



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

FOURTH SECTION

CASE OF KAUCZOR v. POLAND

(Application no. 45219/06)

JUDGMENT

STRASBOURG

3 February 2009

FINAL

03/05/2009

This judgment may be subject to editorial revision.

In the case of Kauczor 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,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 45219/06) 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 Adam Kauczor (“the applicant”), on 5 November 2006.

2. The applicant was represented by Mr I. Płaza, a lawyer practising in Katowice. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that his pre-trial detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention. He also complained under Article 6 § 1 of the Convention of the allegedly unreasonable length of the criminal proceedings against him.

4. On 4 May 2007 the President of the Chamber to which the case has been allocated 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, Mr Adam Kauczor, is a Polish national who was born in 1967 and lives in Siemianowice Śląskie.

A. The applicant's detention and criminal proceedings against him

6. On 9 February 2000 the applicant was arrested. On 10 February 2000 the Katowice District Court (*Sąd Rejonowy*) remanded him in custody on suspicion of murder. That decision was upheld by the Katowice Regional Court (*Sąd Okręgowy*) on 1 March 2000.

7. The applicant's pre-trial detention was subsequently extended by the Katowice Regional Court's decisions of 25 April 2000, 3 July 2000 (upheld by the Katowice Court of Appeal (*Sąd Apelacyjny*) on 2 August 2000), and 23 April 2001.

8. Meanwhile, on 21 June 2000 the applicant was indicted for murder and illegal possession of weapons. The Prosecutor requested that thirty-four witnesses be heard by the trial court and the testimonies of a further one hundred and four witnesses be read out at the trial.

9. The first hearing was scheduled on 28 December 2000. It was adjourned, however, due to the absence of a key witness.

Subsequently the court held sixty hearings. Approximately twenty hearings were cancelled or adjourned either because of the absence of the applicant's counsel or summoned witnesses, or because of the illness of a judge.

10. On 26 November 2001 the Katowice Regional Court decided to extend the applicant's detention until 30 April 2002. However that decision was changed by the Katowice Court of Appeal's decision of 19 December 2001. The Katowice Court of Appeal agreed to continue the applicant's detention, but only until 9 February 2002. It was held that the first-instance court was no longer competent to extend the preventive measure, since the length of the applicant's detention was about to reach the statutory two-year time-limit laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*).

11. Between 2001 and 2003 the court held a hearing every two or three months.

12. During this time, the applicant's detention was extended by the Katowice Court of Appeal's decisions of 6 February 2002 (confirmed by the same court on 13 March 2002), 15 May 2002 (upheld on 23 October 2002), 23 October 2002 (upheld on 12 March 2003), 12 March 2003 (upheld on 23 April 2003).

13. On 21 May 2003 the applicant's trial commenced *de novo* because the judge rapporteur had retired.

14. The first hearing scheduled on 5 July 2003 was adjourned due to the absence of a key witness and one of the lay judges.

15. From the beginning of 2004 until mid-2005 the court held on average one hearing per month.

16. On 16 September 2005 the President of the Criminal Section (*przewodniczący wydziału*) ordered that hearings be scheduled more often than once a month.

17. In 2006 the court scheduled twenty-three hearings, of which eleven did not take place. It appears that between January and October 2007 the court scheduled nine hearings.

18. Meanwhile, the applicant's detention was extended by the Katowice Court of Appeal decisions of 23 July 2003 (upheld on 27 August 2003), 26 November 2003 (upheld on 17 December 2003), 18 February 2004 (upheld on 17 March 2004), 11 August 2004 (upheld on 25 August 2004), 24 November 2004 (upheld on 5 January 2005), 16 March 2005 (upheld on 20 April 2005), 27 July 2005 (upheld on 10 August 2005), 19 October 2005 (upheld on 23 November 2005), 25 January 2006 (upheld on 22 February 2006), 19 April 2006 (upheld on 19 May 2006), 19 July 2006 (upheld on 23 August 2006), 25 October 2006 (upheld on 15 November 2006), and 24 January 2007.

