



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

FOURTH SECTION

CASE OF KAŁOL v. POLAND

(Application no. 3994/03)

JUDGMENT

STRASBOURG

6 September 2007

FINAL

06/12/2007

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 Kałol v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 10 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 3994/03) 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 Jarosław Kałol ("the applicant"), on 15 November 2002.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołasiwicz of the Ministry of Foreign Affairs.

3. On 18 October 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the applicant's detention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1969 and lives in Gdynia.

5. On 21 April 1999 the applicant was arrested on suspicion of armed robbery. On 22 April 1999 the Gdańsk District Court remanded him in custody in view of the reasonable suspicion that he had committed several offences of armed robbery.

6. Later, several other persons were detained and charged in connection with the same investigation conducted by the Department of Organised

Crime of the Gdańsk Regional Prosecutor's Office. In the course of the investigation, the applicant's detention was prolonged several times.

7. On 13 December 2000 the Gdańsk Court of Appeal prolonged the applicant's and his eight co-suspects' detention until 31 March 2001.

8. On 7 March 2001 the Gdańsk Court of Appeal prolonged the applicant's detention until 31 May 2001. It relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and the severity of the anticipated penalty. The Court of Appeal further held that the detention on remand was the only measure which could secure the proper conduct of the proceedings given the nature of the charges and the relations between the suspects, who had acted in an organised group. It also considered that the prolongation of detention was justified by the need to obtain DNA evidence in order to corroborate evidence previously obtained.

9. On 15 May 2001 the prosecution filed a bill of indictment with the Gdańsk Regional Court. The applicant was charged with several dozen counts of armed robbery which had been committed in an organised armed criminal group. The bill of indictment listed 120 charges brought against 19 defendants, who were all detained on remand. The case file comprised 114 volumes. The prosecution asked the court to hear evidence from 366 witnesses.

10. On 23 May 2001 the Court of Appeal ordered that the applicant be kept in custody until 31 October 2001. In addition to the grounds previously invoked, it referred to the complexity of the case, the significant number of defendants and the number of witnesses to be heard in the trial.

11. On 24 October 2001 the Court of Appeal extended the applicant's detention until 31 March 2002, relying on the same grounds as in its earlier decisions.

12. The trial began on 28 December 2001. However, as of 22 April 2002 the reading out of the bill of indictment by the prosecution had still not been concluded. Initially, the trial court held three hearings per month.

13. During the hearing held on 30 January 2002 the trial court ordered the removal of the applicant and two other defendants from the court room. They disrupted the trial by screaming when the prosecutor was reading the bill of indictment, notwithstanding a warning from the presiding judge. Similarly, during the hearings held on 27 May and 14 October 2002 the trial court ordered the applicant's removal on the ground that he had disrupted the trial.

14. On 13 March 2002 the Court of Appeal ordered that the applicant and his seven co-defendants be held in custody until 30 September 2002. It considered that the trial could be terminated by the last-mentioned date. In addition to the grounds previously invoked, the Court of Appeal found that the prolongation of detention was justified under Article 263 § 4 of the Code of Criminal Procedure by the particular complexity of the case. It

further observed that the delays in the trial were partly attributable to some of the defendants who had attempted to disrupt the proceedings and, consequently, had to be removed from the court room. The Court of Appeal instructed the trial court to hold more than 3 hearings per month. Furthermore, it held that no other preventive measure could secure the proper conduct of the trial. In that respect, the Court of Appeal observed that there was a reasonable risk that the applicant and other defendants might interfere with the proceedings, given the nature of the charges, the severity of the anticipated penalty and the fact that such attempts had been made in the course of the investigation.

15. On 27, 28 and 29 May 2002 the Gdańsk Regional Court dismissed the applicant's requests for the presiding judge to withdraw.

16. On 11 September 2002 the Court of Appeal prolonged the applicant's and his nine co-defendants' detention until 31 December 2002. In addition to the grounds previously relied on, it considered that the applicant's detention was justified under Article 258 § 2 of the Code of Criminal Procedure since that provision established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the proceedings. It also noted that the prolongation of his detention was justified by the volume of evidence to be heard at the trial.

17. On 18 December 2002 the Court of Appeal ordered that the applicant and his 17 co-defendants be kept in custody until 30 June 2003. It held that the grounds invoked in its previous decisions were still valid.

18. On 13 January and 31 March 2003 the Gdańsk Regional Court dismissed the applicant's request for the judges and lay members of the trial court to withdraw. On 15 January 2003 the applicant and seventeen of his co-defendants unsuccessfully challenged the judges and lay members of the trial court.

19. On 13 January 2003 the trial court refused the applicant's request for dismissal of his legal-aid counsel. Similar requests were dismissed on 12 February and 20 March 2003.

