



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

FOURTH SECTION

**CASE OF MALIK v. POLAND**

*(Application no. 57477/00)*

JUDGMENT

STRASBOURG

4 April 2006

**FINAL**

*04/07/2006*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Malik v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSCHI,

Mr L. GARLICKI,

Mr J. BORREGO BORREGO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 14 March 2006,

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

## PROCEDURE

1. The case originated in an application (no. 57477/00) 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 Andrzej Malik ("the applicant"), on 13 September 1999.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołásiewicz, of the Ministry of Foreign Affairs.

3. On 17 March 2005 the Court decided to communicate the complaint concerning the length of the applicant's detention on remand to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Dąbrowa Górnicza, Poland.

5. On 15 October 1998 the applicant was arrested on suspicion of having committed fraud.

6. On 16 October 1998 he was brought before the Tarnowskie Góry District Court (*Sąd Rejonowy*), which ordered that he be remanded in custody until 15 January 1999. The court considered that the applicant's

detention was justified by the existence of strong evidence against him, the gravity of the charges and the severity of the anticipated penalty. His two alleged accomplices were subject to police supervision.

7. On 29 October 1998 the Tarnowskie Góry District Prosecutor (*Prokurator Rejonowy*) refused the applicant's application for release. He considered that keeping him in detention was necessary because an investigation was pending and the police still needed to collect evidence against him. The Katowice Regional Prosecutor (*Prokurator Okręgowy*) upheld that decision on 20 November 1998.

8. On 8 January 1999 the District Court prolonged the applicant's detention until 15 April 1999. It referred to the interests of the pending investigation, such as the need to obtain additional evidence. On 27 January 1999 the Katowice Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal against that decision.

9. In the course of the investigation the applicant filed numerous applications for release. They were dismissed by the District Prosecutor, who found that the reasons for the applicant's detention had not ceased to exist.

10. On 30 March 1999 the prosecutor lodged a bill of indictment against the applicant and two other defendants with the Tarnowskie Góry District Court. The applicant was indicted on several charges of fraud and forgery of documents.

11. On an unspecified date the applicant asked the District Court to release him in view of his bad health. He maintained that he suffered from high blood pressure.

12. On 21 March 1999 the court refused the application. It found that the applicant's health condition allowed him to remain in detention and that his case "did not disclose any of the grounds for release" provided by Article 259 of the Code of Criminal Procedure. The court based its view on the opinion of a prison doctor.

13. On 12 April 1999 the court again prolonged the applicant's detention until 15 October 1999. It considered that it was justified by the existence of strong evidence against him and the gravity of the charges. The Katowice Regional Court upheld that decision on 27 October 1999.

14. The trial began on 13 August 1999. The District Court held 8 hearings and heard 23 witnesses.

On 15 October 1999 the court prolonged the applicant's detention until 15 April 2000, relying on the grounds previously given.

15. The applicant repeatedly asked the Tarnowskie Góry District Court to release him in view of the state of his health. Each time, the court repeated the reasons it had previously given, finding that the original grounds for the applicant's detention were still valid and that he had failed to adduce any arguments which would weigh in favour of his release. It also found that keeping the applicant in detention would not endanger his health,

as it was possible for him to obtain medical treatment in the detention centre.

16. The District Court convicted the applicant as charged on 17 March 2000. It sentenced him to 4 years' and 6 months' imprisonment. The applicant appealed.

17. On 18 July 2000 the Katowice Regional Court partly amended the first-instance judgment and changed the legal qualification of the offence. It upheld the remainder of it.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

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

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

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

20. Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

"1. Detention on remand may be imposed if:

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

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

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

21. The Code sets out the margin of discretion as to the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

“1. Detention on remand shall not be imposed if another preventive measure is sufficient.”

22. Article 259, in its relevant part, reads:

“1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

(1) seriously jeopardise his life or health; or

(2) entail excessively harsh consequences for the accused or his family.”

23. The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

24. Article 263 sets out time-limits for detention. In the version applicable at the material time it provided:

“1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on the application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date of the first conviction at first instance may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

25. The applicant complains that his detention was in breach of Article 5 § 1 of the Convention.

26. However, the Court notes that the applicant's detention was based on Article 258 § 1 of the Code of Criminal Procedure. Furthermore, the Court observes that in the present case the applicant was detained on reasonable suspicion of having committed a serious offence. The Court accordingly finds that the decision to place the applicant in custody had a legal basis and was issued by the appropriate judicial authority. There is nothing to suggest that the legal basis for his detention was not clearly defined and, therefore, lacked the necessary foreseeability required under the Convention. The Court is therefore satisfied that the applicant's detention complied with the requirements of Article 5 § 1. Moreover, the Court does not see any appearance of arbitrariness on the part of the relevant judicial authorities in the process of making decisions on the applicant's detention. It also observes that its lawfulness was repeatedly reviewed by the competent domestic courts.

27. Against that background, the Court concludes that the applicant's detention was "lawful" within the meaning of Article 5 § 1 of the Convention.

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

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

29. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention was excessive. Article 5 § 3 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

30. 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.

### B. Merits

#### *1. Period to be taken into consideration*

31. The Court observes that the applicant was arrested on 15 October 1998. His detention ended on 17 March 2000 when he was convicted.

