



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF WOJCIECH KOWALSKI v. POLAND

(Application no. 33734/06)

JUDGMENT

STRASBOURG

13 October 2009

FINAL

13/01/2010

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 Wojciech Kowalski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 33734/06) 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 Wojciech Kowalski (“the applicant”), on 24 March 2006.

2. The applicant was represented by Ms N. Klima, 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 detention pending trial had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention and that the proceedings in his case have lasted an excessively long time.

4. On 6 November 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 applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Kraków.

A. Criminal proceedings against the applicant and his detention pending trial

6. On 3 April 1997 the applicant was arrested by the police. On the same day the Kraków District Court (*Sąd Rejonowy*) ordered his detention for three months on suspicion of having committed several armed robberies. Simultaneously, an investigation was opened into the charges against the applicant.

7. Between 3 and 11 April 1997 the applicant served a prison sentence imposed on him in another set of proceedings.

8. On 1 July 1997 the applicant was released.

9. On 2 September 1997 the investigation was stayed because one of the suspects had gone into hiding.

10. On 10 January 2000 the applicant was arrested again. On the following day the Katowice District Court ordered his detention pending trial until 9 April 2000 on suspicion of having committed, *inter alia*, several armed robberies while acting in an organised armed criminal gang. It relied on a reasonable suspicion that the applicant had committed the offences with which he had been charged and the likelihood of a severe sentence of imprisonment being imposed on him. Moreover, the court considered that the applicant might tamper with evidence and go into hiding.

11. In the course of the investigation, the applicant's detention was extended several times. In their decisions, the courts relied on the reasons previously given and the likelihood that he had committed the offences while acting in an organised armed criminal gang. In this connection, they referred, *inter alia*, to the testimony of a crown witness (*świadek koronny*). They also referred to the complexity of the case, the need to obtain further evidence and the fact that some of the suspects had not yet been arrested.

12. Simultaneously, between 22 September 2000 and 22 March 2001, the applicant was serving a prison sentence imposed on him in other criminal proceedings.

13. On 11 June 2001 the investigation was completed and on 18 June 2001 the applicant was indicted before the Kraków Regional Court (*Sąd Okręgowy*).

14. In a decision of 28 September 2001 extending the applicant's detention the Kraków Regional Court held that “a wanted notice had been put out in respect of some of the co-defendants and one of them was not a

Polish citizen and had no domicile in Poland; therefore there was a real risk of absconding and going into hiding not only as regards that defendant but also as regards the remainder of them”.

15. In its decision of 28 December 2001 the Kraków Regional Court repeated the same argument.

16. Due to the fact that some of the accused were detained in the Katowice area, on 4 March 2002 the Kraków Regional Court asked the Katowice Court of Appeal (*Sąd Apelacyjny*) to refer the case to the Katowice Regional Court. On an unspecified date the Katowice Court of Appeal refused. On 5 May 2002 the Supreme Court, following a request by the Kraków Regional Court, referred the case to the Katowice Regional Court.

17. The first hearing was scheduled for 23 January 2003, but it did not take place because one of the defence lawyers was unwell.

18. On 13 February 2003 the trial started. It was continued on 20 March, 10 April and 15 May 2003 when the trial court heard evidence from the co-accused. On 12 June 2003 the trial court heard evidence from one witness but could not proceed with hearing other evidence because a sworn interpreter had failed to appear.

19. At a hearing held on 8 July 2003, out of fifteen witnesses only three appeared before the trial court. Similarly, on 25 September 2003, the Katowice Regional Court took evidence from only one witness, instead of four. At the subsequent hearing held on 26 September 2006, seven witnesses failed to appear at the trial, so the court heard evidence from only three witnesses. The same happened at the hearings held on 27 November and 18 December 2003, 6 June 2004 and 25 February 2005.

20. For example, between 7 July 2004 and 20 January 2005 the trial court scheduled seven hearings. Only one, scheduled for 29 October 2004, took place.

21. In sum, from 13 February 2003 to 25 May 2005, the Katowice Regional Court heard evidence from only seven witnesses.

22. At the hearing on 25 October 2005 the applicant and his co-accused challenged the trial judges and called for their disqualification. The challenge was dismissed on an unspecified date in 2006.

23. It appears that no hearing was scheduled between 15 July and 1 September 2006 because the hearing room was under renovation.

