



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

FOURTH SECTION

CASE OF M.B. v. POLAND

(Application no. 11887/07)

JUDGMENT

STRASBOURG

26 July 2011

FINAL

26/10/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M.B. v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Sverre Erik Jebens,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 5 July 2011,

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

PROCEDURE

1. The case originated in an application (no. 11887/07) 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, Ms M.B. (“the applicant”), on 7 March 2007. The President of the Section acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

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

3. On 21 April 2008 the President of the Fourth Section of the Court 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 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1958 and lives in Katowice.

5. On 18 October 2004 the Katowice Regional Prosecutor (*Prokurator Prokuratury Okręgowej*) ordered the applicant's detention in connection with a criminal investigation pending against her. The prosecutor also issued a search warrant for the applicant's apartment with a view to locating any book-keeping records or other documents which could be used as evidence in the ongoing investigation.

6. On 19 October 2004 the applicant was arrested on suspicion of abuse of her powers and office in her role as head of a certain division at the Katowice Office of Fiscal Control (*Urząd Kontroli Skarbowej*) and accepting a bribe (in the amount of 130,000 Polish zlotys (PLN)).

7. On 20 October 2004 the Katowice District Court (*Sąd Rejonowy*) remanded the applicant in custody, relying on the reasonable suspicion that she had committed the offences in question. It also considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings, given the risk that if released, the applicant might induce witnesses to give false testimony. The court also stressed that a severe sentence was likely to be imposed.

8. The applicant's appeal against the detention order was dismissed by the Katowice Regional Court (*Sąd Okręgowy*) on 1 December 2004.

9. In the course of the investigation, the applicant's detention was extended on several occasions by the Katowice District Court, namely on 12 January, 14 April, and 12 July 2005.

10. On 14 January 2005 the Regional Prosecutor's Office issued a decision whereby the possible penalty to be imposed on the applicant was to be secured by means of a charge on the applicant's assets, amounting to PLN 25,000, as well as through the forfeiture of benefits deriving from her crime in the amount of PLN 130,000. On 25 February 2005 this decision was upheld together with the relevant enforcement order by the Katowice District Court.

The applicant appealed. The Prosecutor's decision was eventually upheld by the Katowice Regional Court on 29 September 2005.

11. The applicant's detention was subsequently extended by decisions of the Katowice Court of Appeal (*Sąd Apelacyjny*) delivered on 3 October and 28 December 2005, 29 March, 28 June, and 27 September 2006 and 4 January, 1 March and 4 April 2007.

12. In all their decisions the authorities repeatedly relied on the original grounds given for the applicant's detention. They also considered that keeping her in detention was necessary to secure the proper conduct of the proceedings, given the risk that she might tamper with evidence or induce witnesses to give false testimony. Further, they attached great importance to the considerable number of witnesses and the extensive body of evidence to be considered.

In its decision of 4 January 2007 the court noted that the investigation has been lengthy and informed the prosecutor that any subsequent motion for having the applicant's detention extended would be critically reviewed.

13. The applicant's subsequent appeals against decisions extending her detention, as well as her other numerous applications for release were all unsuccessful. In her appeals she argued that the charges against her were based on unreliable and contradictory evidence. She subsequently invoked the principle of the presumption of innocence and also relied on her personal circumstances, in particular her age and health problems.

14. On 19 April 2007 a bill of indictment was lodged with the Katowice Regional Court. The bill of indictment comprised charges of abuse of powers and office, bribery and numerous tax offences. The applicant was accused of having gained through her criminal activities a permanent source of income. The charges were brought against twenty-one defendants.

15. On 26 April 2007 the Katowice Court of Appeal ordered that the applicant be kept in custody until 30 July 2007. It further held that she could be released if she put up bail of PLN 200,000 (approximately 52,000 euros (EUR) at the time) by 31 March 2007, to be deposited in cash into the Katowice District Court's account. The court held that the amount of bail was appropriate in view of the applicant's financial situation and the role she had played in the alleged criminal activities. In addition, the court placed the applicant under police supervision and prohibited her from leaving the country.

16. The applicant appealed, contesting the amount of bail to be paid and requesting its reduction to PLN 30,000. She stressed that since the date of her arrest she had no longer been gainfully employed and further relied on the difficult financial situation of her family. She also requested that bail be accepted in the form of a charge on her apartment.

17. On 18 May 2007 the Court of Appeal upheld the decision of 26 April 2007, refusing to alter the conditions for the applicant's release.

