



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF MARUSZAK v. POLAND

(Application no. 11253/07)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Maruszak v. Poland,

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

Nicolas Bratza, *President*,
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 11253/07) 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 Robert Maruszak (“the applicant”), on 15 February 2007.

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

3. The applicant alleged, that his pre-trial detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention. He also complained under Article 6 § 1 of the Convention of the allegedly unreasonable length of the criminal proceedings against him.

4. On 16 January 2008 the President of the Chamber to which the case has been allocated decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

5. The applicant was born in 1982 and is currently detained in Gdańsk Remand Centre.

A. The applicant's pre-trial detention and criminal proceedings against him

6. On 24 November 2002 the applicant, who since 28 August 2002 had been sought under a wanted notice, was arrested and remanded in custody on suspicion that he had committed murder with three accomplices.

7. The applicant's pre-trial detention was subsequently extended by decisions of the Gdańsk Regional Court (*Sąd Okręgowy*) of 26 November 2002 and 6 February, 8 May, 29 July, and 18 November 2003.

8. The domestic court justified the applicant's pre-trial detention by the existence of strong evidence against him and the likelihood that a severe penalty would be imposed in the case. The court also noted that it was necessary to carry out further investigations, such as obtaining evidence from new witnesses, psychiatric reports on the suspects and various forensic reports.

9. Meanwhile, on 14 July 2003 the applicant was indicted on charges of robbery, manslaughter, distribution of drugs, assault and battery. There were three other defendants in the applicant's case. The prosecutor asked the trial court to examine sixty-four witnesses and to read out the testimonies of another five witnesses.

10. On 15 October 2003 the trial court decided that certain procedural shortcomings had occurred in the proceedings and returned the bill of indictment to the prosecutor. On 27 October 2003 a rectified bill of indictment was filed with the court.

11. The first hearing in the applicant's case took place on 28 November 2003. Subsequently, seventeen hearings were held by the trial court. One hearing was adjourned due to the absence of defendants.

12. Between 2 and 12 June 2004 the applicant was serving a prison sentence imposed by the Gdańsk District Court in a separate case.

13. On 8 October 2004 the Gdańsk Regional Court convicted the applicant on several counts and sentenced him to fifteen years' imprisonment.

14. Pending appeal, the applicant's detention was extended by decisions of the Gdańsk Regional Court of 23 November 2004 and of the Gdańsk Court of Appeal (*Sąd Apelacyjny*) of 19 April and 20 July 2005.

15. The courts reiterated that there was strong evidence against the applicant and the likelihood that a severe penalty would be imposed in the case. In addition, the authorities noted that for the above reasons the applicable law allowed for a presumption of risk that the applicant would obstruct the proper course of the proceedings and the latter could only be ensured by applying the preventive measure in question.

16. Meanwhile, on 22 June 2005 the Gdańsk Court of Appeal partly quashed the judgment and remitted the case to the Regional Court in that

part. The first-instance judgment was upheld, however, with respect to a few offences and in that connection the applicant was sentenced to three years' imprisonment. The court deducted from the imposed sentence the term of the applicant's detention preceding the conviction, namely two years, six months and eighteen days comprising two periods: from 24 November 2002 to 2 June 2004 and from 12 June 2004 to 22 June 2005.

17. Subsequently, the applicant's detention was extended by the decision of the Gdańsk Court of Appeal of 20 July 2005 and then, by decisions of the Gdańsk Regional Court of 25 October 2005, 21 February and 21 September 2006 (upheld on 11 October 2006 by the Gdańsk Court of Appeal), 30 November 2006, 22 February 2007 (upheld on 6 March 2007), 22 May 2007 (upheld on 5 June 2007), 24 August and 30 October 2007.

18. The authorities continued to briefly reiterate the reasons previously given to justify the applicant's detention. In decisions of 6 March and 5 June 2007 the Gdańsk Court of Appeal elaborated in greater detail on the reasons for continuing to apply the measure in question. The court noted that the decision to impose pre-trial detention in connection with a criminal case involving several co-defendants was taken in the light of the circumstances of the case *vis-à-vis* the position of each individual defendant. Thus, the fact that, in the instant case, a few of the applicant's co-defendants had been released pending trial did not have any bearing on the applicant's situation. Similarly, the court observed that the argument that there was strong evidence against the applicant, which had been relied on to justify the preventive measure, did not undermine the principle of the presumption of innocence in criminal proceedings. Finally, the court admitted that the applicant's detention had been lengthy; however, its length was considered proportionate to the penalty envisaged under domestic law for the offences with which he had been charged.