24. Around sixteen out of forty-five hearings scheduled by the first-instance court were cancelled for various reasons, such as: the absence of some witnesses, defendants and interpreters; failure of the police to bring certain accused to the court from detention centres; the summer break; the resignation of one of the defence lawyers; the illness of a lay judge and a professional judge; and the failure to notify one of the defence lawyers of a hearing.

25. The applicant's detention during the proceedings was subsequently extended by the Katowice Regional Court on 25 June, 28 September and 28 December 2001 as well as later by the Katowice Court of Appeal on 26 June and 18 December 2002; 23 April, 17 September and 10 December 2003; 10 March, 30 June and 10 November 2004; 16 February, 25 May and 21 September 2005; 11 January, 5 April, 7 June, 20 September 2006 and 19 December 2006. In addition to the reasons specified in the decisions given during the investigation, the courts vaguely referred to the continuing necessity to obtain further witness evidence. They noted that it was not possible to schedule hearings more often as only one hearing room meeting the relevant safety requirements had been at the disposal of the trial court. However, in its decisions given in 2005 and 2006 extending the applicant's detention the Katowice Court of Appeal acknowledged to a certain degree that the applicant's detention had been excessive, criticised delays in the collection of evidence and ordered the trial court to speed up the proceedings and discipline the defence lawyers.

26. Requests by the applicant for release and appeals against the extensions of the term of his detention were to no avail. The courts held that the reasons for his detention were still valid.

27. On 13 March 2007 the applicant was released from detention. The court prohibited the applicant from leaving the country and confiscated his passport.

28. The proceedings are pending before the first-instance court.

B. Proceedings under the 2004 Act

29. On 5 September 2005 the applicant lodged with the Katowice Court of Appeal a complaint under section 5 of 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").

30. The applicant sought a ruling declaring that the length of the proceedings before the Katowice Regional Court had been excessive and an award of just satisfaction in the amount of 10,000 Polish zlotys (PLN) (approx. 2,500 euros (EUR)).

31. On 28 September 2005 the Katowice Court of Appeal dismissed the applicant's complaint. It acknowledged that the proceedings had been lengthy. However, in the opinion of the court that was due to the factual complexity of the case, such as the significant number of accused, the nature of the charges against them, the fact that they were dangerous criminals and the necessity to ensure that the trial was conducted safely. The court also observed that the trial court had at its disposal only one hearing room adapted for trials against organised armed gangs and that this was not the

fault of the trial court itself. Similarly, the trial court could not be held wholly responsible for witnesses' failure to appear at hearings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. The relevant domestic law and practice concerning the imposition of detention during judicial proceedings (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other “preventive measures” (*środki zapobiegawcze*) 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.

33. The relevant statistical data, recent amendments to the Code of Criminal Procedure designed to streamline criminal proceedings and references to relevant Council of Europe materials 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*, no. 45219/06, §§ 27-28 and 30-35, 3 February 2009).

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

THE LAW

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

35. The applicant complained that the length of his detention pending trial 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.”

A. Admissibility

36. 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

37. The applicant's detention started on 3 April 1997, when he was arrested on suspicion of having committed several armed robberies while acting in an organised criminal group. Subsequently, on 1 July 1997, he was released. On 10 January 2000 the applicant was arrested again and, on 13 March 2007, was released from detention.

38. However, between 3 and 11 April 1997 and between 29 September 2000 and 22 March 2001 the applicant served prison sentences which had been imposed on him in other sets of criminal proceedings. These terms, being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's detention pending trial for the purposes of Article 5 § 3.

Accordingly, the period to be taken into consideration amounts to six years, ten months and twenty-four days.

2. The parties' submissions

(a) The applicant

39. The applicant's lawyer submitted that the length of the applicant's detention had clearly been unreasonable and that the grounds relied on by the authorities which had extended the period of detention had never been clearly explained; each time the authorities had simply repeated the grounds originally given to justify the applicant's detention pending trial.

(b) The Government

40. The Government submitted that, having regard to the Court's case-law concerning the question of the length of detention pending trial, they had decided to refrain from taking a position on the matter.

3. *The Court's assessment*

(a) General principles

41. 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 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

42. 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; and (3) the risk that the applicant might tamper with evidence or obstruct the proper conduct of proceedings in some other unlawful way. As regards the latter, they relied on the complexity of the case and the large number of co-defendants and victims involved in the proceedings.

43. The applicant was charged with numerous counts of armed robbery committed in an organised and armed criminal group (see paragraph 6, 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).

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 to determine the degree of the alleged responsibility of each of the defendants who had acted in a criminal group and against whom numerous charges of serious offences were laid as well as the need to secure the proper conduct of the proceedings constituted valid grounds for the applicant's initial detention.

