EDJ 2009/258034

Tribunal Europeo de Derechos Humanos, S 24-11-2009, nº 8456/2008

Resumen

En el caso #URAWSKI v. POLONIA, el TEDH estima que la detención del demandante fue excesiva violándose el art. 5,3 de la CEDH.

NORMATIVA ESTUDIADA

Conv. de 4 noviembre 1950. Convenio Europeo para la Protección Derechos Humanos y Libertades Fundamentales art.5.3 , art.41 , art.46

CLASIFICACIÓN POR CONCEPTOS JURÍDICOS

AGOTAMIENTO RECURSOS INTERNOS
CONDICIÓN DE VÍCTIMA
DERECHO A LA LIBERTAD Y SEGURIDAD
DETENCIÓN PREVENTIVA
PASO A DISPOSICIÓN JUDICIAL
RECURSOS SOBRE SU LEGALIDAD
DETENCIÓN EN ASEGURAMIENTO
DURACIÓN
INDEMNIZACIÓN POR VIOLACIONES DEL CONVENIO
EN GENERAL
DAÑO MORAL
PRESUNCIÓN DE INOCENCIA
PRIVACIÓN DE LIBERTAD

FICHA TÉCNICA

Procedimiento:Procedimiento ante el TEDH

Legislación

Aplica art.5.3, art.41, art.46 de Conv. de 4 noviembre 1950. Convenio Europeo para la Protección Derechos Humanos y Libertades Fundamentales

Sinópsis *Hechos:*

El 20 de mayo de 2003 el fiscal inició una investigación sobre el tráfico ilegal de gasolina.
El 8 de junio de 2005 el demandante fue acusado de liderar el grupo criminal para lavar dinero y falsificación de documentos.
Al día siguiente, el tribunal ordenó su puesta bajo custodia basándose en la sospecha razonable de que había cometido el delito en cuestión.
Las apelaciones contra las decisiones de su detención fueron sin éxito.
En todas las decisiones de la detención las autoridades repetidamente se basaban en la sospecha fuerte de que el demandante había cometido los delitos en cuestión.
El 27 de junio de 2008 el demandante fue puesto en libertad.
Parece que el proceso está aun pendiente.
Valoración de la violación del art. 5,3 de la CEDH:
El demandante alegó que la duración de su detención bajo custodia había sido excesiva.
El período a tener en cuenta es de 3 años y 17 días.
El TEDH acepta que la sospecha razonable de que el demandante había cometido los delitos inicialmente justificó la detención. También la necesidad de obtener pruebas y determinar el grado de responsabilidad. Sin embargo, la naturaleza de los delitos no requería la detención prolongada.
El TEDH concluye que los argumentos dados por las autoridades internas no podían justificar todo el periodo de la detención del demandante. Así, ha habido violación del art. 5,3 de la CEDH.
Aplicación del art. 46 de la CEDH:
Las autoridades no justificaron la detención continuada del demandante con razones similares como en casos similares.
Aplicación del art. 41 de la CEDH:
El TEDH otorga 1,000 euros al demandante por daños morales.

VERSION OFICIAL EN INGLÉS

SENTENCIA

CASE OF #URAWSKI v. POLAND

(Application no. 8456/08)

JUDGMENT

STRASBOURG

24 November 2009

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 #urawski v. Poland,

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

Nicolas Bratza, President,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijovi#,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, judges,

and Fato# Arac#, Deputy Section Registrar,

Having deliberated in private on 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 8456/08) 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 Andrzej #urawski ("the applicant"), on 4 February 2008.

2. The applicant was represented by Mr M. Esnekier, a lawyer practising in Katowice. The Polish Government ("the Government") were represented by their Agent, Mr J. Wo# #siewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that his detention had exceeded a "reasonable time" within the meaning of Article 5 § 3 of the Convention.

4. On 6 October 2008 the President of the Fourth Section decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Sosnowiec.