19. Meanwhile, on 1 August 2006 and 12 April 2007 the Gdańsk Regional Court refused the applicant's request to have his detention lifted in view of his allegedly difficult family situation.

20. The first hearing at the re-trial was held on 18 April 2006. Subsequently, the first-instance court held twenty and adjourned two hearings.

21. In the meantime, namely from 16 June 2006 to 29 May 2007 the applicant was serving a prison sentence imposed by the Ostrów Wielkopolski District Court in a separate case.

22. On 30 November 2007 the Gdańsk Regional Court convicted the applicant of three offences and sentenced him to thirteen years' imprisonment. The court deducted from the imposed sentence the term of the applicant's detention from 3 December 2005 and 26 June 2006, which added up to six months and twenty-two days.

23. On 19 June 2008 the Gdańsk Court of Appeal quashed the above judgment, *inter alia*, in the part concerning two charges against the

applicant and remitted the case to the Regional Court in that part. The first-instance judgment was upheld, however, with respect to one offence and in that connection the applicant was sentenced to two years' imprisonment. The appellate court deducted from the imposed sentence the term of the applicant's detention preceding the conviction, namely one year, seven months and two days comprising two periods: from 3 December 2005 until 16 June 2006 and from 29 May 2007 until 19 June 2008. It is unclear on which date the applicant finished serving the remainder of his prison sentence.

The applicant's criminal case is currently pending before the first-instance court and he remains in detention by virtue of subsequent court decisions.

B. Proceedings under the 2004 Act

24. On 1 August 2007 the applicant lodged a complaint about the unreasonable length of proceedings under the Act of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act"). The applicant submitted that his criminal case had been pending before the Gdańsk Regional Court for too long.

25. On 20 September 2007 the Gdańsk Court of Appeal rejected the application on the ground that the applicant had not complied with the procedural requirements, namely that he had failed to indicate the circumstances of the case which would justify his claim.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions pertaining to pre-trial detention

26. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "preventive measures" (*środki zapobiegawcze*) are set out 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.

B. Remedies for the excessive length of judicial proceedings

27. The relevant domestic law and practice concerning remedies for the 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.

C. Relevant statistical data concerning pre-trial detention

28. In the framework of the procedure before the Committee of Ministers (see paragraphs 30 and 32 below) the Polish Government supplied statistical data concerning the number and the length of pre-trial detentions ordered in the years 2005-2006 by the domestic courts. A more detailed rendition of the relevant statistical data can be found in the Court's judgment in the case of *Kauczor* (see *Kauczor v. Poland*, no. 45219/06, § 28, 3 February 2009).

III. MEASURES TAKEN BY THE STATE TO REDUCE THE LENGTH OF PRE-TRIAL DETENTION

A. Recent amendments to the relevant legislation

29. A number of amendments to the Code of Criminal Procedure (*Kodeks postępowania karnego*), designed to streamline criminal proceedings, entered into force on 20 June 2007 (Law of 9 May 2007 on amendments to the Code of Criminal Procedure; Journal of Laws of 2007, No. 99, item 664; *Ustawa o zmianie ustawy - Kodeks postępowania karnego oraz niektórych innych ustaw*). Those amendments strengthened the powers of the authorities to discipline the participants. A more detailed rendition of the recent amendments to the legislation can be found in the Court's judgment given in the case of *Kauczor v. Poland* (see *Kauczor v. Poland*, cited above, §§ 27 and 30-31).

B. Other measures

30. According to the information supplied by the Polish Government to the Committee of Ministers, in addition the Polish trial courts and prosecution authorities have undertaken a series of practical measures in order to organise criminal proceedings in a more efficient manner, i.e. by scheduling time-limits for hearings well in advance, holding hearings on Saturdays or severing charges against co-accused to separate proceedings under Article 34 § 3 of the Code of Criminal Procedure if the joint examination proves difficult and time-consuming.

31. On 17 May 2007 the Cabinet (*Rada Ministrów*) adopted the “Plan of Actions of the Government for the execution of judgments of the European Court of Human Rights in respect of Poland” (*Program Działań Rządu w sprawie wykonywania wyroków Europejskiego Trybunału Praw Człowieka*). By virtue of that document the Minister of Justice was obliged to disseminate among judges and prosecutors on a regular basis information on the standards concerning the length of pre-trial detention stemming from the Convention and the case-law of the Court in Polish cases and to include this topic in the programmes of workshops and seminars for judges.

