



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

FOURTH SECTION

CASE OF DOCHNAL v. POLAND

(Application no. 31622/07)

JUDGMENT

STRASBOURG

18 September 2012

FINAL

18/12/2012

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

In the case of Dochnal v. Poland,

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 28 August 2012,

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

PROCEDURE

1. The case originated in an application (no. 31622/07) 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, Mr Marek Alojzy Dochnal (“the applicant”), on 13 July 2007.

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

3. The applicant alleged, in particular, that his detention pending investigation was contrary to Article 5 of the Convention, that he had had no contact with his family, contrary to Article 8 of the Convention, and that the criminal proceedings against him were politically motivated, contrary to Article 18 of the Convention.

4. On 8 January 2008 the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

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

5. The applicant was born in 1961 and lives in Katowice.

A. The first set of criminal proceedings

6. The applicant, a businessman and lobbyist, lived in Warsaw and London and was a resident of Monaco. On 26 September 2004 the applicant was arrested at Krakow airport.

7. On 28 September 2004 the Łódź District Court (*Sąd Rejonowy*) remanded the applicant in custody in view of a reasonable suspicion that he had offered a bribe to a Member of Parliament, A.P., in connection with a privatisation process. The court established that only detention would secure the proper conduct of the proceedings, given that the applicant did not have a permanent address in Poland. It also referred to the likelihood that a severe sentence would be imposed on the applicant and to a risk that he would influence witnesses.

8. The applicant's appeal against this decision was dismissed by the Łódź Regional Court (*Sąd Okręgowy*) on 20 October 2004.

9. On 21 December 2004 and 22 March and 21 June 2005 the District Court extended the applicant's detention. It relied on the grounds given previously.

10. The applicant's appeals against those decisions were dismissed.

11. On 5 March and 23 April 2005 the applicant testified before the Parliamentary Commission of Inquiry (*Komisja Śledcza*) on the "PKN Orlen" case. The Commission subsequently notified the Prosecutor General that the applicant had cooperated with it.

12. On 21 September and 21 December 2005 the Łódź Court of Appeal (*Sąd Apelacyjny*) extended the applicant's detention pending the outcome of the investigation. The court referred to the extraordinary complexity of the case, which concerned charges of corruption involving the highest public officials, and reiterated that other preventive measures would not secure the applicant's attendance at the trial.

13. The applicant's detention was then extended by the Court of Appeal on 8 February, 10 May, 21 June, 20 September and 6 December 2006. The court found that there were circumstances justifying the fact that the investigation in the applicant's case had not yet been terminated by the prosecutor. On the last of these dates the court also decided that the applicant could be released on bail in the amount of 1,000,000 Polish zlotys (PLN) (approximately 260,000 euros (EUR)).

14. On 5 January 2007 the pre-trial detention of the former MP A.P., and the applicant's assistant, K.P., was lifted. The applicant's appeals against all the decisions extending his detention were dismissed. His numerous applications for release were also to no avail.

15. On 20 January 2007 the Katowice Appeal Prosecutor lodged a bill of indictment against the applicant, A.P., and K.P. The applicant was accused of several offences of corruption. The bill of indictment was over 200 pages long. The prosecutor requested that eighty-four witnesses be heard and

statements from a further forty-two witnesses be read out. He relied on 458 pieces of evidence.

16. On 9 February 2007 the applicant's detention was further extended. The applicant lodged an appeal against this decision.

17. On 11 April 2007 the Warsaw Court of Appeal allowed the appeal and decided to release the applicant on bail, fixing the amount at PLN 600,000. The court established that the evidence in the case had been obtained, the bill of indictment had been lodged with the trial court and the applicant had a permanent place of residence in Poland.

18. On 15 June 2007 the Warsaw District Court changed the order and fixed bail at PLN 500,000. The prosecutor lodged an appeal.

19. On 17 July 2007 the Warsaw Regional Court dismissed the prosecutor's appeal, finding that there was no evidence that the applicant would try to influence witnesses or otherwise interfere with the proper course of the proceedings. The court also observed that the applicant had not paid the bail set by the District Court, probably because he had remained in pre-trial detention in connection with another set of proceedings.

20. In the meantime, on 30 April 2007, the Warsaw District Court decided that it did not have jurisdiction to try the applicant's case, and transferred it to the Zgierz District Court. On 14 May 2007 the Warsaw District Court corrected an "obvious editorial mistake" in its decision of 30 April 2007, by indicating that the trial should be conducted before the Pabianice District Court. The applicant's lawyer appealed against that decision, and on 17 July 2007 the Warsaw Regional Court allowed the appeal, on the ground that the designation of a trial court should not have been considered a matter of editorial revision. Finally, on 17 July 2007 the Warsaw Regional Court decided that the Pabianice District Court should hear the applicant's case.

The trial court scheduled the first hearing for 27 September 2007, but it was cancelled.

21. On 10 October 2007 the Pabianice District Court fixed the amount of bail for the applicant's release at PLN 300,000 (approximately EUR 84,000). The court established that bail in this amount would secure the applicant's attendance at the trial. The prosecutor lodged an appeal, but it was dismissed on 30 October 2007.