45. 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 often, by the nature of things, high. However, the Court notes in this respect that the courts extending the detention did not refer to any particular examples of attempts by the applicant to intimidate witnesses or any other obstructive behaviour. In any event, the Court considers that the grounds referred to by the Kraków Regional Court in its decision of 28 September 2001 relating to other co-accused who had gone into hiding

and had no domicile in Poland (see paragraph 14 above) could not be applied to the applicant.

Furthermore, according to the authorities, the serious nature of the charges and 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 reoffending, the gravity of the charges cannot by itself justify long periods of detention pending trial (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

46. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to extend this measure. In particular, the Government have failed to explain why it was only on 13 March 2007 that the authorities finally considered that it was safe to release the applicant against the surrender of his passport (see paragraph 27 above).

47. 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.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF THE CRIMINAL PROCEEDINGS

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

“In the determination of any criminal charge against him ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

49. In their observations the Government decided to refrain from taking a position on the matter, noting however the exceptional complexity of the case and problems with transport of the accused who at the same time had been involved in several other sets of proceedings. The Government also submitted that at the relevant time the trial court had had only one hearing room at its disposal that met the safety requirements concerning the proceedings against a criminal group.

50. The period to be taken into consideration began on 3 April 1997 and has not yet ended. It has thus lasted over twelve years and the proceedings are still pending before the first-instance court.

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 arguments presented by the Government that is the complexity of the case as well as problems relating to transport and availability of an adequate hearing room cannot justify the excessive length of proceedings which, so far, have lasted for over twelve years and are still pending before the first-instance court. In this connection, it recalls that persons kept in detention pending trial are entitled to “special diligence” on the part of the authorities as regards timing and organisation of hearings. Consequently, in cases where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see, for example, *Abdoella v. the Netherlands*, judgment of 25 November 1992, Series A no. 248-A, p. 17, § 24; *Jabłoński v. Poland*, no. 33492/96, § 102, 21 December 2000; *Mõtsnik v. Estonia*, no. 50533/99, § 40, 29 April 2003). 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).

54. Having examined all the material submitted to it, the Court finds no argument capable of persuading it to reach a different conclusion in the present case.

55. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

56. 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*

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

2. *The Government*

58. The Government submitted that there were no grounds to apply Article 46 of the Convention and that the proceedings in the applicant's case had exceptional features that distinguished it from other cases of detention pending trial. Consequently, the length of the applicant's detention pending trial did not reveal the existence of a structural problem. They referred further to problems concerning cases involving organised criminal groups such as complexity of the case, the necessity to obtain expert reports or intentional prolongation of proceedings by the accused themselves or their representatives. Turning to the circumstances of the present case, the Government pointed to its exceptional complexity and submitted that it fully justified the length of detention and trial.

59. The Government further stressed that Polish law was compatible with the standards of Article 5 § 3 of the Convention.

60. Maintaining that the number of cases in which the domestic courts had ordered detention pending trial lasting from twelve months to two years or longer was decreasing, the Government made reference to statistical data for 2002-2007 which they submitted to the Court. They further stressed that the courts' awareness of the standards concerning the length of detention pending trial was growing.

61. They also suggested that the fact that the Court had already given many judgments finding a violation of Article 5 § 3 of the Convention should not lead to the automatic application of Article 46, as had occurred in the case of *Scordino v. Italy*. The Polish authorities had taken many general and individual measures based on the conclusions stemming from the Court's judgments finding that the length of pre-trial detention had been excessive. In particular, on 17 May 2007, the Cabinet had adopted the

“Plan of Actions of the Government for the execution of judgments of the European Court of Human Rights in respect of Poland”

62. 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 pending trial, Poland could not be said to have failed to comply with its obligations under Article 46 of the Convention to abide by the Court's judgments.

B. The Court's assessment

63. 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 pending cases raising an issue of excessively long 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.

64. 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. As in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 42-47 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; *Kąkol 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).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 65,705.20 Polish zlotys (PLN) plus income tax in respect of pecuniary damage and PLN 50,000 in respect of non-pecuniary damage.

67. The Government considered the applicant's claim in respect of pecuniary damage “highly speculative” and his claim in respect of non-pecuniary damage far too high, and requested that they be rejected.

68. 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 awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

69. The applicant's lawyer did not make any claim for costs and expenses.

C. Default interest

70. 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 on account of the excessive length of the criminal proceedings;
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), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Polish zlotys 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President