IV. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. The Committee of Ministers

32. On 6 June 2007 the Committee of Ministers adopted an 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”). It concluded that the number of the Court’s judgments finding Poland in violation of Article 5 § 3 of the Convention on account of the length of pre-trial detention 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*, cited above, § 34)

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

33. 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 pre-trial detention in Poland. The Commissioner referred to the fact that the Court had repeatedly found violations of Article 5 § 3 in respect of Poland and stressed that examples of cases brought to 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 (see *Kauczor v. Poland*, cited above, § 35).

THE LAW

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

34. 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.”

35. The Government contested that argument.

A. Admissibility

36. 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

37. The applicant's detention started on 24 November 2002, when he was arrested on suspicion that he had committed murder with three accomplices.

On 8 October 2004 the Gdańsk Regional Court convicted the applicant on several counts and sentenced him to fifteen 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*, cited above, § 104).

On 22 June 2005 the Gdańsk Court of Appeal partly quashed the judgment and remitted the case to the Regional Court in that part. The first-instance judgment was upheld, however, with respect to a few offences and in that connection the applicant was sentenced to three years' imprisonment. The court deducted from the imposed sentence the term of the applicant's detention preceding the conviction, namely two years, six months and eighteen days comprising two periods: from 24 November 2002 to 2 June 2004 and from 12 June 2004 to 22 June 2005. As a result, on 3 December 2005 the applicant finished serving the remainder of his

sentence. Therefore, the period from 22 June until 3 December 2005 is covered by Article 5 § 1 (a) and falls outside the scope of Article 5 § 3.

From the latter date, however, until 30 November 2007, when the applicant was convicted in the proceedings following the partial quashing of the 8 October 2004 judgment, his detention again fell within the ambit of Article 5 § 3.

From 30 November 2007, the applicant was again detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a).

On 19 June 2008 the Gdańsk Court of Appeal quashed the above judgment in the part concerning two charges against the applicant and remitted the case to the Regional Court in that part. The first-instance judgment was upheld, however, with respect to one offence and in that connection the applicant was sentenced to two years’ imprisonment. The appellate court deducted from the imposed sentence the term of the applicant’s detention preceding the conviction, namely one year, seven months and two days comprising two periods: from 3 December 2005 until 16 June 2006 and from 29 May 2007 until 19 June 2008. Neither of the parties informed the Court of the date the applicant finished serving the remainder of his prison sentence. It appears, however, that soon after 19 June 2008 the applicant regained his status as a detained person. In these circumstances the Court cannot but assume that from 19 June 2008 onwards the applicant’s detention has been again covered by Article 5 § 3.

38. In parallel, namely from 2 until 12 June 2004 and from 26 June 2006 until 29 May 2007 the applicant served two separate prison sentences which had been imposed on him in other criminal proceedings. These terms, as being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant’s pre-trial detention for the purposes of Article 5 § 3.

39. Accordingly, the period to be taken into consideration has so far amounted to three years, ten months and twenty-seven days.

2. The parties’ submissions

(a) The applicant

40. The applicant submitted that the length of his pre-trial detention had been excessive and that the measure had not been sufficiently justified by the authorities.

(b) The Government

41. The Government considered that the applicant’s pre-trial detention had satisfied the requirements of Article 5 § 3. Throughout its entire period it had been justified by “relevant” and “sufficient” grounds, in particular the existence of a reasonable suspicion that he had committed the offences he had been charged with. Moreover, the Government considered that the

applicant's protracted detention pending trial was justified by the complex nature of the case and a genuine public interest requirement, namely the fact that the applicant had been charged with serious offences and was facing a lengthy prison sentence. Finally, the Government noted that the applicant's pre-trial detention was justified by the risk that he would obstruct the proceedings and tamper with evidence.

3. *The Court's assessment*

(a) General principles

42. 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

43. 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; (3) the need to secure the proper conduct of the proceedings. As regards the latter, they did not, however, specify any concrete grounds justifying their opinion beyond repetitive statements that it was necessary to carry out further investigations (see paragraphs 8 and 15 above).

