



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF LEWICKI v. POLAND

(Application no. 28993/05)

JUDGMENT

STRASBOURG

6 October 2009

FINAL

28/06/2010

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

In the case of Lewicki 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,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 28993/05) 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 Włodzimierz Lewicki (“the applicant”), on 27 July 2005.

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

3. The applicant alleged, in particular, that his detention during judicial proceedings had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention. He further claimed that his appeals against the extension of his pre-trial detention had not been examined “speedily”.

4. On 20 November 2007 the President of the Fourth Section of the Court 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 1959 and lives in Warsaw.

6. The applicant was arrested on 3 September 2004 during a police intervention following complaints of domestic violence made by his wife. On 4 September 2004 the Warsaw District Court remanded him in custody

on suspicion of acts of domestic violence committed between May and September 2004. It relied on evidence given by the applicant's wife and his son. It found that there was a risk that the applicant might influence witnesses, in particular his twelve-year old son. The court noted that according to witnesses' statements the applicant had been violent and had not respected the living arrangements in the family flat. Furthermore, the preventive measure (police supervision) which had been imposed so far had proved ineffective. Having regard to the above, the District Court held that only detention during judicial proceedings could secure the proper conduct of the investigation. However, it noted that the investigation should last no longer than two months.

7. The applicant appealed. However his appeal was dismissed on 5 October 2004. His requests for release were likewise dismissed, on 1 October 2004.

8. On 26 October 2004 the Warsaw District Court extended the applicant's pre-trial detention until 2 February 2005. It found that his continued detention was necessary in order to prevent the applicant from influencing the victims.

9. On 9 November 2004 the applicant appealed against the extension of his detention. He argued that the background to the family conflict was related to his older son's alleged addiction to drugs and theft of his money. He also submitted that he had no criminal record and had been declared "second-degree disabled".

10. On 5 January 2005 the Warsaw Regional Court dismissed the applicant's appeal. It relied on the severity of the anticipated penalty and the fact that the applicant had just begun psychiatric observation.

11. On 25 January 2005 the Warsaw District Court extended the applicant's detention until 2 May 2005. It invoked the risk that the applicant, if released, would attempt to influence the victims. It also found that continued detention was justified in order for a psychiatric report to be prepared.

12. The applicant's lawyer lodged an appeal against this decision on 8 February 2005.

13. The Government submitted that the applicant obtained a copy of the decision of 25 January 2005 only on 24 February 2005. His appeal, dated 25 February 2005, was submitted to the Warsaw District Court on 21 March 2005.

14. On 6 April 2005 the Warsaw Regional Court dismissed the applicant's and his lawyer's appeal. It relied, in particular, on the need to obtain a psychiatric report.

15. On 11 March 2005 the Warsaw Żoliborz District Prosecutor refused the applicant's request to be released on bail.

16. Meanwhile, on 1 April 2005 the psychiatric experts submitted their report to the District Prosecutor.

17. On 29 April 2005 the Warsaw District Court ordered that the applicant be held in detention until 2 June 2005. In addition to the risk of obstruction of the proceedings, it held that the extension of detention was justified by the need to assess certain documentary evidence and to enable the applicant to consult the file, as the investigation was nearing its end (scheduled for 9 May 2005). On an unspecified later date the applicant appealed against that extension of his detention.

18. On 19 May 2005 the Warsaw Żoliborz District Prosecutor filed a bill of indictment with the Warsaw District Court. The applicant was charged with domestic violence in respect of his wife and older son.

19. On 25 May 2005 the Warsaw District Court extended the applicant's detention until 2 October 2005. On 30 May 2005 the applicant appealed against that decision. On 31 August 2005 the Regional Court dismissed his appeal. On 10 June and 3 August 2005 the District Court refused his applications for release.

20. On 26 September 2005 the District Court ordered the further extension of the applicant's detention until 2 December 2005. The court referred to the risk of influencing victims' testimonies. On 3 October 2005 the applicant appealed.

21. On 29 September 2005 the Warsaw Regional Court decided not to take cognisance of the applicant's appeal against the District Court's decision of 29 April 2005 extending his detention, since the period of detention authorised by that decision had expired on 2 June 2005. The applicant lodged a further appeal against that decision. On 3 November 2005 a different panel of the Warsaw Regional Court dismissed his appeal. It observed, however, that the five-month delay of the Warsaw District Court in transmitting the applicant's appeal to the Regional Court, contrary to Article 463 § 2 of the Code of Criminal Procedure, had rendered the review of the decision under appeal nugatory.