6. On 20 May 2003 the Regional Prosecutor instituted an investigation into illegal trading in liquid fuel.

7. On 8 June 2005 the applicant was charged with, inter alia, establishing and leading an organised criminal group engaged in money laundering, illegal trading in liquid fuel and the falsification of tax documents.

8. On 9 June 2005 the Katowice District Court (S#d Rejonowy) remanded him in custody, on the basis of reasonable suspicion that he had committed the offence in question. It also considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings, given the risk that he might tamper with evidence. The court also stressed the severity of the anticipated sentence.

9. The applicant's appeals against decisions prolonging his detention were unsuccessful. In his appeals, he argued that the charges against him were based on unreliable and fabricated evidence. He also relied on his personal circumstances, in particular the need to ensure that his wife, who suffered from psychiatric problems, was cared for.

10. In the course of the investigation, the applicant's detention was prolonged on 30 August and 30 November 2005 and 2 March 2006.

11. Further decisions extending the applicant's detention were taken by the Katowice Court of Appeal (S#d Apelacyjny) on 19 May, 9 August 2006 and 22 November 2006, 14 February, 16 May, 17 August, 19 September and 19 December 2007.

12. In all their detention decisions the authorities repeatedly relied on a strong suspicion that the applicant had committed the offences in question, which was supported by evidence from witnesses and experts. They attached importance to the complexity of the case, the significant number of persons involved and the voluminous documentation. They further considered that the need to secure the proper conduct of the proceedings, especially the need to verify evidence from suspects and witnesses, justified holding the applicant in custody. The courts stressed, on several occasions, the applicant's role in the organised criminal group, holding that there was a risk that if released, he would induce witnesses to give false testimony, or otherwise obstruct the proper conduct of the investigation. In one of the decisions dismissing an appeal by the applicant against a decision prolonging his detention, the Court of Appeal noted, that "certain witnesses in principle admitted that they had been instructed (about what to say) in their testimony" and that "the testimony of other witnesses was not consistent with the explanations given by the applicant in the course of the investigation." It did not, however, specify

who had exerted pressure on the witnesses or how they had done so. The courts found no special grounds that would justify lifting the applicant's detention and imposing a less severe measure.

In its decisions of 17 August and 19 September 2007 the Katowice Court of Appeal stressed that the investigation had already lasted a long time and urged the prosecutor to draw up a bill of indictment. It also noted, in its decisions of 19 September and 19 December 2007, that the prosecutor's arguments for having the applicant's detention extended had been of a very general nature and instructed the prosecutor to provide a detailed list of tasks that still needed to be completed during the investigation if he wished to have the applicant's detention extended further.

13. On 27 June 2008 the applicant's pre-trial detention was lifted and he was released.

14. It appears that the proceedings are still pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

15. 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" (#rodki zapobiegawcze) are described in the Court's judgments in the cases of Go#ek v. Poland (no. 31330/02, §§ 27-33, 25 April 2006) and Celejewski v. Poland (no. 17584/04, §§ 22-23, 4 August 2006).

16. On 24 July 2006 the Polish Constitutional Court, having examined jointly two constitutional complaints (skarga konstytucyjna) lodged by former detainees, declared Article 263 § 4 of the Code of Criminal Procedure unconstitutional in so far as it related to the investigation stage of criminal proceedings (No. SK 58/03). A more detailed description can be found in the Court's judgment in the case of Kauczor (see Kauczor v. Poland, no. 45219/06, §§ 26-27, 3 February 2009).

B. Measures taken by the State to reduce the length of pre-trial detention and relevant Council of Europe documents

17. The relevant statistical data, recent amendments to the Code of Criminal Procedure designed to streamline criminal proceedings and references to the relevant Council of Europe documents, including the 2007 Resolution of the Committee of Ministers, can be found in the Court's judgment in the case of Kauczor (see Kauczor v. Poland, cited above, §§ 27-28 and 30-35).

