

**Press release issued by the Registrar**

**Chamber judgment <sup>1</sup>**

**[Wasilewska and Kalucka v. Poland](#)** (application no. 28975/04 and 33406/04)

**POLICE OPERATION RESULTING IN DEATH OF A SUSPECT BREACHED THE  
CONVENTION**

*Unanimously:*

***Two violations of Article 2 (right to life)***  
***of the European Convention on Human Rights***

**Principal facts**

On 23 August 2002, Mr Kałucki, 26 years old at the time, parked outside of Spała Sports Centre in Łódź accompanied by two persons, G.B. and T.N. The events, as described by the applicants – Sylwia Wasilewska and Barbara Kałucka, respectively partner and mother of Mr Kałucki – follow below.

Just as the car in which Mr Kałucki was had parked, it was suddenly surrounded by several vehicles from which a number of armed men jumped out. Although it later turned out that those were police officers from a special anti-terrorist group, at the time of the events it was not clear that that was the case given that not all police officers bore visible signs to identify themselves.

Mr Kałucki and his two companions tried to escape in the direction of the swimming pool which led to a dead end. They drove between the second and third police vehicles while the police, most of whom have jumped out of their cars, opened fire shooting repeatedly from automatic weapons at them. The whole operation lasted about fifteen seconds during which about 40 bullets were fired at the car as it was driving off. In spite of the claims by the police officers that they had been aiming at the tyres, none of the tyres had been damaged. The driver lost control of the car and hit the fence. Mr Kałucki was severely wounded and was removed from the car by one of the police officers, who pulled him by the head. Mr Kałucki was of a heavy build, weighing about 120 kg, and at the time of the events was observed to have five bullet wounds.

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<sup>1</sup> Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

No arrangements had been made for an ambulance to be present. Although the police officers testified that they had attempted to resuscitate Mr Kałucki and stop the haemorrhage, the autopsy reports made no mention of this. Mr Kałucki died before the arrival of an ambulance twenty minutes after the shooting. The driver of the car, G.B., was seriously wounded.

On an unspecified date both applicants requested the Łódź District Prosecutor to initiate a criminal investigation into the death of Mr Kałucki. The prosecutor took testimony from all the police officers who had taken part in the operation and decided, on 18 August 2003, to discontinue the investigation. The prosecution found in particular that the police officers had conducted an operation in order to arrest armed members of a criminal gang. As the suspects were trying to escape in a car, and in so doing had accelerated towards one of the police officers and thus threatened his life, the police had had the right to use their firearms as they had pursued persons against whom there was a reasonable suspicion that they had attempted to commit homicide and were armed. The prosecutor concluded that the police had followed all relevant rules and that their sole purpose had been to stop escaping suspects.

Both applicants' appeals against that decision were dismissed in February 2004 by the district court in a final decision.

After the events, G.B. and some other persons were indicted on various charges as a result of which G.B. was sentenced to six years in prison for assaulting a police officer.

### **Complaints, procedure and composition of the Court**

Relying on Article 2, the applicants complained about the killing of Mr Kałucki and there not having been an effective investigation into it.

The applications were lodged with the European Court of Human Rights on 29 July 2004 and 23 August 2003 respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Nicolas **Bratza** (the United Kingdom), **President**,  
Lech **Garlicki** (Poland),  
Giovanni **Bonello** (Malta),  
Ljiljana **Mijović** (Bosnia and Herzegovina)  
Päivi **Hirvelä** (Finland),  
Ledi **Bianku** (Albanian),  
Nebojša **Vučinić** (Montenegro), **judges**,

and Lawrence **Early**, **Section Registrar**,

### **Decision of the Court**

#### Use of force and planning of police operation

The Court noted that the Government had not submitted any observations in this case and also had failed to provide documents concerning the subsequent criminal proceedings against G.B. and other suspects which the Court regarded as important for the establishment of the facts and the assessment of the thoroughness of the investigation.

Consequently, the Court examined the case on the basis of the account of facts as submitted by the applicants.

The Court accepted that the police officers had intervened in order to arrest persons suspected of belonging to a gang and being armed – among them Mr Kałucki. Indeed firearms had been found in Mr Kałucki's car although there had been no evidence that Mr Kałucki or any other suspect had intended to use them. The police officers had opened fire allegedly with the purpose of stopping the escaping suspects, who, according to the authorities, had made an attempt on the life or physical integrity of a police officer. In the circumstances it could be argued that such danger had existed, and the use of firearms could be regarded as absolutely necessary before the suspects' car had passed the police officer.

However, the majority of the shots had been fired at the escaping vehicle once it had passed the police officer who had been allegedly hit by it. At that moment there had been no direct danger to the police officer and the only intention of the police officers had been to prevent the escape of the suspects.

Serious issues had also arisen with the conduct and organisation of the operation. Although that had been a planned operation in which significant police forces had been deployed, it had been unclear whether the intervening officers had been clearly identifiable as being from the police. In addition, an order of their commanding officer appeared not to have been abided by the officers who had jumped out of their cars shooting at the suspects to stop their car instead of trying to arrest them as they had been ordered initially. The police had failed too to arrange for an ambulance to be present, as a result of which the victims had waited about 20 minutes for its arrival.

Finally, the Government had failed to submit any comments regarding the proportionality of the level of force used by the police, the organisation of the police action and whether an adequate legislative and administrative framework had been put in place to safeguard people against arbitrariness and abuse of force.

Consequently, the Court considered that the manner in which the police had responded and the degree of force used had not been strictly proportionate to the aim of preventing Mr Kałucki's escape and arresting him or averting the perceived threat posed by him. Moreover, the operation had not been planned so as to reduce to a minimum recourse to lethal force. Accordingly there had been a violation of Article 2 in respect of Mr Kałucki's death.

#### Investigation

The Court noted that there had been no examination of whether a lesser degree of force would have been sufficient to stop the escaping car, taking into account the fact that most of the shots had been fired by the police when there had been no longer a threat to the life or limb of the police officer. Furthermore, the manner in which the operation had been carried out had not been examined and the authorities had unconditionally embraced the statements of the police officers. Accordingly, there had also been a violation of Article 2, on account of the ineffective investigation carried out into the death of Mr Kałucki's.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the each of the applicants 20 000 euros (EUR) in respect of non-pecuniary damage.

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The judgment is available only in English. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<http://www.echr.coe.int>).

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***The European Court of Human Rights*** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.