



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

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FOURTH SECTION

**CASE OF KACPRZYK v. POLAND**

*(Application no. 50020/06)*

JUDGMENT

STRASBOURG

21 July 2009

**FINAL**

***21/10/2009***

*This judgment may be subject to editorial revision.*



**In the case of Kacprzyk 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 30 June 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 50020/06) 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 Rafał Kacprzyk (“the applicant”), on 1 December 2006.

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 Articles 6 § 1 of the Convention of a shortcoming on the part of the trial court regarding the classification of one charge and of the unreasonable length of the criminal proceedings against him.

4. On 17 October 2007 the President of the Fourth Section 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 1973. He is currently detained in Ustka Prison.

6. On 22 October 2004 the applicant was arrested on suspicion that he had committed a series of criminal offences against different banks, such as fraud, perjury and attempted unlawful disposal of property.

7. On 25 October 2004 the Gdańsk District Court (*Sąd Rejonowy*) remanded the applicant in custody. On 7 February 2005 the Gdańsk Regional Court (*Sąd Okręgowy*) upheld that decision.

8. The applicant's pre-trial detention was subsequently extended by decisions of the Gdańsk District Court of: 13 January and 22 April 2005 (the latter upheld by the Gdańsk Regional Court on 23 May 2005) and 15 July 2005 (upheld by the Gdańsk Regional Court on 16 August 2005). Later, the preventive measure in question was extended by decisions of the Gdańsk Regional Court of 20 October 2005 (upheld by the Gdańsk Court of Appeal on 3 November 2005), 2 January, 23 March, 31 May and 3 July 2006 (upheld by the Gdańsk Court of Appeal on 19 July 2006), and 23 August 2006.

9. The domestic courts justified the applicant's pre-trial detention in its initial phase by the existence of strong evidence against the applicant and a likelihood that a severe penalty would be imposed. Moreover, the authorities invoked the need to ensure the proper conduct of the proceedings in the light of the risk that the applicant might go into hiding. He did not have a permanent residence and had been already sought by the police under a wanted notice. Finally, the domestic courts indicated that it had been necessary to examine new witnesses, to obtain psychiatric reports on the applicant and to run the necessary graphology tests, all of which had contributed to the delays in the pre-trial proceedings.

10. At the later stage of the applicant's pre-trial detention, the authorities emphasised that the applicant had been charged with seventeen serious criminal offences and that holding him in detention was the only possible way to ensure the proper conduct of the proceedings, since the applicant had already gone into hiding in the past.

11. Meanwhile, from 19 November 2004 to 27 February 2005, from 27 February to 13 May 2005 and from 20 July 2005 to 20 April 2006 the applicant was concurrently serving prison sentences which had been imposed by domestic courts in three unrelated criminal proceedings against him.

12. It appears that on 18 February 2005 the applicant, who beforehand had resided in Germany, became registered at a permanent address in Poland.

13. On 30 September 2005 the applicant was indicted on numerous charges of fraud, perjury and attempted unlawful disposal of property. It was asserted in the indictment that he had tried to enter into financial transactions with different banks under false pretences and using false documents. The prosecutor asked the trial court to examine sixty-one witnesses, including nine expert witnesses.

14. The first hearing took place on 7 November 2005. Subsequently, between 2005 and the end of 2007 the trial court held twenty-four hearings.

15. When the length of the applicant's pre-trial detention appeared to reach the statutory two-year time-limit laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), the Gdańsk Regional Court asked the superior court to assume jurisdiction to take a decision on the measure. On 17 October 2006, however, the Gdańsk Court of Appeal decided not to hear the case, noting that the applicant's actual pre-trial detention had not lasted two years because it had been interrupted by the prison sentences which he had been serving at the same time, for approximately one year and three months.

16. Consequently, the applicant's pre-trial detention was extended again by decision of the Gdańsk Regional Court of 19 October and 30 November 2006 and 10 January, 7 February, 12 April and 28 June 2007. Those decisions were upheld by the Gdańsk Court of Appeal on 7 November and 13 December 2006, an unspecified date, and 20 February, 24 April and 18 July 2007, respectively.