THE LAW

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

18. 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 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."

19. The Government contested that argument.

A. Admissibility

20. The Government submitted that the applicant had not exhausted all the remedies provided by Polish law in that he had rarely appealed against decisions extending his pre-trial detention.

21. The applicant's lawyer submitted that he had appealed against every decision prolonging the applicant's detention. He further noted that at the moment of lodging his complaint with the Court, the applicant could not have claimed compensation and just satisfaction for the undoubtedly unjustified pre-trial detention (under Article 552 § 4 of the Code of Criminal Procedure), as this remedy could only be used after detention was lifted.

22. In the present case the applicant lodged appeals against most of the decisions prolonging his detention. The Court considers that the purpose of the remedy used by the applicant was to obtain a review of his detention pending trial. In the circumstances of the case this remedy constituted an adequate and effective remedy within the meaning of Article 35 of the Convention as its aim was to obtain his release. It follows from the Court's case-law that the applicant is not required to appeal against each and every decision extending his detention (see, by contrast, Bronk v. Poland (dec.), no. 30848/03, 11 September 2007).

23. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in previous cases against Poland (see Tomecki v. Poland, no. 47944/06, §§ 19-21, 20 May 2008, and Buta v. Poland, no. 18368/02, §§ 25-27, 28 November 2006) and that the Government have not submitted any new circumstances which would lead the Court to depart from its previous findings.

24. The Government further submitted that the applicant had not exhausted all the remedies available under Polish law in that he had failed to lodge a complaint under Article 79 § 1 of the Polish Constitution questioning the constitutionality of those provisions of the Code of Criminal Procedure that had served as a basis for extending his pre-trial detention, in particular Article 263 of that Code. In that respect they raised the same arguments as those submitted in the case of Figas v. Poland (no. 7883/07, § 31, 23 June 2009, not final).

25. The applicant's lawyer did not submit any comments on the possibility of lodging a complaint with the Constitutional Court.

26. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, Akdivar and Others v. Turkey, 16 September 1996, § 65, Reports of Judgments and Decisions 1996-IV).

The Court has already found that in Polish law, the objective of an appeal against decisions extending detention is to secure a review of the lawfulness of detention at any given time of the proceedings, both at the pre-trial and trial stages, and to obtain release if the circumstances of the case no longer justify continued detention (see Wolf v. Poland, nos. 15667/03 and 2929/04, § 78, 16 January 2007). In that respect the Court observes that the applicant challenged most of the decisions prolonging his pre-trial detention.

27. The Court notes that in its judgment of 24 July 2006 the Constitutional Court found Article 263 § 4 of the Code of Criminal Procedure unconstitutional in so far as it provided for the detention measure to be extended beyond two years if the pre-trial proceedings could not be completed because of "important obstacles" (see paragraph 16 above).

The Court observes, however, that in the present case, in all their detention decisions, the domestic authorities relied on the reasonable suspicion that the applicant had committed the offence he was charged with and the need to secure the proper conduct of the proceedings, given the risk that he could tamper with evidence; that is on the grounds specified in Articles 249 and 258 of the Code of Criminal Procedure. They further relied on the necessity of gathering evidence in a particularly complex case, that is on the part of Article 263 § 4 of the Code that the Constitutional Court considered compatible with the Constitution and thus, a prerequisite of the pre-trial detention.

The Court is therefore of the opinion that it is doubtful that the applicant could have successfully lodged a constitutional complaint in respect of provisions whose constitutionality had been examined by the Constitutional Court and found to be compatible with the Polish Constitution in its judgment of 24 July 2006.

28. Furthermore, the Court is not persuaded that at the relevant time a constitutional complaint was capable of satisfying the second part of the test established in the Szott-Medy#ska decision (Szott-Medy#ska v. Poland (dec.), no. 47414/99, 9 October 2003), that is to say that it would have provided the applicant with a possibility to have the proceedings re-opened or the final decision quashed following the Constitutional Court's judgment.