22. On 25 November 2005 the Warsaw District Court held a hearing and extended the applicant's detention until 2 January 2006. On the same day it ordered the joinder of the case with two other cases against the applicant. In those two cases he was charged with domestic violence (acts committed between December 2002 and April 2004), insulting police officers and unlawful possession of a stun gun.

23. Six days after the last detention order, on 1 December 2005, the Warsaw District Court extended the applicant's detention until 2 April 2006.

24. On 6 December 2005 the applicant's lawyer appealed against the latter extension. On 16 December 2005 the Warsaw Regional Court upheld the contested decision. On 15 December 2005 the applicant himself appealed against the decision of 1 December 2005. This appeal was transmitted to the Warsaw Regional Court in October 2006. During a session held on 21 December 2006 the applicant withdrew his appeal.

25. The trial began on 21 December 2005. It appears that during the hearing the trial court suggested that the applicant accept a sentence of eighteen months' imprisonment; he refused, claiming his innocence.

26. On 27 March 2006 the applicant was released from detention. On a prosecutor's appeal, the Warsaw District Court quashed its decision. The court stressed that if released the applicant could commit further acts of domestic violence. On 31 March 2006 the applicant was again arrested and placed in the detention centre. On the same date the Warsaw District Court extended the applicant's detention until 2 July 2006. The court referred to the risk of influencing the victims' and witnesses' testimonies and the severity of the anticipated penalty.

27. On 15 May 2006 the applicant complained to the Minister of Justice about delays in the trial. On 21 June 2006 the Deputy President of the Warsaw Regional Court, to whom the applicant's letter had been transmitted, acknowledged that there had been delays in the proceedings against the applicant.

28. On 7 August 2006 the Warsaw Żoliborz District Court convicted the applicant of domestic violence and insulting police officers. It sentenced him to four years' imprisonment. The applicant was released on the same day.

29. On 30 October 2007 the Warsaw Regional Court partly upheld and partly modified the first-instance judgment. The applicant was sentenced to two years' imprisonment.

30. Meanwhile, on 24 September 2007 the applicant lodged, under the Law of 17 June 2004 (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act"), a complaint that his right to a fair trial within a reasonable time had been breached. On 16 November 2007 the Warsaw Regional Court decided not to examine the merits of the complaints.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

31. The relevant domestic law and practice concerning the imposition of detention during judicial proceedings (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "preventive measures" (*środki zapobiegawcze*) are stated in the Court's judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

B. Relevant statistical data

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

C. The length of proceedings

33. The relevant domestic law and practice concerning remedies for excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the 2004 Act, are set out 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 in its judgment in the case of *Krasuski v. Poland*, (no. 61444/00, §§ 34-46, ECHR 2005-V).

THE LAW

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

34. The applicant complained that the length of his detention during judicial proceedings 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 3 September 2004, when he was arrested on suspicion of domestic violence, and ended when he was convicted by the first-instance court on 7 August 2006. However, he was released between 27 March 2006 and 31 March 2006. Accordingly, the period to be taken into consideration amounts to one year and eleven months.

2. The parties' submissions

(a) The applicant

38. The applicant argued that the length of his detention had been unreasonable. He submitted that there had been a violation of Article 5 § 3 of the Convention.

(b) The Government

39. The Government submitted that the applicant's pre-trial detention had been justified by the existence of substantial evidence of his guilt, the serious nature of the offences with which he had been charged, the severity of the anticipated penalty and the risk that he might influence the witnesses.

40. They emphasised that once the applicant was released he immediately contacted one of the victims, the risk of which was the direct ground for quashing the decision to release him. The necessity of the applicant's continued detention had been regularly supervised by the courts, which on each occasion had given sufficient reasons for their decisions.

41. Furthermore, the Government maintained that the applicant had significantly contributed to the length of the proceedings. In the course of the trial he submitted altogether twelve obviously unjustified requests seeking the withdrawal of the presiding judge.