19. The domestic courts justified the applicant's pre-trial detention in its initial phase by the existence of strong evidence against the applicant and the likelihood that a severe penalty would be imposed, as well as by the need to secure the proper course of the proceedings. The latter was derived from the fact that there was a suspicion that the applicant had been aided in committing the offence charged and that the alleged accomplices were being sought by the authorities. During that time numerous witnesses were heard and an identification parade was held.

20. At the later stage of the applicant's detention, the authorities relied on the complexity of the case as the reason for extending the measure. It was also emphasised that many of the scheduled court hearings did not take place for various objective reasons, such as the illness of a judge, the applicant's request for the withdrawal of a judge, the absence of witnesses or of the applicant himself, as well as difficulties in obtaining the report of ballistic-forensic experts as requested by the applicant at an advanced stage of the proceedings.

21. On 11 December 2007 the Katowice Regional Court decided to lift the preventive measure and to release the applicant. On an unspecified date that decision was upheld by the Katowice Court of Appeal.

22. The case is currently pending before the Katowice Regional Court as the court of first instance.

B. Proceedings under the 2004 Act

23. On an unspecified date in 2006 the applicant lodged a complaint about unreasonable length of proceedings under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time

(*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) (“the 2004 Act”).

24. On 25 October 2006 the Katowice Court of Appeal dismissed the complaint. Although the court examined the entire length of the proceedings, it held that there had been no inactivity or undue delay on the part of the relevant court. It was observed that until April 2003 the court had been dealing with the case speedily and there had been no periods of inactivity. It was acknowledged that the proceedings had been obstructed when the case had had to be opened *de novo* and a new judge rapporteur had had to be assigned. The court emphasised that from the end of 2003 until the end of 2006 over fifty hearings had been scheduled. The fact that some of them were cancelled was attributable to objective factors such as the absence of a lay judge, illness of a presiding judge or absence of the applicant’s lawyer. Finally, it was pointed out that the case was of a complex nature and, moreover, that the applicant himself had contributed to the delay because of his multiple requests for new evidence to be admitted.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

25. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines pre-trial detention (*aresztowanie tymczasowe*) one of the so-called “preventive measures” (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition on leaving the country (*zakaz opuszczania kraju*).

Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

“Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused’s committing another, serious offence; they may be imposed only if evidence gathered shows a significant probability that an accused has committed an offence.”

Article 258 lists grounds for pre-trial detention. It provides, in so far as relevant:

“1. Pre-trial detention may be imposed if:

(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or when he has no permanent abode [in Poland];

(2) there is a reasonable risk that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years' imprisonment, or if a court of first instance has sentenced him to at least 3 years' imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed."

The provisions on pre-trial detention are based on the precept that pre-trial detention, the most extreme among the preventive measures, should not be imposed if more lenient measures are adequate.

Article 257 reads, in so far as relevant:

"1. Pre-trial detention shall not be imposed if another preventive measure is sufficient."

Article 259 § 1 reads:

"1. If there are no special reasons to the contrary, pre-trial detention shall be lifted, in particular if depriving an accused of his liberty would:

- (1) seriously jeopardise his life or health; or
- (2) entail excessively harsh consequences for the accused or his family."

Article 259 § 3 provides:

"Pre-trial detention shall not be imposed if an offence attracts a penalty of imprisonment not exceeding one year."

Article 259 § 4 specifies that the rule provided for in Article 259 § 3 is not applicable when the accused is attempting to evade justice, when he persistently fails to comply with summonses or when his identity cannot be established.

A more detailed description of the relevant domestic law and judicial practice concerning the imposition of pre-trial detention, the grounds for its extension, release from detention and rules governing other "preventive measures" 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.

26. 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). The provision in question provided that the detention measure might be extended beyond two years if the pre-trial proceedings could not have been completed because of "important obstacles" which could not have been overcome. The provision in question did not set any statutory time-limit for extending the detention measure. The

Constitutional Court considered that the impugned provision, by its imprecise and broad wording, could lead to arbitrary decisions of the courts on pre-trial detention and thus, infringe the very essence of constitutional rights and freedoms.

The Constitutional Court ruled that the unconstitutional provision was to be repealed within six months from the date of the publication of the judgment in the Journal of Laws (*Dziennik Ustaw*).