17. In the meantime, on 27 February 2007 the Gdańsk Regional Court dismissed a request by the applicant to lift the preventive measure in question.

18. At that stage, the domestic courts justified the applicant's protracted pre-trial detention by the complexity of the case, the need to examine two more witnesses and the fact that the investigation could not be completed for reasons beyond the prosecutor's control, namely delays in obtaining the testimony of a witness who was to be heard by the court in a different administrative region under the courts' mutual aid system.

19. On 28 December 2007 the court convicted the applicant of several offences and sentenced him to five and a half years' imprisonment.

20. It appears that the applicant appealed and that the proceedings are currently pending before the second-instance court. The applicant remains in detention.

21. The applicant did not use, in connection with his criminal trial, any of the domestic legal means designed to counteract and redress the undue length of judicial proceedings, such as those regulated in the Law 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*) or by Article 417 of the Civil Code (*Kodeks Cywilny*).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Provisions pertaining to pre-trial detention

22. 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

23. 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, measures taken by the State to reduce the length of pre-trial detention and relevant Council of Europe documents

24. The relevant statistical data, recent amendments to the Code of Criminal Procedure designed to streamline criminal proceedings and references to relevant Council of Europe materials including the 2007 Resolution of the Committee of Ministers, can be found in the Court’s judgment in the case of *Kauczor* (see *Kauczor v. Poland*, no. 45219/06, §§ 27-28 and 30-35, 3 February 2009).

## THE LAW

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

25. 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.”

26. The Government contested that argument.

#### A. Admissibility

27. The Government submitted that the applicant had not exhausted all the remedies provided for by Polish law in that he had failed to appeal against several decisions extending his detention. They also submitted that the applicant should have lodged a constitutional complaint with the Constitutional Court.

28. The applicant did not comment.

29. The Court observes that the applicant did not challenge every decision extending his detention. However, he did lodge as many as eleven appeals against decisions in question (see paragraphs 7, 8 and 16 above). He also unsuccessfully requested that his detention be lifted (see paragraph 17 above).

The Court has already considered that those remedies, namely an appeal against a detention order or a request for release, whether submitted to the prosecutor or to the court, depending on the stage of the proceedings, and also an appeal against a decision to extend detention, serve the same purpose under Polish law. Their objective is to secure the review of the lawfulness of detention at any given time in the proceedings, both in their pre-trial and trial stage, and to obtain release if the circumstances of the case no longer justify continued detention (see *Iwańczuk v. Poland* (dec.), no. 25196/94, 9 November 2000, and *Wolf v. Poland*, nos. 15667/03 and 2929/04, § 78, 16 January 2007). It follows from the Court's case-law that the applicant is not required to appeal against each and every decision extending his detention (see, by contrast, *Bronk v. Poland* (dec.), no. 30848/03, 11 September 2007).

30. Moreover, according to the established case-law, having exhausted the available remedy, the applicant was not required to embark on another attempt to obtain redress by bringing a constitutional complaint (see, for example, *Cichla v. Poland* no. 18036/03, § 26, 10 October 2006).

31. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

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

32. The applicant's detention started on 22 October 2004, when he was arrested on suspicion that he had committed a series of criminal offences against banks, including fraud, perjury and attempted unlawful disposal of property.

On 28 December 2007 the Gdańsk Regional Court convicted the applicant and sentenced him to five and a half years' imprisonment. As from that date he has been 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). It appears that the proceedings are currently pending an appeal.

33. In parallel to the applicant's pre-trial detention, however, namely from 19 November 2004 to 27 February 2005, from 27 February to 13 May 2005 and from 20 July 2005 to 20 April 2006 the applicant served three separate prison sentences which had been imposed on him in other criminal proceedings (see paragraph 11 above). These terms, 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.