22. It appears that the applicant paid the bail, and his detention with respect to this set of proceedings ended. Nevertheless, he was not released (see below).

23. On 25 June 2012 the Pabianice District Court convicted the applicant and sentenced him to three years and six months' imprisonment and a fine (II K 293/07). The judgment is not final and the applicant applied to receive a reasoned copy of the judgment with a view to lodging an appeal against it.

B. The second set of criminal proceedings (Ap II Ds 54/05/s)

1. The investigation and pre-trial detention

24. On 8 March 2005 the applicant was charged with abetting an offence of bribery (*podżeganie do przekupstwa*), contrary to Article 229 taken together with Article 18 of the Criminal Code. The content of the charge was classified “top secret” (*ściśle tajne*) and thus the details of the charge do not appear on the reasoned decision to charge the applicant. The applicant alleged that this and subsequent charges were a reaction to his statements made before the “PKN Orlen” Parliamentary Commission (see paragraph 11 above).

25. In January and November 2006 the applicant was charged in connection with various counts of money laundering and tax evasion (causing damage to the State Treasury in the amount of EUR 1,900). Subsequently, his wife and mother-in-law were charged in connection with the latter offence. The applicant’s mother-in-law was arrested but later released on bail.

26. On 26 November 2006 the Katowice District Court decided to remand the applicant in custody in connection with this set of proceedings.

27. On 8 December 2006 the charges against the applicant were further supplemented with the addition of other tax-related offences.

28. On 19 February and 22 June 2007 the Katowice District Court further extended the applicant’s pre-trial detention. It considered that there was a risk that the applicant would influence witnesses or tamper with the proper course of the proceedings. The court also referred to the likelihood that a heavy sentence would be imposed on the applicant. The applicant appealed against these decisions.

29. The appeal against the decision of 19 February 2007 was firstly rejected on 18 April 2007 as lodged out of time. The applicant’s lawyers further appealed against this decision. On 9 May 2007 the Katowice Regional Court allowed that appeal and quashed the decision of 18 April 2007. On 6 June 2007 the appeal against the decision of 19 February 2007 was decided on the merits and dismissed by the Katowice Regional Court. The court disagreed that the allegations against the applicant were unfounded, and considered that extensive evidence had been gathered justifying the reasonable suspicion against the applicant (the evidence included bank documents, contracts, correspondence, and statements from witnesses and the applicant).

30. On 18 October 2007 the State Prosecutor (*Prokurator Krajowy*) gave a decision authorising a search of the applicant’s cell and seizure of illegal items, in particular drugs and other psychotropic substances. On the same day a search of the applicant’s cell was conducted. No illegal items were

found. However, the authorities seized two books containing Sudoku puzzles, which also contained notes written by the applicant.

31. On 23 October 2007 the Katowice District Court dismissed the prosecutor's request for a further extension of the applicant's detention. The court decided that the applicant could be released on bail, which it set at PLN 500,000 (approximately EUR 140,000). The court referred to the lengthy imposition of the most severe preventive measure on the applicant, who should be presumed innocent, and considered that his pre-trial detention had become a criminal sanction in violation of the principles of domestic criminal law and of international law. It also noted that the prosecution had collected by that time a huge amount of evidence against the applicant (the case file amounted to 227 volumes) and should be able to terminate the investigation. The prosecutor appealed against this decision.

32. On 29 October 2007 the Katowice Regional Court allowed the prosecutor's appeal and quashed the decision allowing the applicant to be released on bail. It also extended the applicant's detention until 31 January 2008.

33. On 28 January 2008 the Warsaw Regional Court decided to dismiss the prosecutor's request and not to extend the applicant's pre-trial detention.

34. The applicant was released on 31 January 2008.

35. On 19 February 2008 the Warsaw Court of Appeal dismissed an appeal lodged by the prosecutor and decided to impose a preventive measure on the applicant, namely police supervision and a ban on leaving the country. The court considered that the total length of the applicant's pre-trial detention, imposed in two sets of proceedings but taken cumulatively, amounted to three years and four months, as the applicant had been arrested on 28 September 2004. The court thus dismissed the prosecutor's allegation that only the length of the second set of the proceedings should be taken into consideration and that therefore the detention could be extended further.

36. On 7 August 2008 the applicant was arrested again. A new charge relating to forgery of a foreign driving licence was added to the original charges against him.

37. On 9 August 2008 the Katowice Court of Appeal decided to extend the applicant's detention.

38. The applicant appealed against that decision; on 10 September 2008 the Katowice Court of Appeal shortened the period by which the applicant's detention was extended.

39. On 25 September 2008 the Katowice Court of Appeal further extended the applicant's detention. An appeal against this decision was dismissed on 29 October 2008.

40. On 5 November 2008 the Katowice Court of Appeal extended his detention. The applicant appealed.

41. On 21 January 2009 the Katowice Court of Appeal decided to release the applicant on bail of PLN 3,000,000 (approximately EUR 690,000). It appears that the applicant paid the bail.