18. As it appears from the documents submitted, on 31 May 2007 the Court of Appeal ordered the applicant's release as she had eventually paid the bail (in cash).

19. On 23 February 2009 the applicant filed a motion requesting that the amount of bail be reduced to PLN 20,000. On 7 April 2009 the Katowice Regional Court reduced the amount of bail to PLN 50,000.

20. It appears that subsequently the amount of bail was reduced to PLN 20,000.

21. On 20 July 2010 the Regional Court reduced the amount of bail to PLN 19,000. Subsequently, the measure prohibiting the applicant from leaving the country was quashed.

22. The proceedings are still pending before the Katowice Regional Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

23. The relevant domestic law and practice concerning the imposition of detention during judicial proceedings (*tymczasowe aresztowanie*) the grounds for its extension and release from detention are set out in the Court's judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006 and *Osuch v. Poland*, no. 30028/06, §§ 22-24, 3 November 2009.

24. The relevant domestic provisions governing the imposition of other "preventive measures" (*środki zapobiegawcze*), *inter alia*, bail, are covered by Chapter 28 of the Code of Criminal Procedure of 1997, which entered into force on 1 September 1998.

25. Article 257 § 1 of the Code provides that detention shall not be imposed if another preventive measure (for example, bail) is considered to be adequate. Pursuant to Article 266 of the Code, bail in the form of cash, securities or by way of a charge on property can be deposited by the accused or by another person. Determination of the amount, form and the relevant methods for the payment of bail should be made by a decision, having regard to the financial situation of the accused and, as the case may be, that of another party depositing bail, as well as to the assessment of the damage which may have been caused by the offence concerned and to the character of the offence.

B. Relevant statistical data

26. The relevant statistical data, recent amendments to the Code of Criminal procedure designed to streamline criminal proceedings and references to the relevant Council of Europe materials 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).

THE LAW

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

27. The applicant complained that the length of her pre-trial detention had been excessive. In this connection she complained that the amount of bail had been set too high and had not been proportionate to her financial means. She further alleged that the authorities had refused to accept bail in the form of a charge on her property.

She 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

28. 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

29. The applicant's detention started on 19 October 2004 with her arrest on suspicion of bribery. It ended on 31 May 2007 when she was released after having paid bail.

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

2. The parties' submissions

(a) The Government

30. The Government failed to submit observations on the case.

(b) The applicant

31. The applicant submitted that her detention had been extended about eleven times at the prosecutor's request and that the courts had always substantiated the relevant decisions on the same grounds. Further, she claimed that the fact that the authorities had been collecting evidence against her, while keeping her detained, had been contrary to Article 5 § 3 of the Convention. She maintained, relying on the principle of the presumption of innocence, that such evidence should have been gathered before her arrest.

32. In addition to the above, the applicant submitted that the investigative proceedings had not been conducted with special diligence by the responsible authorities. In particular, because she was being detained, a speedy and effective investigation should have been carried out. In this connection the applicant emphasised that after her initial questioning the next questioning had not taken place until February 2005, that is, four months after her arrest. The subsequent questioning occurred more than one year later, namely, in April 2006. Further, she stressed that during the entire period of her pre-trial detention no hearing had been held in her case.

33. Lastly, the applicant submitted that the amount of bail had been set too high and the authorities had refused to accept it in the form of a charge on her property.

3. The Court's assessment

(a) General principles

34. The Court observes 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).

35. The Court further observes that, according to its case-law, the amount of bail must be assessed principally with reference to the accused, his assets and his relationship with the persons who are to provide the security, in other words to the extent to which it is felt that the prospect of loss of the security or of action against the guarantors in case of his non-appearance at the trial will act as a sufficient deterrent to dispel any wish on his part to abscond (see *Neumeister v. Austria*, judgment of 27 June 1968, Series A, p. 40, § 14). The accused whom the judicial authorities declare themselves prepared to release on bail must faithfully furnish sufficient information, that can be checked if need be, about the amount of bail to be set. As the fundamental right to liberty as guaranteed by Article 5

of the Convention is at stake, the authorities must take as much care in setting an appropriate amount of bail as in deciding whether or not the continued detention is indispensable (see *Piotr Osuch v. Poland*, no. 30028/06, §§ 39-40, 3 November 2009, *Iwańczuk v. Poland*, no. 25196/94, § 66, 15 November 2001, and also *Skrobol v. Poland*, no. 44165/98, § 57, 13 September 2005).

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

36. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the severity of the penalty to which the applicant was liable; (2) the need to secure the proper conduct of the proceedings, given the risk that she might tamper with evidence and induce witnesses to give false testimony; (3) the extensive body of evidence to be considered in the case (see paragraphs 7 and 12 above).