44. 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, in particular the process of obtaining evidence from witnesses, constituted valid grounds for the applicant initial detention.

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

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 (see paragraph 15 above). 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 *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

46. As regards the risk that the applicant would obstruct the proceedings and tamper with evidence, the authorities have relied on the fact that the proceedings against the applicant involved a large number of witnesses and several co-defendants. They never suggested, however, that the applicant himself had undertaken any measures to obstruct the proceedings in a particular manner.

47. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

48. The applicant further complained that the length of the proceedings was incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

However, 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 ..."

49. In this connection, the Court observes that the applicant attempted to avail himself of the new Polish remedy for the excessive length of proceedings ("the 2004 Act"). His complaint, however, was not examined on the merits. On 20 September 2007 the Gdańsk Court of Appeal rejected the application on the ground that the applicant had not complied with the procedural requirements, namely, that he had failed to indicate the circumstances of the case which would justify his claim.

Accordingly, the applicant has not exhausted domestic remedies in respect of his complaint under Article 6 § 1 of the Convention as his application under the 2004 Act failed due to his procedural mistake and he did not take the opportunity to lodge a new complaint under the 2004 Act, this time in compliance with the procedural requirements.

50. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, the Court considered that the remedy was capable both of preventing the alleged violation 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 v. Poland* (dec.), no. 15212/03, §§ 36-42).

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

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

52. 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.”

A. The parties' submissions

1. *The applicant*

53. The applicant did not submit any observations concerning this provision.

2. *The Government*

54. The Government submitted that the length of the applicant's pre-trial detention had not been excessive considering the complexity of the case. Therefore, the length of the measure in question did not reveal the existence of a structural problem. They further stressed that Polish law was compatible with the standards of Article 5 § 3 of the Convention.

55. Maintaining that the number of cases in which the domestic courts had ordered detention on remand lasting from twelve months to two years or longer was decreasing, the Government made reference to the statistical data for 2005-2007 which they submitted to the Court. They further stressed that the awareness of courts of the standards concerning the length of the detention on remand was growing.

56. They also suggested that the fact that the Court had already given many judgments finding a violation of Article 5 § 3 of the Convention should not lead to the automatic application of Article 46, as had occurred in the case of *Scordino v. Italy*. The Polish authorities had taken many general and individual measures based on the conclusions stemming from the Court's judgments finding that the length of the detention on remand had been excessive. In particular, on 17 May 2007 the Cabinet adopted the “Plan of Actions of the Government for the execution of judgments of the European Court of Human Rights in respect of Poland” (see paragraph 31 above).

57. The Government concluded that, bearing in mind the efforts of the Polish authorities and the legislative reforms which were and had been undertaken by them to solve the problem of the length of detention on remand, Poland could not be said to have failed to comply with its obligations under Article 46 of the Convention to obey the Court's judgments.

B. The Court's assessment

58. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, § 58 et seq. with further references) the Court held that the 2007 Resolution taken together with the number of judgments already delivered and of the pending cases raising an issue of excessive detention incompatible with Article 5 § 3 demonstrated that the violation of the applicant's right under Article 5 § 3 of the Convention had originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which had affected, and may still affect in the future, an as yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

It concluded, as the Committee of Ministers had already done, that for many years, at least as recently as in 2007, the excessive length of pre-trial detention in Poland revealed a structural problem consisting of "a practice that is incompatible with the Convention" (see *Kauczor*, cited above, § 60; and, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, §§ 190-191, ECHR 2004-V; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 229-231, ECHR 2006-...; *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V with respect to the Italian length of proceedings cases).

59. In *Kauczor* the Court noted that the respondent State has already taken certain steps to remedy the structural problems related to pre-trial detention (see paragraphs 23-25 above). It stressed, however, that in view of the extent of the systemic problem at issue, consistent and long-term efforts, such as adoption of further measures, must continue in order to achieve compliance with Article 5 § 3 of the Convention (see *Kauczor v. Poland*, cited above, § 62).

60. In the present case, as in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 43-47 above). Consequently, the Court sees no reason to diverge from its findings made in *Kauczor* as to the existence of a structural problem and the need for the Polish State to adopt measures to remedy the situation (see *Kauczor*, cited above, §§ 60-62).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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.”

62. The applicant submitted his claim for just satisfaction outside the time-limit prescribed by the Court. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 5 § 3 of the Convention 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.

Done in English, and notified in writing on 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President