42. On 20 February 2009 the applicant was released from detention.

43. Between September 2009 and March 2010 the Katowice Appeal Prosecutor discontinued several sets of investigations in connection with the following charges against the applicant: owning a forged driving licence issued by British Honduras (whose name has been Belize since 1973), shortcomings in preparation of yearly reports of activity of a limited liability company, lack of care in storing ammunition for his legally owned gun so it was accessible to his wife, and passing to another person two joints of marijuana, as there was no evidence that the offences had been committed.

44. On 8 September 2010 the Katowice Appeal Prosecutor discontinued the investigation in connection with the charge against the applicant of abetting an offence of bribery contrary to Article 229 taken together with Article 18 of the Criminal Code (the charge of 8 March 2005, see paragraph 24 above). The prosecutor considered that there was no evidence that the offence had been committed. Since the materials pertaining to the charge were classified as secret, the written reasons for the decision were also considered secret and were deposited in the secret registry of the prosecutor's office.

45. On 21 January, 4 March and 21 July 2010, and on 21 February 2012 the Katowice Appellate Prosecutor lodged bills of indictment against the applicant. On 9 December 2011 the prosecutor discontinued the investigation as regards a number of remaining charges.

46. The remaining part of the investigation is pending before the Katowice Appeal Prosecutor (no. Ap V Ds. 6/09/s).

2. Access to the case file

47. On 29 November 2006 the Katowice Appeal Prosecutor dismissed the applicant's requests for leave to consult the case file against him. The decision was upheld on 12 January 2007. In 2007 the applicant's lawyers attempted on at least eight occasions to obtain leave to consult the case file, without success. All those refusals of permission were upheld at the appellate stage. The prosecutor considered on each occasion that the investigation was multi-layered and complex, and that the case file included classified documents and information which, if disclosed to the accused or his lawyers, would damage the proper course of the pending investigation.

48. On 25 January 2008 the Katowice Appeal Prosecutor decided to allow the applicant and his lawyers partial access to the case file. The prosecutor scheduled consultation of the file between 5 May and 14 August 2008.

49. On 20 November 2008 the Katowice Appeal Prosecutor granted further partial access to the case file.

50. In 2009 the applicant and his lawyers made further unsuccessful applications for access to the case file. Finally, on 19 November 2009 the prosecutor allowed them partial access to it.

3. Proceedings under the 2004 Act

51. On 18 October 2009 the applicant lodged a complaint that his right to a trial within a reasonable time had been breached in respect of the investigation carried out by the prosecutor (no. Ap V Ds. 6/09/s), and asked for just satisfaction. He relied on the amended Law of 17 June 2004 on complaints about a breach of the right to an investigation conducted or 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*) (“the 2004 Act”).

52. On 22 December 2009 the Warsaw Court of Appeal allowed the complaint and awarded the applicant PLN 10,000 (which amounted to EUR 2,300 at the material time). The court considered that the investigation in the instant case started on 20 July 2004 and was still pending. Although it agreed with the prosecutor that the case was complex, it noted that there had been many delays and that many of the actions could have been carried out earlier. The court also instructed the prosecutor to intensify his activity in the case, so that the investigation could be terminated by 30 March 2010.

53. In March 2011 the applicant lodged a second complaint under the 2004 Act complaining that the investigation (no. Ap V Ds. 6/09/s) was still pending before the prosecutor.

54. On 27 April 2011 the Warsaw Court of Appeal dismissed the complaint. It examined the course of the investigation since 30 March 2010 and considered that the prosecutor had been very active and managed to terminate the investigation as regards many of the charges against the applicant either by lodging bills of indictment or by dropping the charges. In spite of all the efforts it had not been possible to terminate the investigation in respect of the main charge against the applicant. This failure however did not justify finding a breach of the applicant’s right to have the proceedings concluded within a reasonable time.

C. Family visits

55. On 10 December 2004 the applicant’s wife visited the applicant in the detention centre after being granted leave by the prosecutor. It appears that up to 5 October 2006 she visited him at least eighteen times, including twice with their older child.

56. On 9 January 2007 the Katowice Appeal Prosecutor informed the applicant’s wife that she had to seek leave to visit the applicant from two

prosecutors conducting two sets of criminal proceedings against the applicant, and that there was no right of appeal against the prosecutor's decisions to refuse visiting rights.

57. Between October 2006 and the applicant's release on 31 January 2008 all requests by the applicant's wife for visits were refused. In particular, the Katowice Appeal Prosecutor dismissed requests made on 8 January, 28 February, 12 March, 29 May, 25 June and 17 December 2007. The decisions contained no reasoning and no appeal lay against them.

58. On 6 February 2007 the Katowice Appeal Prosecutor informed the applicant in a letter that since his wife had been heard as a witness in the second set of proceedings against him it was not possible to grant her leave to visit the applicant. On 28 May 2007 the Katowice Appeal Prosecutor informed the applicant's wife in a letter that since 14 February 2007 she had been a suspect in one of the cases, so her requests to visit the applicant would not be allowed.