34. Accordingly, the period to be taken into consideration amounts to one year, eleven months and thirteen days.

### *2. The parties' submissions*

#### **(a) The applicant**

35. 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**

36. The Government stressed that the applicant's pre-trial detention had not exceeded two years. They considered that the measure in question 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 complexity of the case and the fact that, if convicted, he was facing a lengthy prison sentence. Lastly, they relied on the risk of the applicant's absconding, which was considered real in the light of the fact that he had already been sought under a wanted notice.

### 3. *The Court's assessment*

#### (a) **General principles**

37. 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**

38. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the severity of the penalty to which he was liable; (2) the complexity of the case and (3) the risk of the applicant's absconding. As regards the latter, they specified that the applicant had already been sought under a wanted notice and that he did not have a permanent residence address in Poland.

39. Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004 and *Sarban v. Moldova*, no. 3456/05, § 97, 4 October 2005).

40. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the complexity of the case in so far as it had been necessary to obtain evidence from a large number witnesses, including expert witnesses, constituted valid grounds for the applicant initial detention. However, with the passage of time, those grounds became less and less relevant.

It must be therefore examined whether the other grounds adduced by the courts – namely, the severity of the anticipated sentence and the risk that he would abscond – were "relevant" and "sufficient" (see, *Kudła* cited above, § 111).

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 *Michtha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

As regards the risk of the applicant's absconding, the authorities have relied on the fact that the applicant had already gone into hiding and that he did not have a permanent residence in Poland. In connection with the latter argument, the Court notes that it appears that in early 2005 the applicant obtained a permanent address in the country. Moreover, concurrently to his pre-trial detention in connection with the instant case, the applicant was deprived of liberty for the purpose of serving three sentences of imprisonment. His presence in the country was, therefore, secured by the authorities. The Court cannot agree with the domestic authorities' assessment that the fact that the applicant had gone into hiding in the past was alone sufficient to establish, without further inquiry, a risk that he would abscond or otherwise obstruct the proceedings.

41. Having regard to the foregoing and noting that the offences with which the applicant had been charged, even though they carried a severe penalty, were not violent crimes and that the case did not belong to the category of organised crime (compare *Bqk v. Poland*, no. 7870/04, ECHR 2007-... (extracts)), 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

42. The applicant further complained of the Convention of the excessive length of the criminal proceedings against him. He also complained under that one of the charges against him had been given a wrong classification by the domestic court.

Both complaints fall to be examined under Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... 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 ..."

43. In this connection, the Court observes that on 28 December 2007 the Gdańsk Regional Court convicted the applicant at first instance. It appears

that the applicant appealed against that judgment and that his case is currently pending before the second-instance court with the possibility of ultimately reaching the Supreme Court.

Accordingly, the applicant has not yet exhausted domestic remedies in respect of his complaint under Article 6 § 1 of the Convention concerning the unfairness of the proceedings.

44. Moreover, as regards the applicant's complaint about the unreasonable length of the impugned proceedings, the Court notes that the applicant did not lodge a complaint with the relevant domestic court under the 2004 Act, thus failing to avail himself of the available domestic remedy.

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).

45. It follows that both complaints under Article 6 § 1 of the Convention 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

46. 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*

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

##### 2. *The Government*

48. 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.

49. 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.

50. 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".

51. 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**

52. 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 of the Committee of Ministers 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.

53. 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. 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

54. 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**

55. The applicant claimed 9,500 euros (EUR) in respect of pecuniary damage, comprising overdue child maintenance and rent payments. He also claimed EUR 20,500 in respect of non-pecuniary damage.

56. The Government submitted that the applicant’s claims for pecuniary damage were speculative and unjustified, while his claims for non-pecuniary damage, exorbitant.

57. 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 awards the applicant EUR 800 in respect of non-pecuniary damage.

##### **B. Costs and expenses**

58. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the domestic courts.

59. The Government submitted that the applicant’s claim was to be rejected as unjustified and irrelevant.

60. 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. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings.

##### **C. Default interest**

61. 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 under Article 5 § 3 of the Convention concerning the length of the applicant's pre-trial 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 800 (eight hundred euros) in respect of non-pecuniary damage, 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.

Done in English, and notified in writing on 21 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President