did not find any such reasons, especially as the courts, despite repeatedly referring to the two aforementioned instances of the applicant's failure to comply with a court order, had not mentioned any other circumstance capable of showing that the risk relied on had actually persisted during the entire relevant period.

The Court accordingly concluded that the reasons relied on by the courts in their decisions had not been sufficient to justify the applicant's being held in detention for the period in question.

#### Article 6 § 1 of the Convention

The Court found that the proceedings in the applicant's case had so far lasted more than nine years. However, given its jurisdiction *ratione temporis*, the Court could only consider the period of seven years and some five months that had elapsed since 1 May 1993, the date on which Poland's declaration recognising the right of individual petition for the purposes of former Article 25 of the Convention had taken effect.

The Court considered that, even though the case was of some complexity, it could not be said that this had in itself justified the entire length of the proceedings. While it was true that in February and March 1993 the applicant had failed to appear before the court and that, as a result, the trial had been adjourned to October 1993, the Court found no evidence to demonstrate that at any subsequent stage of the proceedings the applicant had shown dilatory conduct or had otherwise upset the proper conduct of the trial.

The Court observed that the duty to administer justice expeditiously had been incumbent in the first place on the courts, especially as during the substantial part of his trial the applicant had been in custody and had suffered from serious depression. This gave rise to an obligation of diligence in dealing with his case.

In this connection the Court noted that after the applicant's original first-instance conviction had been quashed on 22 February 1996, the retrial had begun only after a lapse of more than a year. It had then been adjourned for some seven months. Even though that postponement had in some part been caused by events attributable to the applicant's co-defendants, it had resulted in a total delay of nearly one year and eight months, a delay which the Court considered incompatible with diligence required under Article 6 § 1.

#### Article 13 of the Convention

In many previous cases in which the Court found a violation of Article 6 § 1, in that the right to trial within a reasonable time had not been respected, it did not consider it necessary also to rule on an accompanying complaint made under Article 13.

The Court declined to rule on the Article 13 complaint because the requirements of Article 6 § 1 were more stringent than those of Article 13.

In the present case, the Court upheld the opinion that in cases where the substance of the complaints was the same there was – and would be – no legal interest in re-examining the same complaint under the less stringent requirements of Article 13.

However, the Court also found that there was no overlap where, as in the present case, the alleged Convention violation that the individual wished to bring before a “national authority” was a violation of the right to trial within a reasonable time, contrary to Article 6 § 1. The question whether the applicant in a given case did benefit from trial within a reasonable time in the determination of civil rights and obligations or a criminal charge is a separate legal issue from that whether there was available to the applicant under domestic law an effective remedy to bring a complaint on that ground. In the present case the issue to be determined before the Article 6 § 1 “tribunals” was the criminal charges brought against the applicant, whereas the complaint that he wanted to have examined by a “national authority” for the purposes of Article 13 was the separate one of the unreasonable length of proceedings.

In the Court’s view, the time had come to review its case-law also in the light of the continuing accumulation of applications before it in which the only, or principal, allegation was, or had been, that of a failure to ensure a hearing within a reasonable time in breach of Article 6 § 1. The growing frequency with which violations in this regard were, and had been, found had already led the Court to draw attention to “the important danger that exists for the rule of law” within national legal orders when “excessive delays in the administration of justice” occur “in respect of which litigants have no domestic remedy” (see, for example, *Bottazzi v. Italy* judgment.) Against this background, in such cases the Court now perceived the need to examine the complaints about lack of an effective remedy against excessive length of the proceedings under Article 13 taken separately, despite its earlier finding of a violation of Article 6 § 1 for failure to ensure an individual trial within a reasonable time.

The Court further stressed that Article 13, giving direct expression to the States’ obligation to protect human rights first and foremost within their own legal system, established an additional guarantee for an individual in order to ensure that he or she effectively enjoyed those rights. It said, among other things, that the object of Article 13:

“is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court. From this perspective, the right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6 § 1, rather than being absorbed by the general obligation imposed by that Article not to subject individuals to inordinate delays in legal proceedings.”

The Court emphasised that a remedy for complaining about unreasonable length of proceedings did not as such involve an appeal against the “determination” of any criminal charge or of civil rights and obligations and that requiring a remedy under Article 13 was not tantamount to the “right of appeal”, guaranteed only in criminal matters under Article 2 of Protocol No. 7 to the Convention.

In the present case the Court noted that the Government had not claimed that there had been any specific legal avenue whereby the applicant could complain of the length of the proceedings but had submitted that the aggregate of several remedies – notably, applications for release, appeals against decisions prolonging detention and complaints to the President of the relevant court and the Minister of Justice – had satisfied the Article 13 requirements.

They had not, however, indicated whether and, if so, how the applicant could have obtained relief – either preventive or compensatory – by having recourse to those measures. It had not been suggested that any of the single remedies invoked, or a combination of them, could have expedited the determination of the charges against the applicant or provided him with adequate redress for delays that had already occurred. Nor had the Government supplied any example from domestic practice showing that, by using the means in question, it had been possible for the applicant to obtain such relief.

Accordingly, the Court held that there had been a violation of Article 13 in that the applicant had had no domestic remedy whereby he could have enforced his right to a “hearing within a reasonable time” as guaranteed by Article 6 § 1.

#### Article 41 of the Convention

The Court made no award for pecuniary damage, having concluded that the applicant had failed to show that the pecuniary damage he pleaded had been caused by his being held in custody for the relevant period.

However, the Court accepted that the applicant had certainly suffered non-pecuniary damage which was not sufficiently compensated by findings of violations of the Convention and awarded PLN 30,000.

The Court awarded PLN 20,000 for costs and expenses, less the amounts already paid under the Court’s legal aid scheme.

Judge Casadevall expressed a partly dissenting opinion, which is annexed to the judgment.

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The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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*The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*