59. On 20 February and 12 March 2007 the Katowice Appeal Prosecutor dismissed the applicant's request for leave to receive a visit from his mother. The letter of refusal provides no reasons for that decision.

D. Seizure

60. On 10 October 2004 the Łódź Appeal Prosecutor decided to seize the applicant's assets. That decision was amended on 10 February 2005 in that the prosecutor decided to seize shares in the applicant's company, L., shares in the public company S., and money deposited on his bank accounts up to the maximum amount of the fine provided by the criminal law, namely PLN 720,000 (approximately EUR 200,000). It appears that that decision was upheld by the Łódź District Court on 18 February 2005.

61. On 1 March 2005 the Appeal Prosecutor decided to seize further assets of the applicant and considered that the maximum amount of fines that could be imposed on him for tax offences was PLN 12,000,000. It appears that this decision was amended by the Łódź District Court on 15 March 2005 in that the sum to be seized by the authorities was limited to PLN 8,015,997 (approximately EUR 2,224,000).

62. On 27 April 2007 the court's bailiff informed the applicant that he had seized his bank accounts by way of enforcement of the prosecutors' decisions.

63. In May 2007 the bailiff seized the applicant's shares in a company D., and subsequently sold them.

II. RELEVANT DOMESTIC LAW AND PRACTICE

64. 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.

65. Article 156 § 5 of the Code concerns access to the file during investigation. It provides:

“Unless otherwise provided by law, during preparatory proceedings parties, defence counsel, and legal representatives shall be allowed to consult files and make certified copies and photocopies, but only with the permission of the person conducting the preparatory proceedings. With the permission of a prosecutor and in exceptional circumstances access to files in preparatory proceedings may be given to another person.”

66. 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 the judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

67. Article 217 § 1 of the Code of Execution of Criminal Sentences of 1997, as applicable at the material time, provided as follows:

“A detainee is allowed to receive visitors, provided he obtains permission from the authority at whose disposal he remains [investigating prosecutor at the investigative stage or from the trial court once the trial has begun]. If the detainee remains at the disposal of several authorities, it is necessary to obtain permission from all of them, unless they decide otherwise.”

Other relevant domestic law and practice concerning family visits is outlined in the judgment *Gradek v. Poland*, no. 39631/06, §§ 20-24, 8 June 2010.

THE LAW

I. THE GOVERNMENT’S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

68. On 1 September 2009 the Government submitted a unilateral declaration requesting the Court to strike out the application in so far as it relates to the applicant’s complaint under Article 5 § 3 of the Convention.

The applicant objected to the proposal.

69. Having studied the terms of the Government’s unilateral declaration, the Court considers, in the particular circumstances of the applicant’s case, that it does not provide a sufficient basis for concluding that respect for

human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see *Choumakov v. Poland* (no. 2), no. 55777/08, § 40, 1 February 2011, and *Ruprecht v. Poland*, no. 39912/06, § 27, 21 February 2012).

70. This being so, the Court rejects the Government's request to strike this part of the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

71. 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.”

72. The Government failed to submit any observations.

A. Admissibility

73. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

74. The applicant's detention in the first set of proceedings started on 26 September 2004, when he was arrested. On 26 November 2006 the court imposed pre-trial detention in connection with the second set of proceedings. The applicant's detention continued without interruption until his release on 31 January 2008. Therefore, in both sets of proceedings the applicant remained in continued and uninterrupted detention for a period of three years and four months (see *Piechowicz v. Poland*, no. 20071/07, § 188, 17 April 2012). The Court notes that the domestic courts also considered that the above-mentioned periods should be considered cumulatively, although the prosecutor severed some charges into separate proceedings (see paragraph 35 above).

On 7 August 2008, after six months spent at liberty, the applicant was arrested again in connection with previous charges. He was detained for

over six months, until 20 February 2009. The Court therefore considers that the applicant's pre-trial detention amounted to three years and ten months (see *Mitev v. Bulgaria*, no. 40063/98, § 102, 22 December 2004).

2. The Court's assessment

(a) General principles

75. The Court recalls 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* cited above, § 110 *et seq.*, 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

76. 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 need to secure the proper conduct of the proceedings, given the risk that the applicant might tamper with evidence or try to influence the witnesses. In addition, the courts underlined the particular complexity of the case.

77. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to secure the proper conduct of the proceedings constituted valid grounds for the applicant's initial detention.

78. However, with the passage of time, those grounds became less and less relevant. The Court must therefore establish whether the other grounds adduced by the courts – namely, the severity of the anticipated sentence and the risk that the applicant would disrupt the proceedings – were "relevant" and "sufficient" (see *Kudła* cited above, § 111).

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

80. Furthermore, the Court notes that in all the decisions extending the applicant's detention, no specific substantiation of the risk that the applicant would tamper with evidence, intimidate witnesses or otherwise disrupt the proceedings emerged. In the absence of any other factor capable of showing

that the risk relied on actually existed, this argument cannot be accepted in the context of the entire period of the applicant's detention.