37. The Court accepts that the reasonable suspicion against the applicant of having committed the offences with which she was charged could initially have warranted her detention. Also, the need to examine the voluminous evidence gathered and the need to secure the proper conduct of the proceedings constituted valid grounds for the applicant's initial detention.

38. 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 likelihood that a severe sentence would be imposed and the need to secure the proper conduct of the proceedings – were “sufficient” and “relevant” (see *Kudła*, cited above, § 111).

39. In this connection the Court reiterates that the gravity of charges cannot by itself justify long periods of detention (see, for instance, *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006). Furthermore, the Court considers that the domestic authorities, by continuously relying on the risk that the applicant would interfere with the proper course of the proceedings by, *inter alia*, influencing witnesses' testimonies, and without giving specific reasons for the latter, failed to justify adequately the applicant's prolonged confinement.

40. Furthermore, the Court takes into consideration the fact that the applicant was not charged with being a member of an organised criminal group and that she was in fact accused of non-violent crimes, namely abuse of power and office, bribery and numerous tax offences (see paragraph 14 above).

41. The Court further notes that it was only on 26 April 2007 that the authorities envisaged the possibility of releasing the applicant on bail, fixing its amount at PLN 200,000. However, there is no evidence that before deciding on that sum the domestic court made any effort to determine what would be an appropriate amount of bail in the circumstances, for example by requiring the applicant to furnish information on her financial standing.

42. 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 measures of ensuring his appearance at 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 *Piotr Osuch v. Poland*, no. 30028/06, § 47, 3 November 2009; and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

The Court furthermore notes that almost two years after having imposed the bail the Regional Court decided to substantially reduce its amount (see paragraph 19 above).

43. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities cannot justify the overall period of the applicant’s detention.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

44. The applicant complained that she did not receive the benefit of the guarantees set forth in paragraph 2 of Article 6 of the Convention in that information concerning the proceedings had been leaked to the press and published in local newspapers, in which she had been referred to as a bribe-taker.

45. Furthermore, the applicant alleged, invoking Article 1 of Protocol No. 1 to the Convention, that her property rights had been violated in that her assets were seized in order to secure the penalty to be imposed in the event of conviction.

46. Lastly, the applicant complained under Article 6 § 1 of the Convention, about the unreasonable length of the proceedings.

47. The Court reiterates that, under Article 35 § 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted. The Court observes that the criminal proceedings are still pending and it is open to the applicant to raise the alleged violations of her right to the presumption of innocence as well as of her property rights in those proceedings. Furthermore, as regards the allegations published about her, the applicant also has the possibility of recourse to legal action for damages in defence of her personal rights.

48. As to the complaint under Article 6 § 1, the Court notes that persons complaining about the length of proceedings before the Polish courts are required by Article 35 of the Convention to lodge a complaint about the breach of the right to a trial within a reasonable time under the Law of 17 June 2004 on complaints about a breach of the right to an investigation conducted and supervised by a Prosecutor and to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki*) (see *Charzyński v. Poland* (dec.) no. 15212/03, 1 March 2005). The applicant failed to make use of this remedy.

49. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

50. 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.”

51. In the case of *Kauczor v. Poland* (cited above, § 58 et seq. with further references) the Court held that the 2007 Resolution taken together with the number of judgments already delivered and of the pending cases raising an issue of excessive 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.

52. In the present case, as in other numerous similar detention cases, the authorities did not justify the applicant’s continued detention by relevant and sufficient reasons (see paragraphs 34-40 above). 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

53. 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

54. The applicant claimed 155,487 euros (EUR) in respect of pecuniary damage (the equivalent of lost income while she was in detention, future income, since she had lost her employment and the amount of bail she had been ordered to pay). She further claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government failed to submit observations in this connection.

56. 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, ruling on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage resulting from the violation found of Article 5 § 3 of the Convention.

B. Costs and expenses

57. The applicant also claimed EUR 4,000 for costs and expenses incurred before the Court. In that respect the applicant presented a bill for legal representation before the Court amounting to EUR 4,784.

58. The Government failed to submit observations in this respect.

59. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, and given the fact that the applicant’s complaints were only partly allowed, the Court considers the request excessive and decides to award the applicant the sum of EUR 2,000 for the proceedings before the Court.

C. Default interest

60. 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 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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage resulting from the violation found, 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 the respondent State is to pay the applicant's representative, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 26 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President