20. On 25 June 2003 the Court of Appeal prolonged the applicant's and eighteen of his co-defendants' detention until 31 December 2003, relying on the same grounds as given previously. In addition, it observed that the trial could not have been terminated due to obstructiveness on the part of the defendants who had filed numerous requests challenging the trial court. It also noted that the trial court had taken various procedural steps in order to accelerate the proceedings.

21. In its decision of 30 July 2003 dismissing the applicant's appeal against the decision of 25 June 2003 prolonging his detention, the Court of Appeal held that Article 258 § 2 of the Code of Criminal Procedure established a presumption to the effect that the likelihood of a severe penalty being imposed on the applicant might induce him to obstruct the

proceedings¹. It added that the risk of absconding or tampering with witnesses in the present case did not have to be supported by any concrete facts, but resulted from the above presumption. The Court of Appeal also observed that although the applicant and other defendants were free to make use of their procedural rights, the abuse of those rights undoubtedly led to delays in the trial.

22. On 1 September 2003 a new legal-aid counsel was appointed for the applicant. The previous counsel was discharged by the trial court from his duties at his own request and following a number of complaints made by the applicant.

23. Subsequently, the Court of Appeal prolonged the applicant's detention on several occasions. The relevant decisions were given on 17 December 2003 (prolonging his detention until 30 June 2004), 23 June 2004 (extending his detention until 31 December 2004), 15 December 2004 (ordering his continued detention until 31 March 2005), 30 March 2005 (prolonging his detention until 30 June 2005) and 22 June 2005 (extending his detention until 30 September 2005). In all those decisions the Court of Appeal stated that the grounds previously given for the applicant's detention were still valid. It also stressed the exceptionally complex nature of the case.

24. In its decision on the applicant's detention of 23 June 2004, the Court of Appeal observed that up to April 2003 the main reason for the delays during the trial was the obstructiveness of the defendants and the abuse of the rights of the defence. It also observed that the trial could be concluded by the end of 2004 provided that the Regional Court endeavoured to organise the trial efficiently.

25. On 15 January and 29 July 2004 and 16 and 31 May 2005 the Gdańsk Regional Court dismissed as unfounded the applicant's requests for various members of the trial court to withdraw.

26. On 8 March and 24 May 2005 the trial court dismissed the applicant's application for release on health grounds, relying on the report prepared by the experts from the Gdańsk Medical Academy. The applicant was diagnosed with a number of ailments, including a brain tumour. However the experts determined that he could remain and receive treatment in detention.

27. In its decision of 27 July 2005 dismissing the applicant's appeal against the decision of 22 June 2005 prolonging his detention, the Court of Appeal referred, *inter alia*, to the presumption established under Article 258 § 2 of the Code of Criminal Procedure and held that that presumption alone justified the applicant's continued detention. It also held that keeping the applicant in custody was necessary in order to prevent him from interfering with the trial, given the reasonable risk of such interference which flowed

1. The Court of Appeal relied on the decision of the Supreme Court of 19 November 1996, no. IV KZ 119/96, published in OSP 1997 no. 4, item 74.

from the fact that he had been charged with commission of offences as a member of an organised criminal group.

28. By March 2006 the trial court had held some 135 hearings of the 162 which had been scheduled. It heard more than 400 witnesses.

29. During the trial the applicant filed numerous but unsuccessful applications for release and appealed, likewise unsuccessfully, against the decisions prolonging his detention. He maintained that the length of his detention was excessive and that the charges against him lacked a sufficiently strong basis.

30. On 21 March 2005 the Gdańsk Regional Court made a severance order with a view to expediting the proceedings, and thereafter four defendants (J.N., G.P., Z.S. and Z.C.), who in the meantime had been released from detention, were to be tried separately.

31. After 20 June 2005 no hearing was held due to the serious illness of the judge rapporteur. On 21 September 2005 the President of the IV Criminal Section of the Gdańsk Regional Court assigned a new judge rapporteur. Consequently, the trial had to commence *de novo*.

32. On 20 September 2005 the Court of Appeal prolonged the applicant's detention until 31 January 2006. The applicant appealed against that decision. On 18 October 2005 a different panel of the Court of Appeal quashed the impugned decision and ordered the applicant's release under police supervision. It also imposed on him a prohibition on leaving the country. The Court of Appeal had regard to the fact that the trial had to commence *de novo* and that the applicant had already spent a few years in pre-trial detention.

33. The applicant was released on 19 October 2005.

34. On 24 November 2005 the trial court made a further severance order and divided the case into eleven separate cases.

35. It appears that the proceedings are still pending before the first-instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. The relevant domestic law and practice concerning the imposition of detention on remand (*tymczasowe aresztowanie*), the grounds for its prolongation, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) at the material time are stated 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.

THE LAW

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

37. 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.”

38. The Government, having regard to the Court's case-law concerning the length of pre-trial detention, refrained from taking a position on the admissibility of the complaint.