81. 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.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION AS REGARDS ACCESS TO THE CASE FILE

83. The applicant further complained under Article 5 § 4 of the Convention that in the second set of criminal proceedings he did not have access to his case file. He submitted that this limited to a great extent his opportunity to challenge the decisions extending his pre-trial detention. The applicant underlined that it placed him at a significant disadvantage *vis-à-vis* the prosecutor, who had unlimited access to his case file. The relevant part of Article 5 of the Convention provides as follows:

“4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

84. The Government contested that argument. They maintained that the applicant had had unrestricted contact with his lawyers and they had eventually been allowed access to the case file.

85. The Court notes that the 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.

86. The Court observes that the complaint relates to the second set of criminal proceedings against the applicant in which he was charged in 2005 and 2006 and which are still pending either at the preparatory stage or before trial courts. In this set of proceedings the applicant was remanded in custody on 26 November 2006, and immediately afterwards made a request to consult his case file. This and subsequent requests were all dismissed by the Katowice Appeal Prosecutor (see paragraphs 47-50 above).

Thus, until the applicant's release on 31 January 2008, neither the applicant nor his lawyers had access to the case file. The first decision of the prosecutor allowing partial access to the case file had been given in January 2008. It appears that the applicant's lawyer subsequently consulted those volumes of the case file to which they had been given access. Afterwards, in November 2008 and in 2009, partial access to the case file was again granted.

87. The Court reiterates that a certain degree of access to the case file, if only to such an extent as to afford the detainee an opportunity of effectively challenging evidence on which his detention was based, may in certain circumstances be envisaged in proceedings concerning review of the lawfulness of detention during judicial proceedings (see *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, pp. 16--17, § 29, and *Chruściński v. Poland*, no. 22755/04, § 62, 6 November 2007).

The Court also notes that the prosecutor's refusal to allow the applicant access to the case file was justified by the fact that the case concerned a complex investigation of the criminal activity of several individuals and that the file included classified documents. However, it reiterates that the efficient conduct of an investigation, albeit a legitimate goal, cannot be pursued at the expense of substantial restrictions of the rights of the defence of the applicant who, along with his lawyers, was prevented from accessing his case file for more than two years, for fourteen months of which he remained in pre-trial detention.

88. The Court considers that it was essential for the applicant and his lawyers to have access to the file and to inspect the documents in it, subject, if need be, to special arrangements in respect of the classified documents, in order to challenge the lawfulness of the applicant's pre-trial detention (see *Migoń v. Poland*, no. 24244/94, § 86, 25 June 2002).

In the light of the above, given the extensive period of time during which neither the applicant nor his lawyer had access to any of the documents in the case file, the Court considers that the applicant could not effectively exercise his defence rights in the proceedings concerning the review of the lawfulness of his pre-trial detention.

89. Accordingly, there has been a violation of Article 5 § 4 of the Convention as regards the lack of access to the case file.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

90. The applicant complained that during his detention he had been deprived of personal contact with his family for a significant period of time. He complained that the prosecutor's decisions had been arbitrary and that no appeal lay against them. The applicant relied on Article 8 of the Convention, which provides as relevant:

"1. Everyone has the right to respect for his ... family life...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

91. The Government contested this argument, and maintained that the restriction of contact with the applicant's wife had been necessary to secure the proper conduct of the proceedings.

92. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

93. The Court further notes that it has not been contested that the applicant was not allowed to receive visits from his wife from October 2006 until his release in January 2008. The applicant's mother visited the applicant on two occasions, in June 2005 and June 2007. From the documents at the disposal of the Court it also appears that the prosecutor's decisions refusing those visits did not include any reasoning (see paragraphs 54 and 56 above).

In particular, the few information letters sent by the Katowice Appellate Prosecutor to the applicant or his wife could not be considered as sufficiently remedying the total lack of reasoning in the authorities' decisions refusing family visits between October 2006 and January 2008 (see paragraphs 53 and 55 above and compare and contrast *Piechowicz*, cited above, § 21).

94. The restrictions on the applicant's personal contact with his family constituted an "interference" with his right to respect for his family life.

95. The Court observes that the contested measure was applied under Article 217 § 1 of the Code of Execution of Criminal Sentences. The Court further notes that this provision, as applicable at the material time, gave the relevant authority (prosecutor or court) the power to grant permission for family visits in prison. The law, however, provided no details as regards the conditions for granting such permission, no guidance as to how the authorities might decide whether a prohibition of visiting rights was merited in a particular case, and what factors might be relevant to that decision. Nor did it provide for the possibility of an appeal against refusal of visits. Those decisions were left to the authorities' absolute discretion.

96. The Court further observes that it has already held that Article 217 § 1 of the Code of Execution of Criminal Sentences did not indicate with reasonable clarity the scope and manner of the exercise of any discretion conferred on the relevant authorities to restrict visiting rights (see *Wegera v. Poland*, no. 141/07, § 74-75, 19 January 2010, and *Gradek v. Poland*, no. 39631/06, § 43, 8 June 2010).