Accordingly, the total period of his detention amounts to 1 year and 5 months.

*2. The reasonableness of the length of detention*

**(a) The parties' arguments**

32. The Government maintained that the length of the applicant's detention was not excessive. In their opinion, there had been valid reasons for holding him in custody for the entire period in question. It was necessary to ensure the proper course of the proceedings, especially in view of the gravity of the charges and the anticipated severe penalty. Moreover, the applicant's case did not disclose any of the grounds for release enumerated in Article 259 of the Code of Criminal Procedure.

33. The Government stressed that the applicant's detention had been subject to frequent diligent reviews by the domestic courts. All decisions concerning his custody were accompanied by detailed reasons.

34. The Government also argued that the District Court had shown due diligence in examining the applicant's case. Hearings were scheduled at regular intervals and they were never adjourned for reasons for which the court could be held responsible.

35. In conclusion, the Government maintained that there had been no breach of Article 5 § 3.

36. The applicant asserted that the period of 17 months he had spent in custody was not compatible with the "reasonable time" requirement. He argued that the grounds for his detention relied on by the courts, namely the reasonable suspicion that he had committed the impugned offence, had not been based on any concrete, true circumstances.

37. He maintained that he had never contributed to the prolongation of the proceedings.

38. The applicant stressed that he had lodged numerous applications for release due to his state of health but they had never been seriously examined by the courts. He maintained that his health had seriously deteriorated during his stay in detention.

39. The applicant pointed out that he was the only one of the co-defendants kept in custody pending trial as the two others were not detained but placed under police supervision.

40. The applicant concluded that there had been a breach of Article 5 § 3.

**(b) The Court's assessment***(i) Principles established under the Court's case-law*

41. The Court reiterates that the question whether a period of detention is reasonable cannot be assessed in the abstract but must be considered in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-X).

42. Under Article 5 § 3 the national judicial authorities must ensure that the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for a departure from the rule in Article 5 and must set them out in their decisions on the applications for release.

43. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (see, for instance, *Jabłoński v. Poland*, no. 33492/96, § 80, 21 December 2000).

(ii) *Application of the principles to the circumstances of the present case*

44. The Court observes that in the present case the relevant judicial authorities advanced two principal reasons for the applicant's continued detention, namely the serious nature of the charges and the strong evidence against him (see paragraphs 6-9, 13 and 15). Later, they also held that the applicant should be kept in custody because there were no special circumstances for releasing him on account, in particular, of his state of health (see paragraphs 12 and 15).

45. The Court accepts that the suspicion against the applicant of having committed the serious offences with which he had been charged may initially have justified his detention. However, it cannot accept that it could be a "relevant and sufficient" ground for his being held in custody for 1 year and 5 months, as, with the passage of time, it inevitably became less relevant.

46. The applicant argued that he should have been released because his health was very poor and had constantly been aggravated by his detention. The Court would however point out that Article 5 § 3 cannot be read as obliging the national authorities to release a detainee on account of his state of health (see *Kudła v. Poland* cited above, § 93).

47. On the other hand, the Court observes 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.

48. The Court notes that over the period of 17 months which the applicant spent in detention no consideration was given to the possibility of imposing on him other "preventive measures" – such as bail or police supervision – expressly foreseen by Polish law to secure the proper conduct of criminal proceedings. Nor did the courts explain why those alternative measures would not have ensured the applicant's presence before them or why, had he been released, his trial would not have followed its proper course. They did not point to any factor indicating that there was a risk of his colluding, absconding or otherwise evading justice. The Court cannot but note that there was no indication that at any earlier stage of the proceedings the applicant had attempted to abscond, tamper with evidence or induce witnesses to commit perjury. Moreover, the Court observes that the other two co-defendants were not detained and there is nothing in the case file that would suggest that this fact affected the proper course of the proceedings.

49. The Court observes further that the applicant was detained on charges of having committed fraud and forgery. Those offences, even though they carried a severe penalty, were not violent crimes. Moreover, even though the applicant committed them with the help of accomplices, there is no indication that he was a member of an organised crime group. It does not appear therefore that his case presented particular difficulties for

the investigation authorities and for the courts to determine the facts and the degree of responsibility of each accomplice, as would undoubtedly have been the case had the proceedings concerned organised crime.

50. The Court is, therefore, not satisfied that the reasons given to justify the applicant's detention were "relevant" and "sufficient", as required under Article 5 § 3.

51. There has accordingly been a violation of Article 5 § 3 of the Convention in that the applicant's right to trial within a reasonable time or to release pending trial was not respected.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 145,000 Polish zlotys (PLN) in respect of pecuniary and PLN 1,000,000 in respect of non-pecuniary damage.

54. The Government asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

55. 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, the Court considers that the applicant has suffered non-pecuniary damage – such as distress resulting from the protracted length of his detention – which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head

#### B. Costs and expenses

56. The applicant also claimed PLN 6,000 for the costs and expenses incurred before the domestic courts.

57. The Government asked the Court to make an award only in so far as the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum.

58. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among

other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II). In the present case, the Court finds that he has not produced any evidence supporting his claim as required by Rule 60 § 2 of the Rules of Court. Accordingly, it makes no award under this head.

### C. Default interest

59. 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE  
Registrar

Nicolas BRATZA  
President