



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF MARZEC v. POLAND

(Application no. 42868/06)

JUDGMENT

*This version was rectified on 3 November 2010
under Rule 81 of the Rules of the Court*

STRASBOURG

9 June 2009

This judgment may be subject to editorial revision.

In the case of Marzec v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 19 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 42868/06) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Paweł Marzec (“the applicant”), on 17 October 2006.

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

3. The applicant alleged that his detention on remand exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 10 October 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

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

5. The applicant was born in 1973 and lives in Zabrze. He is currently detained in Włocławek Prison.

6. On 29 September 2003 the applicant was arrested on suspicion of drug trafficking, committed while acting in an organised criminal gang.

7. On 1 October 2003 the Bytom District Court remanded him in custody, relying on the reasonable suspicion that he had committed the

offence 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 he might induce witnesses to give false testimony. The court pointed out that other persons involved in the crime were still at large. The court also stressed the severity of the anticipated sentence.

8. Later, several other members of the same criminal gang were detained and charged in connection with the investigation against the applicant.

9. The applicant's appeal against the detention order, like his further appeals against decisions prolonging his detention and all his subsequent numerous applications for release and appeals against refusals to release him, were unsuccessful. In his applications and appeal, he argued that the authorities had failed to justify his continued detention by relevant and sufficient reasons. He stressed that the measure complained of should be imposed only at the initial stage of the proceedings and that his continued detention constituted in practice deprivation of liberty. He also relied on his personal circumstances, in particular on the difficult financial situation of his family.

10. In the course of the investigation, the applicant's detention was prolonged on 3 December 2003, 8 March 2004, 3 June 2004 and 22 September 2004. In all their detention decisions the authorities repeatedly relied on the original grounds given for the applicant's detention.

11. On 22 December 2004 a bill of indictment was lodged with the Katowice District Court. The applicant was charged with drug trafficking, illegal arms trading, unlawful possession of a firearm and acting in an organised criminal gang. There were fifteen defendants in the case, all charged with numerous counts of drug trafficking committed in an organised criminal gang.

12. On 25 August 2005 the trial court held the first hearing. It subsequently held some sixty-one hearings in the case.

13. During the court proceedings the authorities further prolonged the applicant's detention (on 30 December 2004, 17 March 2005, 14 June 2005, 24 August 2005, 8 March 2006, 17 August 2006, 20 December 2006 and 23 March 2007). The courts repeated the grounds previously given for his continued detention.

14. On 15 May 2007 the Katowice District Court gave judgment. The applicant was convicted of drug trafficking, unlawful possession of a firearm and acting in an organised criminal gang and sentenced to nine years' imprisonment.

15. The applicant appealed against that judgment.

16. On 7 May 2008 the Katowice Regional Court heard the applicant's appeal. It partly quashed the first-instance judgment and remitted the case in respect of the charges concerning drug trafficking and acting in an organised criminal gang. The court upheld the first-instance judgment in respect of the charge concerning unlawful possession of a firearm for which

the applicant had been sentenced to three years' imprisonment. It held that the applicant's detention from 29 September 2003 to 29 September 2006 should be counted towards his sentence.

17. The retrial started on 13 June 2008. On 30 June 2008 the Katowice Regional Court ordered that the applicant's detention should continue until 15 January 2009.

18. In the retrial proceedings the applicant made numerous unsuccessful applications for release and appealed, likewise unsuccessfully, against the decision of 30 June 2008 prolonging his detention.

19. The applicant was released on 17 February 2009. The Katowice Regional Court prohibited him from leaving the country and placed him under police supervision. The proceedings are currently pending before the Katowice Regional Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called “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.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. The Committee of Ministers

21. On 6 June 2007 the Committee of Ministers adopted on the Interim Resolution concerning the judgments of the European Court of Human Rights in 44 cases against Poland relating to the excessive length of detention on remand (“the 2007 Resolution”). Noting that the number of cases in which the European Court had found similar violations was constantly increasing. It concluded that the number of the Court's judgments finding Poland in violation of Article 5 § 3 of the Convention revealed a structural problem. A more detailed rendition of the 2007 Resolution can be found in the Court's judgment given in the case of *Kauczor v. Poland* (see *Kauczor v. Poland*, no. 45219/06, § 34, 3 February 2009; not final).

B. The Council of Europe's Commissioner for Human Rights

22. On 20 June 2007 the Council of Europe's Commissioner for Human Rights released the Memorandum to the Polish Government concerning,

among other issues, the use of the detention measure in Poland, stressing that examples of cases lodged with the Court where pre-trial detention had lasted between 4 to 6 years were not uncommon. The Commissioner urged the Polish authorities to review the application and functioning of pre-trial detention in Polish law. A more detailed rendition of the relevant parts of the memorandum can be found in the above mentioned *Kauczor* judgment (§ 35).

THE LAW

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

23. The applicant complained that the length of his detention on remand 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.”

24. The Government contested that argument.

A. Admissibility

25. 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

26. The applicant's detention started on 29 September 2003, when he was arrested on suspicion of drug trafficking, committed in an organised criminal gang. On 15 May 2007 the Katowice District Court convicted him of drug trafficking, unlawful possession of a firearm and acting in an organised criminal gang and sentenced him to nine years' imprisonment.