97. For these reasons the Court concludes that the unreasoned refusal of family visits in detention in the applicant's case was not in accordance with the law. On that account it is not necessary to ascertain whether the other conditions imposed by Article 8 § 2 have been complied with.

There has accordingly been a violation of Article 8 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

98. The applicant complained of a violation of Article 3 of the Convention, in that he remained in solitary confinement between 6 January 2006 and 31 January 2008. He submitted that the cell had been fitted with a narrow bed which was too short for him, that in winter the temperature in the cell fell below zero, and that he had not been allowed to use the library, attend mass or participate in other activities. The applicant also argued that he had been kept in isolation and had been prevented or restricted from receiving newspapers and books.

99. The Government contested these arguments. They submitted that while detained in the Katowice Detention Centre between 6 January 2006 and 30 October 2007 the applicant had been placed in a single cell measuring 3.5 square metres. They maintained that he had been allowed daily outdoor walks with other inmates and had had access to the library, religious services and other activities provided by the detention centre. He also had his own radio and TV in the cell. In Sieradz Prison, where the applicant was detained between 30 October 2007 and 31 January 2008, he had been placed in a single cell of 5 square metres.

The Government provided letters from both remand centres, which attest that the applicant had had daily walks and that he had not been interested in other activities provided by the prison. They also maintained that in both detention centres the applicant had been receiving parcels from his family and had subscribed to several magazines and newspapers.

100. The Government submitted that the applicant had never complained to the prison authorities or to the District Inspectorates of the Prison Service about being placed in a single cell or about the conditions of his detention; nor had he lodged a civil action against the State Treasury.

101. The applicant admitted that he had not complained to the Penitentiary Judge. From the evidence submitted by him it appears that he made one request in May 2006 to the Director of the Katowice Detention Centre asking additionally for leave to receive meals from outside on days when he was not taken to court.

102. The Court notes that it is not disputed that for over two years the applicant was detained in a single cell. The parties disagreed as to the particular conditions of his detention; in particular, it is not clear what was the degree of isolation to which he had been subjected, and, in particular, whether he had regular contact with other inmates.

103. The allegations made by the applicant to the Court about the conditions of his detention are indeed very serious ones. Nevertheless, the Court notes that there is no evidence that the applicant at any time complained about being placed in a single cell, about the arrangements for outdoor exercise or about access to various activities. Nor did he request transfer to another cell. The letters from the Katowice Detention Centre and

Sieradz Prison submitted by the Government confirm that the applicant lodged no complaints with the authorities. The applicant acknowledged this, and submitted that complaints would have had no effect.

104. The Court reiterates that the purpose of Article 35 § 1 is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. Consequently the Court considers that the applicant should have raised his complaints first with the prison authorities, the Prison Service Inspectorate or a prosecutor.

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

VI. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION AND OF ARTICLE 18 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 5

106. The applicant complained under Article 5 § 1 of the Convention that his detention had been imposed in the absence of a reasonable suspicion that he had committed an offence, and under Article 18 that his detention had had a purpose other than that provided for in Article 5 § 1(c). The relevant parts of Articles 5 and 18 of the Convention read as follows:

“Article 5 – Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ...;

Article 18 – Limitation on use of restrictions of rights

The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

107. The Government submitted that the applicant’s allegations were not supported by the materials of the case. The arrest took place at Krakow airport because the applicant appeared to be about to board a plane to leave Poland. He was charged with the serious offence of bribing a public official. The applicant’s pre-trial detention was imposed and extended by an independent court on the ground of reasonable suspicion against him. There was also a risk of the applicant evading justice, given his financial means and the fact that he did not live permanently in Poland. All the decisions extending his detention were challenged by the applicant and were upheld

by appellate courts. Between 2004 and 2009 Poland was governed by three different, and opposing, political formations (the Alliance of Democratic Left, followed by Law and Justice and Civil Platform). During the period of the applicant's detention there were four different Ministers of Justice and Prosecutors General. There was therefore no basis for the belief that the prosecution of the applicant and keeping him in detention was politically motivated.

108. The applicant maintained that the purpose of his detention was not to secure the investigation but to persecute and abuse him. He contested that there had not been a reasonable suspicion against him, pointing to the fact that no judgment had so far been given, and many charges had been dropped by the prosecutor. The applicant also argued that the prosecution service used different means to persecute him, such as keeping him in solitary confinement without visits from his wife and other members of his family, and not allowing him to receive newspapers and magazines. The applicant concluded that his detention was carried out in breach of Article 5 § 1 (c) and for ulterior motives contrary to Article 18.

109. The Court reiterates that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c) it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody (see *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 29-30, § 53). Neither is it necessary that the person detained should ultimately be charged or taken before a court. The object of detention for questioning is to further a criminal investigation by confirming or eliminating suspicions which provide the grounds for detention (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27, § 55). However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words "reasonable suspicion" mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, pp. 16-17, § 32).