27. As a result of the Constitutional Court's judgment, Article 263 § 4 of the Code of Criminal Procedure was amended as follows:

"The pre-trial detention shall be extended beyond the period specified in paragraphs 2 and 3, only by the court of appeal in whose jurisdiction the proceedings are conducted, upon a motion from the court before which the case is pending, and at the investigation stage, upon a motion from the appellate prosecuting authorities. This can be done if deemed necessary in connection with a suspension of criminal proceedings, in connection with actions aiming at establishing or confirming the identity of the accused, prolonged psychiatric observation of the accused, prolonged preparation of an opinion of an expert, conducting evidentiary action in a particularly intricate case or conducting them abroad, or intentional protraction of proceedings by the accused."

However, a new provision was added in § 4(a) of Article 263:

"The court of appeal, in whose jurisdiction the proceedings are being conducted may also, on a motion from the court before which the case is pending, order the extension of the detention on remand for a fixed period, exceeding that specified in paragraph 3, because of other important obstacles whose removal has not been possible".

The above amendment was adopted on 12 January 2007 and entered into force on 16 February 2007 (Journal of Laws of 2007, No. 20, item 116).

B. Relevant statistical data

28. In the framework of the procedure before the Committee of Ministers (see paragraph 34 below) the Polish Government supplied statistical data concerning the number and the length of pre-trial detentions ordered in a given year by the domestic courts.

According to these statistics, in 2005 the total number of cases in which pre-trial detention was ordered by regional courts amounted to 3,833. That number comprised 30% of cases in which the measure lasted between twelve and twenty-four months, and 23 % of cases in which the measure exceeded two years. In 2006 the total number cases in which pre-trial detention was ordered by district courts was 4,000. It comprised over 33 % of cases in which the detention measure lasted between twelve and twenty-four months, and over 21 % of cases in which the measure exceeded two years. District courts ordered pre-trial detention in 7,635 cases in 2005 and 7,632 cases in 2006. In both years, approximately in 12% of cases the

detention measure lasted between twelve and twenty-four months and in approximately 2.5 % over two years.

C. Remedies for unreasonable length of proceedings

29. The relevant domestic law and practice concerning remedies for excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII, and its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

III. MEASURES TAKEN BY THE STATE TO REDUCE THE LENGTH OF PRE-TRIAL DETENTION

A. Recent amendments to the relevant legislation

30. In addition to new Article 263 § 4 of the Code of Criminal Procedure (see paragraph 27 above) new amendments, designed to streamline criminal proceedings, entered into force on 20 June 2007 (Law of 9 May 2007 on amendments to the Code of Criminal Procedure; Journal of Laws of 2007, No. 99, item 664; *Ustawa o zmianie ustawy - Kodeks postępowania karnego oraz niektórych innych ustaw*). Those amendments strengthened the powers of the authorities to discipline the participants.

In particular, newly added Article 285 § 1 (a), which applies in the investigative and judicial phase of criminal proceedings, empowers a trial court to impose a fine of up to 10,000 Polish zlotys (PLN) on a defence counsel or a representative of a party who has failed to obey the summons of the authority conducting the proceedings or who, without the approval of the competent authority, has left the venue of the proceedings before they were completed.

A similar admonishing measure may be applied in respect of experts, witnesses, interpreters and other persons participating in the proceedings (see among others, Articles 285 § 1, 287 and 20 § 1 (a)).

In addition, new Article 117 (a) entered into force on 20 June 2007. According to this provision it is sufficient if one of the defence lawyers or representatives of a party (who has more than one defence lawyer or representative) is present before the authority to proceed with the case.

31. Another amendment, preventing the obstruction of proceedings was introduced, to Article 378 § 1 of the Code of Criminal Procedure. According to the new provision a trial court shall appoint *ex officio* a defence counsel if the accused has dismissed his lawyer or the lawyer

himself has resigned and the accused has not appointed a new defence counsel. Previously, in such a situation, the court had to fix a time-limit for the accused to choose a new defence counsel and only after this time had lapsed, could the court act *ex officio*.

