



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

FOURTH SECTION

CASE OF KACHEL v. POLAND

(Application no. 22930/05)

JUDGMENT

STRASBOURG

23 September 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Kachel 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 Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 22930/05) 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 Jan Kachel (“the applicant”), on 17 May 2005.

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

3. The applicant alleged, in particular, that his detention on remand had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 13 September 2007 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).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1960 and lives in Tarnów. He is currently serving a sentence of imprisonment in Tarnów Prison.

Criminal proceedings against the applicant and his detention on remand

6. On 30 July 2002 the applicant was arrested on suspicion of murder.

7. On 31 July 2002 the Bytom District Court (*Sąd Rejonowy*) remanded him in custody. It justified the applicant's pre-trial detention by the gravity of the offence, the existence of strong evidence against him, the likelihood that a heavy penalty would be imposed and by the need to ensure the proper conduct of the proceedings.

8. The applicant's appeal against the decision to remand him in custody was unsuccessful. On 4 September 2002 the Katowice Regional Court (*Sąd Okręgowy*), relying on a reasonable suspicion that the applicant had committed a serious offence, upheld the Bytom District Court's decision.

9. The applicant's pre-trial detention was subsequently extended by decisions of the Katowice Regional Court of, *inter alia*, 21 October 2002, 2 December 2002, 31 March 2003 (upheld by the Katowice Court of Appeal on 7 May 2003), 29 July 2003 and 16 June 2004.

10. Once the length of the applicant's detention had reached the statutory two-year maximum laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), the first-instance court was no longer competent to extend it. Consequently, it was the Katowice Court of Appeal (*Sąd Apelacyjny*) which issued further extensions on, *inter alia*, 14 July 2004, 8 December 2004, 6 April 2005 and 28 December 2005.

11. The courts repeatedly justified the applicant's pre-trial detention in the initial phase by the existence of strong evidence against him, the likelihood that a heavy penalty would be imposed and the reasonable risk that the applicant would attempt either to induce witnesses to give false testimony or to obstruct the proper course of proceedings by other unlawful means. They further stressed that it would be necessary to hear evidence from a large number of witnesses and to obtain expert reports.

12. In the latter stages of the applicant's detention, the courts additionally referred to the complexity of the case and the fact that there was strong evidence against him and other defendants.

13. In the meantime, on 16 April 2003 the applicant was indicted on a charge of murder allegedly committed with two accomplices, who were also on trial.

14. On 4 July 2005 the Katowice Regional Court convicted the applicant and his co-defendants as charged. The applicant was sentenced to 25 years' imprisonment.

15. The prosecutor and the lawyers of all three defendants lodged appeals.

16. On 25 January 2006 the Katowice Court of Appeal upheld the substance of the first-instance judgment concerning the characterisation of the charges and the sentence.

17. On 8 November 2006 the Supreme Court dismissed a cassation appeal lodged by the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation and release from detention and the rules governing other, so-called “preventive measures” (*środki zapobiegawcze*) are set out 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

19. 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.”

20. The Government contested that argument.

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. *Period to be taken into consideration*

22. The applicant’s detention started on 30 July 2002, when he was arrested on suspicion of homicide. On 4 July 2005 the Katowice Regional Court convicted him as charged.

Accordingly, the period to be taken into consideration amounts to two years, eleven months and seventeen days.

2. The parties' submissions

(a) The Government

23. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. They submitted that the detention had been justified and that during the entire period the authorities had given relevant and sufficient reasons for extending it. They further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case, in which evidence from 39 witnesses had had to be heard.

(b) The applicant

24. The applicant submitted in general terms that his application lodged with the Court was justified.

3. The Court's assessment

(a) General principles

25. 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 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

26. In their detention decisions, the authorities, relied principally on three grounds in addition to a reasonable suspicion against the applicant, namely (1) the serious nature of the offences with which he had been charged, (2) the heavy penalty to which he was liable; and (3) the need to ensure the proper conduct of the proceedings. As regards the latter, they did not, however, specify any concrete grounds justifying their opinion.

27. The Court accepts that the reasonable suspicion that the applicant had committed a serious offence could initially warrant his detention. Also, the need to determine the degree of alleged responsibility of each of the three co-accused and the process of obtaining evidence from witnesses constituted valid grounds for the applicant's initial detention.

28. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds cited

by the courts – namely, the heavy sentence faced and the need to ensure the proper conduct of the proceedings – were “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

According to the authorities, the likelihood of a heavy sentence created a presumption that the applicant would obstruct the proceedings. However, the Court would reiterate that, while the length 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 *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

Moreover, as noted above (paragraph 26), the domestic courts did not provide any grounds to justify their concern that the applicant, if released, would obstruct the proceedings.

29. The Court further notes that there is no specific indication that the authorities, at any point during the applicant’s pre-trial detention, considered the possibility of imposing on him other preventive measures – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of the criminal proceedings.

In this context the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative means of ensuring his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

30. 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. 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. Relying on Article 6 §§ 1 and 2 of the Convention, the applicant complained that the principle of presumption of innocence had been violated, because “the first-instance court had sentenced him in spite of the evidence gathered in the investigation”. He also complained that he had been found guilty without sufficient evidence.

32. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant has failed to substantiate his complaints. Furthermore, the complaint concerning the outcome of the relevant proceedings is clearly of a fourth-instance nature. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 150,000 Polish zlotys (PLN) in respect of pecuniary, and PLN 200,000 in respect of non-pecuniary, damage.

35. The Government did not comment.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

38. 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 complaint concerning the excessive length of the applicant's detention admissible and the remainder of the application inadmissible;
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 23 September 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President