110. In the first set of proceedings the authorities suspected the applicant of offering a bribe to a Member of Parliament. The prosecutor collected a large amount of evidence, which was reflected in the bill of indictment of 2007; recently the trial court convicted the applicant (see paragraphs 15 and 23 above). In the meantime further charges of money laundering and tax evasion were made against the applicant; by October 2007 the case file prepared by the prosecutor in connection with those charges amounted to 227 volumes (see paragraph 31 above). The domestic courts also noted that

the suspicion against the applicant was justified by extensive evidence (see paragraph 29 above).

111. The Court therefore considers that the evidence gathered by the investigating authorities could “satisfy an objective observer” that the applicant might have committed the offence. The charges against the applicant amounted to a “reasonable suspicion” within the meaning of Article 5 § 1 (c) of the Convention.

112. When an allegation under Article 18 is made the Court applies a very exacting standard of proof; as a consequence, there are only few cases where a breach of that Convention provision has been found. Thus, in *Gusinskiy v. Russia* (no. 70276/01, § 73–78, ECHR 2004-... (extracts), the Court accepted that the applicant’s liberty had been restricted, *inter alia*, for a purpose other than those mentioned in Article 5. The Court in that case based its findings on an agreement signed between the detainee and a federal minister of the press. It was clear from that agreement that the applicant’s detention was applied in order to make him sell his media company to the State. In *Cebotari v Moldova* (no. 35615/06, §§ 46 et seq., 13 November 2007) the Court found a violation of Article 18 of the Convention in a context where the applicant’s arrest was visibly linked to an application pending before the Court. However, such cases remain rare (see, as an opposite example, *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 129, ECHR 2007-II, and *Khodorkovskiy v. Russia*, no. 5829/04, § 261, 31 May 2011).

113. The Court reiterates that “Article 18 of the Convention does not have an autonomous role. It can only be applied in conjunction with other Articles of the Convention” (see *Gusinski*, cited above, § 75). In the light of the above the Court will consider the applicant’s allegations under Article 18 of the Convention in conjunction with his complaints under Article 5 of the Convention.

114. The Court has found in paragraph 111 above that the applicant’s liberty was restricted “for the purpose of bringing him before the appropriate legal authority on reasonable suspicion that he had committed an offence”. However, when considering the allegation under Article 18 of the Convention the Court must ascertain whether the detention had also, and hence contrary to Article 18, been applied for any other purpose than that provided for in Article 5 § 1 (c).

115. The Court reiterates that the burden of proof rests with the applicant to provide evidence in support of an allegation of breach of Article 18 (see *Khodorkovskiy*, cited above, § 256). The applicant’s submissions in this respect are limited to an assertion that he was kept in detention in order to persecute and abuse him. The Court thus concludes that the applicant failed to show that the real aim of the authorities was not the same as that proclaimed, that the State machinery was misused, and that

the authorities were acting in bad faith and in blatant disregard of the Convention.

116. The Court admits that the applicant's case may raise a certain suspicion as to whether the real intent of the authorities was to extract further depositions from him regarding various sensitive political matters. However, a mere suspicion that the authorities used their powers for some other purpose than those defined in the Convention is not sufficient to prove that Article 18 was breached (see *Khodorkovskiy*, cited above, § 255). In particular, the Court is unable to conclude that the legal machinery of the respondent State in the present case was misused. This is a very serious claim which requires incontrovertible and direct proof. Such proof is absent in the case under examination.

117. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Article 5 § 4 of the Convention – other allegations

118. The applicant further complained under Article 5 § 4 of the Convention that his appeal against the decision of 19 February 2007, extending his pre-trial detention, had been examined only on 6 June 2007. Moreover, he complained about the charge brought against him on 8 March 2005, which had been classified as secret.

119. The Government contested these arguments. They submitted that the delay in examining the applicant's appeal against the decision of 19 February 2007 on the merits had been caused by his lawyers, who had lodged the appeals outside the time-limit, and the court initially rejected them.

As regards the charge which was classified as secret, the Government maintained that it had been communicated to the applicant and his lawyers on 8 March 2005.

120. The Court notes that following the applicant's lawyers' appeals against the decision of 19 February 2007 the courts had dealt with the issue of admissibility of those appeals, in particular as regards whether they had been lodged within the time-limit. Once the admissibility of the appeal had been resolved, on 9 May 2007, the court gave a decision on the merits, on 6 June 2007 (see paragraph 29 above).

The Court thus considers that there was no undue delay which would be incompatible with the notion of "speediness" laid down in Article 5 § 4 of the Convention (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III).

121. As regards the complaint that the charge brought against the applicant on 8 March 2005 was classified as secret, the Court first notes that the Government submitted that the applicant and his lawyers had acquainted themselves with this charge. The Court considers that the applicant's submissions in this respect are scanty, confused and unsubstantiated. Nevertheless it appears from them that the applicant had indeed been informed of the content of the classified charge. Finally, the Court notes that it appears that the charge was dropped on 8 September 2010 and that the decisions extending his pre-trial detention did not refer to this charge in particular (see paragraph 44 above).