B. Other measures

32. According to the information supplied by the Polish Government to the Committee of Ministers (see paragraph 28 above and paragraph 34 below), in addition the Polish trial courts and prosecution authorities have undertaken a series of practical measures in order to organise criminal proceedings in a more efficient manner, i.e. by scheduling time-limits for hearings well in advance, holding hearings on Saturdays or severing charges against co-accused to separate proceedings under Article 34 § 3 of the Code of Criminal Procedure if the joint examination proves difficult and time-consuming.

33. On 17 May 2007 the Council of Ministers (*Rada Ministrów*) adopted the “Plan of Actions of the Government for the execution of judgments of the European Court of Human Rights in respect of Poland” (*Program Działań Rządu w sprawie wykonywania wyroków Europejskiego Trybunału Praw Człowieka*). By virtue of that document the Minister of Justice was obliged to disseminate among judges and prosecutors on a regular basis information on the standards concerning the length of pre-trial detention stemming from the Convention and the case-law of the Court in Polish cases and to include this topic in the programmes of workshops and seminars for judges.

IV. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. The Committee of Ministers

34. On 6 June 2007 the Committee of Ministers adopted an Interim Resolution concerning the judgments of the European Court of Human Rights in 44 cases against Poland relating to the excessive length of detention on remand (“the 2007 Resolution”). It reads, in its relevant parts, as follows:

“... Having regard to the great number of judgments of the Court finding Poland in violation of Article 5, paragraph 3, of the Convention on account of the unreasonable length of detention on remand (...)

Recalling that the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court involves an obligation rapidly to adopt the individual measures necessary to erase the consequences of the violations

found as well as general measures to prevent new, similar violations of the Convention;

Stressing the importance of rapid adoption of such measures in cases where judgments reveal structural problems which may give rise to a large number of new, similar violations of the Convention;

Taking note of the steps taken so far by the authorities to remedy the structural problems related to detention on remand in Poland (...)

Noting also that, although some courts have begun to refer to the Convention and the European Court's case-law in rendering decisions on the use of detention on remand, this preventive measure still seems often to be ordered without taking into consideration the Convention's requirements;

Underlining that continued detention can be justified only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty;

Recalling that the persistence of reasonable suspicion that a person arrested has committed an offence, although a condition *sine qua non* for the lawfulness of the continued detention, may no longer suffice after a certain lapse of time and that consequently other relevant and sufficient grounds must be presented in order to extend such detention;

Noting that the number of cases in which the European Court has found similar violations is constantly increasing,

ENCOURAGES the Polish authorities, in view of the extent of the systemic problem concerning the excessive length of detention on remand:

- to continue to examine and adopt further measures to reduce the length of detention on remand, including possible legislative measures and the change of courts' practice in this respect, to be in line with the requirements set out in the Convention and the European Court's case-law; and in particular

- to take appropriate awareness-raising measures with regard to the authorities involved in the use of detention on remand as a preventive measure, including judges of criminal courts and prosecutors;

- to encourage domestic courts and prosecutors to consider the use of other preventive measures provided in domestic legislation, such as release on bail, obligation to report to the police or prohibition on leaving the country;

- to establish a clear and efficient mechanism for evaluating the trend concerning the length of detention on remand;

..."

B. The Council of Europe's Commissioner for Human Rights

35. On 20 June 2007 the Council of Europe's Commissioner for Human Rights released the Memorandum to the Polish Government concerning, among other issues, the use of the detention measure in Poland. It reads, in its relevant parts, as follows:

“36. The European Court of Human Rights has repeatedly found violations of Article 5 § 3 of the Convention (right of a person subject to pre-trial detention to be tried within a reasonable time) in respect of Poland. Examples of cases brought to Strasbourg where pre-trial detention has lasted between 4 to 6 years are not uncommon.

...

40. The Commissioner urges the Polish authorities to review the application and functioning of pre-trial detention in Polish law. The training of judges and prosecutors as regards European standards and case-law of the Strasbourg Court is crucial. The general rule should be the release rather than the detention on remand and this message needs to be strongly underlined to national judges...”

THE LAW

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

36. The applicant complained that the length of his pre-trial detention 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.”