A. Admissibility

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

B. Merits

1. Period to be taken into consideration

40. The applicant's detention started on 21 April 1999, when he was arrested on suspicion of armed robbery. It continued until 19 October 2005 when the applicant was released. Accordingly, the period to be taken into consideration amounts to 6 years and 6 months.

2. The parties' submissions

(a) The applicant

41. The applicant argued that the length of his pre-trial detention had been unreasonable. The courts prolonging his detention repeatedly invoked similar grounds throughout the whole period of his detention and did not impose other preventive measures. The applicant alleged that the domestic court had handled the trial incompetently. He further submitted that the complexity of the case resulted from the court's decision to examine jointly all the charges against the very many defendants in one set of proceedings.

(b) The Government

42. The Government firstly presented some statistical data, indicating that in the years 2000-2005 the number of indictments and convictions in cases concerning organised crime increased both in absolute terms and in relation to other crimes. In 2004 there were 617 indictments in such cases and 220 persons were convicted. They argued that in organised crime cases the authorities were faced with particular problems, relating to the taking and assessment of evidence and various logistical issues.

43. With reference to the present case, the Government submitted that the applicant's pre-trial detention had been justified by the existence of substantial evidence of his guilt, the nature of the offences with which he had been charged and the severity of the anticipated penalty. They underlined that the length of the applicant's detention should be assessed with reference to the fact that he and his co-defendants had acted in an organised criminal gang. The risk that the defendants might obstruct the proceedings or tamper with evidence was aggravated by the fact they had been members of tightly-knit organised criminal group. Thus, the domestic courts had considered it necessary to remand the applicant and his co-defendants in custody until all relevant witnesses had been heard.

44. The Government emphasised that the serious nature of the charges as well as the fact that there had been nineteen defendants charged with numerous offences required that the proper conduct of the proceedings be secured with particular diligence. The necessity of the applicant's continued detention had been thoroughly examined by the courts which on each occasion had given sufficient reasons for their decisions. The applicant's case had been extremely complex on account of the number of charges and defendants, and by reason of the volume of evidence.

45. Furthermore, the Government maintained that the defendants bore the main responsibility for the length of the trial. They had lodged hundreds of applications and appealed against every decision, even when they had been informed that the appeal had been inadmissible. The Government referred in that respect to the decision of the Court of Appeal of 23 June 2004 which had observed that the main reason for the delays in the proceedings until April 2003 had been the obstructiveness of the defendants and the abuse of the rights of the defence. In their view the defendants' behaviour justified the conclusion that they had resorted to delaying tactics. Lastly, they maintained that the authorities had displayed special diligence in dealing with the applicant's case.

3. *The Court's assessment*

(a) General principles

46. The Court recalls that the general principles regarding the right “to trial within a reasonable time or to release pending trial”, as guaranteed by Article 5 § 3 of the Convention were stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

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

47. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the serious nature of the charges against him, (2) the severity of the penalty to which he was liable and the alleged risk that he might obstruct the trial flowing from the former, (3) the complexity of the case related to the number of defendants and volume of evidence to be heard. The domestic courts also referred to the obstructive behaviour of the defendants and their counsel aimed at delaying the trial.

48. The applicant was charged with numerous counts of armed robbery committed in an organised and armed criminal group (see paragraph 9 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 *Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

49. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences could initially warrant his detention. In addition, it notes that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants. In these circumstances, the Court also accepts that the need to obtain voluminous evidence from many sources, coupled with the fact that in the course of the investigation new suspects had been identified, constituted relevant and sufficient grounds for the applicant's initial detention.

50. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts were “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

51. According to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant 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, for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

52. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal gang. In this regard, the Court reiterates that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings (see, *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent prolongations of the detention (see, *Celejewski*, cited above, § 37). It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. Moreover, the Court considers that in cases such as the present concerning organised criminal gangs, 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 particularly high. In this respect, the Court notes that the applicant and some of his co-defendants had made attempts to disrupt the trial in its early stages (see paragraph 13 above). Furthermore, it accepts that certain delays during the trial were caused by the defendants' obstructiveness (see paragraphs 20 and 24 above).

53. While all those above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to prolong this measure. Even if the particular circumstances of the case required detention on remand to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify this (*Wolf v. Poland*, nos. 15667/03 and 2929/04, § 90, 16 January 2007). In this respect the Court observes that the applicant had spent 6 years and 6 months in pre-trial detention which is a particularly long period.

54. 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 members of 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.

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

II. 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 100,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government submitted that the applicant's claim was exorbitant. They asked the Court to rule that a finding of a violation constituted in itself sufficient just satisfaction. Alternatively, the Government invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

59. The Court considers that the applicant has suffered some non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

60. The applicant submitted no claim for costs and expenses.

C. Default interest

61. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national

currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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 6 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President