122. Therefore, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

123. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Article 6 § 1 of the Convention

124. The applicant complained that the length of both sets of criminal proceedings against him had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

125. The Government contested that argument and indicated that the applicant had failed to exhaust domestic remedies.

126. Pursuant to Article 35 § 1 of the Convention:

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law..."

127. The Court observes that it was open to the applicant to lodge a complaint of unreasonable length of proceedings with the relevant domestic court. In respect of the first set of the proceedings the applicant failed to lodge such a complaint, although the proceedings have been pending before since 2007 and the first-instance court gave a judgment only recently (see paragraph 23 above).

128. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it to be effective in respect of complaints of excessive length of judicial proceedings in Poland. In particular, it has considered that that remedy is capable both of preventing violations of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński*, cited above, §§ 36-42).

129. It follows that the complaint of unreasonable length of the first set of criminal proceedings against the applicant must be rejected under

Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

130. As regards the second set of proceedings, in which the investigation started on 20 July 2004 and is still pending, the Court notes that the applicant lodged a complaint under the 2004 Act (see paragraph 51 above). On 22 December 2009 the Warsaw Court of Appeal acknowledged a breach of the applicants' right to an investigation within a reasonable time, and awarded the applicant compensation in the amount of EUR 2,300. The Court thus accepts that the courts acknowledged the failure of the domestic authorities to comply with Article 6 of the Convention in these respects. It is regrettable that in spite of the Court of Appeal's instruction to expedite the proceedings it has not been possible to terminate the investigation into the main charge (see paragraph 54 above). However, it is to be noted that the prosecutor was not inactive since several bills of indictment were laid against the applicant and some charges against him had been dropped (see paragraph 45 above).

It thus remains to be determined whether the compensation awarded to the applicant amounted to sufficient redress.

131. The just satisfaction award was approximately 70% of what the Court would be likely to have awarded the applicant at that time in accordance with its practice, taking into account the particular circumstances of the proceedings. The Court therefore notes that the redress provided to the applicant at domestic level, considered on the basis of the matters of which he complains before the Court, was sufficient (compare and contrast *Czajka v. Poland*, no. 15067/02, § 56, 13 February 2007).

132. Having regard to the criteria for determining victim status in respect of length-of-proceedings complaints as set out in the judgment of *Scordino v. Italy (no.1)* ([GC], no. 36813/97, §§ 193-215, ECHR-2006-...), the Court concludes that the complaint should be rejected as incompatible *ratione personae* with the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

C. Article 1 of Protocol No. 1 to the Convention

133. The applicant complained that the authorities seized his assets worth PLN 8,000,000. Later he informed the Court that some of his assets had been released by the prosecutor.

134. The Government contested this argument, and maintained that no seizure of property had been ordered in connection with the sets of proceedings which were the subject matter of his application to the Court. The applicant had some of his assets seized in order to secure his financial liabilities towards the State Treasury stemming from proceedings which took place prior to his detention. They also submitted that all seized assets

had been placed on an interest-bearing deposit on-demand bank account, and upon request, could be moved on to a fixed-term account.

135. The Court observes that the applicant failed to substantiate his allegation that Article 1 of Protocol No. 1 had been breached. Moreover, there is no indication whatsoever that he raised this complaint before the domestic authorities. Therefore, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

136. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. Other allegations

137. The applicant complained under Article 7 of the Convention that, according to legal opinions produced by him, the first set of proceedings should have been discontinued, as no offence had been committed. The applicant also complained that he had not been able to initiate criminal proceedings against a prosecutor for allegedly withholding information pertaining to his release. He also complained that his private correspondence had been monitored and that his case had received wide media coverage in Poland.

138. However, the Court observes that the applicant failed to substantiate the above complaints. Therefore, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

139. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. 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

141. The applicant claimed 10,000,000 Polish zlotys (PLN) in respect of pecuniary damage and 100,000 euros (EUR) for non-pecuniary damage.

142. The Government did not comment on the applicant’s claims.

143. 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 8,800 in respect of non-pecuniary damage.

B. Costs and expenses

144. The applicant also claimed PLN 80,000 for costs and expenses incurred before the domestic courts and PLN 10,980, which amounted to EUR 3,300 at the material time, for those incurred before the Court.

145. The Government did not comment on the applicant’s claims.

146. According to the Court’s case-law, an applicant is entitled to the reimbursement of 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 documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings, and considers it reasonable to award the sum of EUR 3,300 for the proceedings before the Court.

C. Default interest

147. 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. *Rejects* the Government's request to strike the application out of the list in so far as it relates to the complaint under Article 5 § 3 of the Convention;
2. *Declares* the complaints concerning length of the applicant's pre-trial detention under Article 5 § 3, lack of access to the case file under Article 5 § 4 and refusals of family visits under Article 8 of the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 8 of the Convention;
6. *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 8,800 (eight thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 3,300 (three thousand three hundred euros) for costs and expenses, to be converted into the currency of the respondent State at the rate applicable on 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President