37. The Government contested that argument.

A. Admissibility

38. 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

39. The applicant's detention started on 9 February 2000, when he was arrested on suspicion of murder. On 11 December 2007 he was released home while the criminal proceedings against him were pending before the first-instance court.

Accordingly, the period to be taken into consideration amounts to seven years, ten months and three days.

2. The parties' submissions

(a) The applicant

40. The applicant submitted that the length of his pre-trial detention had been excessive and that the measure had not been sufficiently justified by the authorities.

In particular, the applicant pointed out that the task of the trial court was to hear thirty-four witnesses and merely read out the testimonies of the other witnesses. Consequently, the time which the trial court took to examine the applicant's case was far too long. The applicant also claimed that the Government's argument that there was a risk that he would obstruct the proceedings because he had pleaded 'not guilty' breached the principle of the presumption of innocence and was unjustified. Finally, the applicant argued that during the proceedings he had been acting in compliance with his statutory rights as a defendant and none of his actions should have contributed to the protraction of the trial and his detention. The applicant concluded that the reasons for his pre-trial detention provided by the authorities had been laconic and vague. They had no justification in the circumstances of the case, especially in the light of the fact that the applicant's pre-trial detention had lasted nearly eight years and that his criminal case was still pending before the first-instance court.

(b) The Government

41. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by "relevant" and "sufficient" grounds, in particular the existence of a reasonable suspicion throughout the entire period of the applicant's pre-trial detention that he had committed the offences with which he had been charged. Moreover, the Government considered that the applicant's protracted detention pending trial was justified by a genuine public interest requirement, namely the fact that the applicant had been charged with serious offences and was facing a lengthy prison sentence. Finally, the Government noted that the applicant's

pre-trial detention was justified by the risk that he would obstruct the proceedings and tamper with evidence. The latter was particularly important in the light of the fact that the applicant had pleaded ‘not guilty’, that the case was complex and that the advancing investigation had uncovered new aspects of the case which, in turn, required additional examination.

3. *The Court’s assessment*

(a) **General principles**

42. 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, have been stated in a number of its previous judgements (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**

43. 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 offences 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. The latter was derived from the fact that, at the initial phase of the investigation, the applicant had been suspected of having been aided in committing the offence charged and that the alleged accomplices had been sought by the authorities.

44. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to obtain voluminous evidence and the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the applicant’s initial detention.

45. 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, namely the severity of the anticipated sentence and the risk that the applicant would tamper with evidence, were “relevant” and “sufficient” (see *Kudła*, cited above, § 111).

46. 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 reoffending, the gravity of the

charges cannot by itself justify long periods of pre-trial detention (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

Furthermore, the Court observes that the risk that the applicant would tamper with the evidence was not sufficiently justified by the authorities when deciding to extend his pre-trial detention. The Court notes that the Government relied on a presumption that the applicant would obstruct the proceedings and tamper with evidence because he had not pleaded guilty to the offences charged. In so far as the domestic courts appear to have drawn adverse inferences from the fact that the applicant had not pleaded guilty, the Court considers that their reasoning showed a manifest disregard for the principle of the presumption of innocence and cannot, in any circumstances, be relied on as a legitimate ground for deprivation of the applicant's liberty (see *Garycki v. Poland*, no. 14348/02, § 48, 6 February 2007 and *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005).

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

48. The applicant further complained that the length of the proceedings was incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

49. The Government refrained from making comments on that complaint.

50. The period to be taken into consideration began on 9 February 2000 and has not yet ended. It has thus lasted more than eight years and six months at a single level of jurisdiction.

A. Admissibility

51. 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

52. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

53. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above). Furthermore, the Court considers that, in dismissing the applicant's complaint that the proceedings in his case had exceeded a reasonable time, the Katowice Court of Appeal failed to apply standards which were in conformity with the principles embodied in the Court's case-law (see *Majewski v. Poland*, no. 52690/99, § 36, 11 October 2005).

54. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, the Court notes that during the first two years after the indictment the hearings before the trial court were scheduled not more often than once every two or three months and that many of them had been adjourned. In addition, on 21 May 2003 the trial had to begin *de novo* because the judge rapporteur had retired. There was a period of inactivity in the months to follow. Even though the hearings have been scheduled more frequently since 2005, the proceedings appear still to be pending before the first-instance court.

Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

55. Before examining the claims for just satisfaction submitted by the applicant under Article 41 of the Convention, and having regard to the circumstances of the case, the Court considers it necessary to determine what consequences may be drawn from Article 46 of the Convention for the respondent State.

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.”

56. In this context, the Court observes that it has recently delivered a considerable number of judgments against Poland in which a violation of Article 5 § 3 on account of the excessive length of detention was found. In 2007 a violation of that provision was found in thirty-two cases and in 2008, the number was thirty-three. In addition, approximately 145 applications raising an issue under Article 5 § 3 of the Convention are currently pending before the Court. Nearly ninety of these applications have already been communicated to the Polish Government. The latter number comprises some sixty applications which were communicated within the last twelve months with a specific question as to the existence of a structural problem related to the excessive length of pre-trial detention.

57. It is to be noted that this issue has been recently considered by the Committee of Ministers in connection with the execution of judgments in cases against Poland where a violation of Article 5 § 3 of the Convention was found. In its 2007 Resolution the Committee of Ministers concluded that the great number of the Court’s judgments finding Poland in violation of Article 5 § 3 of the Convention on account of the unreasonable length of pre-trial detention revealed a structural problem (see paragraph 34 above). Similarly, the Council of Europe Commissioner for Human Rights raised that issue in his Memorandum to the Polish Government of 20 June 2007 (see paragraph 35 above).

58. The 2007 Resolution taken together with statistical data referred to above (see paragraphs 28 and 56 above) demonstrate that the violation of the applicant’s right under Article 5 § 3 of the Convention originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which has affected, and may still affect in the future, an yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

59. Thus, in many similar previous cases in the recent years the Court has held that the reasons relied upon by the domestic courts in their decisions to extend pre-trial detention were limited to paraphrasing the grounds for detention provided for by the Code of Criminal Procedure and that the authorities failed to envisage the possibility of imposing other preventive measures expressly foreseen by the Polish law to secure the proper conduct of the criminal proceedings (see among many other examples *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000; *Jarosław Jakubiak v. Poland*, no. 39595/05, §§ 37-45, 3 June 2008 and *Kucharski v. Poland*, no. 51521/99, §§ 60-63, 3 June 2008). Moreover, while the relevant provisions of the domestic law define detention as the most extreme preventive measure, it appears that it is applied most frequently by the domestic courts (see paragraphs 25 and 28 above).

60. The Court thus concludes, as the Committee of Ministers did, that for many years, at least as recently as in 2007, numerous cases have demonstrated that the excessive length of pre-trial detention in Poland reveals a structural problem consisting of “a practice that is incompatible with the Convention” (see *mutatis mutandis Broniowski v. Poland* [GC], no. 31443/96, §§ 190-191, ECHR 2004-V; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 229-231, ECHR 2006-...; *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V with respect to the Italian length of proceedings cases).

61. In this connection, it is to be reiterated that, where the Court finds a violation, the respondent State has a legal obligation under Article 46 of the Convention not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. The respondent State remains free, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court’s judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Broniowski v. Poland* cited above).

62. It is true that the respondent State has already taken certain steps to remedy the structural problems related to pre-trial detention (see paragraphs 27 and 30-33 above). The Court welcomes these developments and considers that they may contribute to reducing the excessive use of detention as a preventive measure. However, as already noted by the Committee of Ministers (see paragraph 34 above), in view of the extent of the systemic problem at issue, consistent and long-term efforts, such as adoption of further measures, must continue in order to achieve compliance with Article 5 § 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 71,253 euros (EUR) in respect of pecuniary and non-pecuniary damage.

65. The Government refrained from making comments on that matter.

66. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 10,000 in respect of non-pecuniary damage suffered on account of the violation of Articles 5 § 3 and 6 § 1 of the Convention.

B. Costs and expenses

67. The applicant did not make a claim for any costs and expenses incurred.

C. Default interest

68. 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* that there has been a violation of Article 6 § 1 of the Convention;
4. *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 10,000 (ten thousand euros) in respect of non-pecuniary damage, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Lawrence Early
Registrar

Nicolas Bratza
President