As from that date he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a) and, consequently, that period of his detention falls outside the scope of Article 5 § 3 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

27. On 7 May 2008 the Katowice Regional Court partly quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 17 February 2009.

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

2. The parties' submissions

(a) The applicant

28. The applicant submitted in general terms that his application lodged with the Court was justified.

(b) The Government

29. The Government considered that the applicant's detention had satisfied the requirements of Article 5 § 3. The Government emphasised that the serious nature of the charges as well as the fact that there had been fifteen defendants charged with numerous offences required the authorities to take all necessary measures to secure the proper conduct of the trial. The necessity of the applicant's continued detention had been thoroughly examined by the courts which on each occasion had given sufficient reasons for their decisions. The applicant's case had been extremely complex on account of the number of charges (40) and defendants (15), and by reason of the volume of evidence. The Government further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case, the number of witnesses to be heard (74) and the number of co-accused, most of whom had been suspected of acting in an organised criminal group.

3. The Court's assessment

(a) General principles

30. 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 v. Poland* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

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

31. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four 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, (3) the need to secure the proper conduct of the proceedings, particularly the risk that he might tamper with evidence, and (4) the complexity of the case.

32. The applicant was charged with drug trafficking, unlawful arms trading, unlawful possession of a firearm and acting in an organised criminal gang.

In the Court's view, the fact that the case concerned a member of a such criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

33. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to obtain a large volume of evidence and to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the applicant's initial detention.

34. Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings often is, by the nature of things, high. In this respect, the Court notes, however, 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 attempt to otherwise disrupt the trial 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 whole period.

35. Furthermore, according to the 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 re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

36. As regards the complexity of the case, the Court's attention has been drawn to the nature of the charges, the number of accused (fifteen) and the voluminous documentation. It appears, however, that the authorities referred to the complexity of the case in a very general manner. There is no indication that the nature of the case required the applicant's continuous detention for such a long period.

37. While all those above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to prolong this measure. In this context, the Court would observe that until the date of his original first-instance conviction the applicant had already been in pre-trial detention for three years, ten months and six days.

Following the quashing of that conviction on appeal, he was kept in custody for a further eight months and eight days (see paragraphs 16 and 26 above).

38. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised criminal group, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION

39. 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.”

40. Recently in the case of *Kauczor v. Poland* (cited above, paragraph 58 *et seq.*, with further references, the Court referred to the above mentioned 2007 Resolution of the Committee of Ministers taken together with the number of judgments recently delivered and concluded:

“60. The Court thus concludes, as the Committee of Ministers did, that for many years, at least as recently as in 2007, numerous cases have demonstrated that the excessive length of pre-trial detention in Poland reveals a structural problem consisting of “a practice that is incompatible with the Convention” (see *mutatis mutandis Broniowski v. Poland* [GC], no. 31443/96, §§ 190-191, ECHR 2004-V; *Scordino v. Italy (no. 1)* [GC], no. 36813.

41. It is true that the present case concerns a person involved in an organised criminal gang. However, as stated above, while this element is to be taken into account in assessing compliance with Article 5 § 3 and may justify a longer period of detention than in a case concerning an individual offender, a member of an organised criminal gang is entitled to the protection against unreasonably lengthy detention afforded by this provision (see paragraphs 34, 37 and 38 above). As in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 32-37 above). Moreover, as demonstrated by the ever increasing number of judgments in which the Court has found Poland to be in breach of Article 5 § 3 in respect of applicants involved in organised crime, the present case is by no means an isolated example of the imposition of unjustifiably lengthy detention but a confirmation of a practice found to be contrary to the Convention (see, among many other examples, *Celejewski v. Poland*, no. 17584/04, 4 May

2006; *Kąkol v. Poland*, no. 3994/03, 6 September 2007; *Malikowski v. Poland*, no. 15154/03, 16 October 2007). 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).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. Lastly, the applicant complained under Article 6 of the Convention about the excessive length of his pre-trial detention.

The Court considers that the applicant's complaint is that the length of criminal proceedings is incompatible with the “reasonable time” requirement provided in Article 6 § 1 of the Convention. The proceedings in question are currently pending before the Katowice Regional Court (see paragraph 19 above).

With respect to the requirement of exhaustion of domestic remedies, the Court notes that the applicant did not avail himself of the remedy provided for by the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time.

Accordingly, this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed EUR 80,000 in respect of non-pecuniary damage and EUR 150,000 in respect of pecuniary damage.

45. The Government did not express an opinion on the matter.

46. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant has suffered non-pecuniary damage 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 2,000 under this head.

B. Costs and expenses

47. The applicant also claimed EUR 70,000 for the costs and expenses incurred before the domestic courts and before the Court.

48. The Government did not express an opinion on the matter.

49. 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 were reasonable as to quantum. The Court awards the applicant, who was not represented by a lawyer, EUR 100.

C. Default interest

50. 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 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, together with EUR 100 (one hundred euros), in respect of costs,¹ 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 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.

1. Rectified on 3 November 2010 : “in respect of costs” has been added.

Done in English, and notified in writing on 9 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President