42. Lastly, they submitted that the applicant's detention had not been unreasonably lengthy.

3. The Court's assessment

(a) General principles

43. The Court reiterates 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” have been 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

44. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the need to secure the proper conduct of the proceedings.

45. The Court accepts that the reasonable suspicion against the applicant of having committed a serious offence 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's initial detention.

46. 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 were relevant and sufficient (see *Kudła*, cited above, § 111).

47. The Court further emphasises that, when deciding whether a person is to be released or detained, the authorities are obliged under Article 5 § 3 to consider alternative means of guaranteeing his appearance at the trial. Indeed, that Article lays down not only the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000). In the present case, the Court notes that there is no express indication that during the entire period of the applicant's pre-trial detention the authorities envisaged any other guarantees designed to secure his appearance at the trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other “preventive measures” expressly intended to secure the proper conduct of criminal proceedings.

48. The Court further notes that the applicant was detained on charges of domestic violence. It does not appear therefore that his case presented particular difficulties for the investigation authorities, especially since it had been committed in a family setting, and for the courts to determine the facts and mount a case against the perpetrator, as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski*, cited above, § 37).

49. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

51. The applicant complained that his appeals against the decisions of 26 October 2004, 25 January, 29 April, 1 December 2005 extending his detention and his application for release of 3 December 2004 were not examined speedily. He relied on Article 5 § 4 of the Convention, which in its relevant part provides as follows:

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

52. The Government contested that argument.

A. Admissibility

53. In so far as the applicant referred to the decision of 26 October 2004 and the application for release of 3 December 2004, the Court observes that under Article 35 § 1 of the Convention it may only deal with the matters arising within a period of six months of the date on which the final decision was taken. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

54. As regards the remaining decisions, the Court notes that this part of the application 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

55. The Court notes at the outset that the applicant's lawyer's appeal against the decision to extend the applicant's detention of 25 January 2005 was examined by the Regional Court only on 6 April 2005 (see paragraphs 12-14 above). The applicant's appeal against the decision of 29 April 2005 was examined as late as 29 September 2005. Lastly, the appeal against the decision of 1 December 2005 was examined on 16 December 2005. The periods under consideration accordingly lasted fifty-six days, 120 days and sixteen days respectively.

2. The parties' submissions

56. The applicant objected to the Government's submissions.

57. The Government submitted that the applicant's appeal against the decision of 25 January 2005 dated 25 February 2005 had been submitted to

the court as late as 21 March 2005. In their opinion it was subsequently examined promptly, as required under Article 5 § 4.

58. They further maintained that while the applicant's own appeal against the decision of 1 December 2005 had indeed been examined only on 21 December 2006 it did not mean that the applicant was deprived of the right to have it reviewed promptly. In this respect, they pointed out that the applicant's lawyer had also appealed against the decision of 1 December 2005 and that his appeal had been examined on 16 December 2005. They stressed that the procedural activities of the applicant's defence lawyer should be treated as the effective execution of the applicant's own procedural rights.

59. With reference to the applicant's appeal brought against the decision of 29 April 2005, the Government refrained from taking a position on the merits of the complaint. Nevertheless, they stressed that during that period the applicant's detention had been extended on two occasions and on one occasion the District Court had examined the applicant's application for release.

3. *The Court's assessment*

60. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to have the lawfulness of their detention reviewed, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and to an order terminating it if proved unlawful (see, for instance, *Baranowski v. Poland* no. 28358/95, § 68, ECHR 2000-III).

61. The finding whether or not the relevant decisions were taken “speedily” within the meaning of that provision depends on the particular features of the case. In certain instances the complexity of medical, or other, issues involved in a determination of whether a person should be detained or released can be a factor which may be taken into account when assessing compliance with the Article 5 § 4 requirements. That does not mean, however, that the complexity of a given dossier, even if it is exceptional, absolves the national authorities from their essential obligation under this provision (see, *mutatis mutandis*, *Baranowski v. Poland*, cited above, and *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

62. In that context, the Court also reiterates that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (see, for instance, *Jabłoński*, cited above, § 93).