In the circumstances of the case, any attempt by the applicant to seek redress by lodging a constitutional complaint lacked the requisite effectiveness.

In addition, the Court is of the opinion that, having challenged most of the decisions prolonging his pre-trial detention, the applicant was not required to embark on another attempt to obtain redress by challenging the constitutionality of Article 263 of the Code of Criminal Procedure.

29. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

30. The applicant's detention started on 9 June 2005, when he was arrested on suspicion of establishing and leading an organised criminal group engaged in money laundering, illegal trading in liquid fuel and the falsification of tax documents. On 27 June 2008 his pre-trial detention was lifted.

Accordingly, the period to be taken into consideration amounts to three years and seventeen days.

2. The parties' submissions

(a) The applicant

31. The applicant's lawyer submitted that the length of the applicant's pre-trial detention had been excessive. He argued that the prosecution authorities had failed to show special diligence in the conduct of the proceedings and that the applicant's detention had not been properly supervised by the judicial authorities. According to the lawyer, the authorities' claim that the applicant had instructed or threatened witnesses had been wholly unsubstantiated. He argued that anonymous information about the alleged attempts of the applicant to influence witnesses and a prosecutor's note concerning the above, which had been included by the authorities in the applicant's case file, could not constitute reliable and valid evidence.

(b) The Government

32. The Government submitted that the applicant's detention, throughout its entire length, was based cumulatively on all the pre-requisites of detention listed in the Code of Criminal Procedure as applicable at the material time, in particular on the persistence of reasonable suspicion that he had committed the offence in question. They underlined that the present case concerned offences committed in an organised criminal group and that the applicant had been charged with establishing and leading that group.

33. They further noted that the criminal proceedings had been conducted with due diligence in the light of the complexity of the case (the charges against the applicant ran to some twenty-five pages) and that the pre-trial proceedings had been regularly and positively assessed by the domestic courts. The Government underlined that the need to secure the proper conduct of the proceedings had been justified, since the statements taken in the course of the police investigation proved unequivocally that certain witnesses had been influenced in their testimony.

34. Furthermore, the Government stressed that it had been necessary to hear evidence from a large number of witnesses and experts in the course of the investigation. The length of the applicant's detention had been a consequence of the highly complex nature of the proceedings, in particular in view of the activities of the criminal group which had been carried on in much of Poland. They also drew the Court's attention to the fact that it had been necessary to establish the role and degree of responsibility of each of the defendants. They noted that as soon as the necessary evidence had been gathered and secured, the applicant had been released.

35. Accordingly, the Government submitted that the length of the applicant's pre-trial detention had been compatible with the standards resulting from Article 5 § 3 of the Convention.

3. The Court's assessment

(a) General principles

36. 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, are set out in a number of its previous judgments (see, among many other authorities, Kud#a, cited above, § 110 et seq., 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

37. In addition to reasonable suspicion against the applicant, the authorities principally based their detention decisions on four grounds, namely (1) the serious nature of the offence with which he had been charged, (2) the severity of the penalty to which he was liable, (3) the need to secure the proper conduct of the proceedings, in particular in view of the risk that he might interfere with witnesses, and (4) the complexity of the case.

38. The applicant was charged with establishing and leading a criminal group engaged in money laundering, illegal trading in liquid fuel and the falsification of tax documents (see paragraph 7 above).

In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see B#k v. Poland, no. 7870/04, § 57, 16 January 2007).

39. The Court accepts that the reasonable suspicion that the applicant had committed serious offences could initially have warranted his detention. Also, the need to obtain voluminous evidence and to determine the degree of the alleged responsibility of each of the defendants acting in a criminal group and against whom numerous charges of serious offences were laid constituted valid grounds for the applicant's initial detention.

40. Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings is, by the nature of things, often high. In this respect, although the fears of the domestic authorities concerning possible collusion had proved to be well-founded (see paragraph 12 above), the Court notes that the issue of instructing witnesses was addressed by the domestic courts in a very general manner. They did not provide any details concerning the fact that pressure had allegedly been exerted on witnesses. Nor did they identify the role of the applicant (who at that time was in detention) in influencing the witnesses.

41. Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that he would obstruct the proceedings. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see Michta v. Poland, no. 13425/02, §§ 49, 4 May 2006).

42. As regards the complexity of the case, the Court's attention has been drawn to the nature and number of the charges (nineteen charges against the applicant) and the voluminous documentation. It appears, however, that the authorities referred to the complexity of the case in a very general manner. There is no indication that the nature of the case required the applicant's continuous detention. Moreover, it seems that the authorities failed to envisage the possibility of imposing other preventive measures on the applicant.

43. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts unlimited power to prolong the measure. In this context, the Court would observe that the applicant spent three years and seventeen days in pre-trial detention.

44. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised criminal group, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

There has accordingly been a violation of Article 5 § 3 of the Convention EDL 1979/3822 .

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION EDL 1979/3822

45. Article 46 of the Convention provides:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. The parties' submissions

1. The applicant

46. The applicant did not submit any observations concerning this provision.

2. The Government

47. The Government referred to the arguments submitted previously in the case of Figas v. Poland (no. 7883/07, cited above, §§ 41-44).

48. The Government concluded that, bearing in mind the efforts of the Polish authorities and the legislative reforms which were and had been undertaken by them to solve the problem of the length of detention on remand, Poland could not be said to have failed to comply with its obligations under Article 46 of the Convention to obey the Court's judgments.

B. The Court's assessment

49. Recently, in the case of Kauczor v. Poland (see Kauczor, cited above, § 58 et seq. with further references) the Court held that the 2007 Resolution of the Committee of Ministers taken together with the number of judgments already delivered and of the pending cases raising an issue of excessive detention incompatible with Article 5 § 3 demonstrated that the violation of the applicant's right under Article 5 § 3 of the Convention had originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which had affected, and may still affect in the future, an as yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

50. It is true that the present case concerns a person involved in an organised criminal group. However, as stated above, while this element is to be taken into account in assessing compliance with Article 5 § 3 and may justify a longer period of detention than in a case concerning an individual offender, a member of an organised criminal group is entitled to the protection against unreasonably lengthy detention afforded by this provision (see paragraphs see paragraphs 38 and 43 above). As in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 39-45 above). Moreover, as demonstrated by the ever increasing number of judgments in which the Court has found Poland to be in breach of Article 5 § 3 in respect of applicants involved in organised crime, the present case is by no means an isolated example of the imposition of unjustifiably lengthy detention but a confirmation of a practice found to be contrary to the Convention (see, among many other examples, Celejewski v. Poland, no. 17584/04, 4 May 2006; K#kol v. Poland, no. 3994/03, 6 September 2007; Malikowski v. Poland, no. 15154/03, 16 October 2007 and also Hilgartner v. Poland, no. 37976/06, §§ 46-48, 3 March 2009). Consequently, the Court sees no reason to diverge from its findings made in Kauczor as to the existence of a structural problem and the need for the Polish State to adopt measures to remedy the situation (see Kauczor, cited above, §§ 60-62).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION EDL 1979/3822

51. 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

52. The applicant's lawyer claimed 20,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

53. The Government considered this sum unreasonable in the light of the Court's case-law concerning similar cases brought against Poland and invited the Court to reject the applicant's claim as excessive.

54. 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 considers that the applicant has 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 1,000 under this head.

B. Costs and expenses

55. The applicant's lawyer submitted no claim for costs and expenses.

C. Default interest

56. 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 application admissible;

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, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at 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;

4. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fato# Arac# Nicolas Bratza

Deputy Registrar President