63. In the present case the Court firstly observes that both the applicant's lawyer's appeal against the decision of 25 January 2005 lodged on 8 February 2005 and the applicant's own appeal of 25 February 2005 were examined together on 6 April 2005. It further considers that the fact that the

applicant's appeal was submitted to the court only two months after the decision had been delivered should not be considered a reason for the failure to examine the first application within a reasonable time. In addition, the Court notes that it would appear that it took the applicant's appeal nearly one month (from 25 February to 21 March) to arrive at the court from the detention centre. The Government did not offer any explanation for such a lengthy duration of conveyance of the document.

64. As regards the applicant's appeal against the decision of 29 April 2005, the Court observes that the Government did not seek to justify the delay of 120 days and did not cite any circumstances which could have absolved the judicial authorities from conducting the habeas corpus proceedings speedily.

65. In respect of the appeal against the decision of 1 December 2005, the Government pointed out that the applicant's lawyer's appeal was examined only sixteen days after it had been lodged. While the Government did not plead that complex issues had been involved in the determination of the lawfulness of the applicant's detention, nevertheless the Court still considers that the delay of sixteen days could be considered justified in the circumstances of the case.

66. Having regard to all the circumstances, the Court considers that the time taken to examine the applicant's appeals against the detention orders of 25 January 2005 and 29 April 2005, did not satisfy the speediness requirement of Article 5 § 4.

67. The Court consequently holds that there has been a violation of Article 5 § 4 of the Convention in respect of detention orders of 25 January 2005 and 29 April 2005.

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

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

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

69. The period to be taken into consideration began on 4 September 2004 and ended on 30 October 2007. It thus lasted three years and nearly two months at two levels of jurisdiction.

70. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake

for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

71. In this respect the Court observes that during three years and two months the applicant's case was examined by courts at two instances. It further observes that there were no significant periods of inactivity. Having regard to the overall duration of the proceedings, the Court finds that the proceedings were not conducted in an unreasonably lengthy fashion.

72. It follows that the applicant's complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

IV. REMAINING COMPLAINTS

73. The applicant complained of a violation of Article 13 of the Convention in respect of certain decisions given by the Warsaw District Court. He further alleged, without invoking any provisions of the Convention, that the Warsaw District Prosecutor had not decided a criminal complaint against his wife.

74. The Court finds that the facts of the case do not disclose any appearance of a violation of the above-mentioned provision. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

75. 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

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

2. The Government

77. The Government referred to the arguments submitted previously in the case of *Figas v. Poland* (no. 7883/07, §§ 41-44, 23 June 2009).

78. 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 during judicial proceedings, 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

79. 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.

80. In the present case, as in other numerous similar detention cases, the authorities did not justify the applicant's continued detention with relevant and sufficient reasons (see paragraphs 43-49 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).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Damage

81. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

82. The Government contested this claim.

83. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

84. The applicant did not claim any amount for costs and expenses.

C. Default interest

85. 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

1. *Declares* unanimously the complaints under Article 5 § 3 and 5 § 4 admissible and the remainder of the application inadmissible;
2. *Holds* by five votes to two that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* unanimously that there has been a violation of Article 5 § 4 of the Convention in respect of detention orders of 25 January 2005 and 29 April 2005;
4. *Holds* by five votes to two
 - (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, plus any tax that may be chargeable, to be converted into Polish zlotys 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;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Mijović and Hirvelä is annexed to this judgment.

N.B.

F.A.

JOINT PARTLY DISSENTING OPINION OF JUDGES
MIJOVIĆ AND HIRVELÄ

While we have no difficulties in joining the Chamber's finding that Article 5 § 4 of the Convention has been violated, we are of the opinion that there has been no violation of Article 5 § 3.

The applicant was arrested on 3 September 2004 and remanded in custody on suspicion of having committed acts of domestic violence between May and September 2004. From the facts of the case it is clear that he was a recidivist offender. The preventive measure of police supervision had been previously imposed and it proved ineffective. As a consequence, the Warsaw District Court held that only detention could secure the proper conduct of the investigation and judicial proceedings. The applicant's detention was extended on several occasions up to 25 November 2005, when the Warsaw District Court ordered the joinder of this case with two other cases against the applicant in which he was charged not only with domestic violence, but with insulting police officers and unlawful possession of a stun gun (acts committed between December 2002 and April 2004).

On 7 August 2006, the applicant was convicted, sentenced and released. Accordingly, the period to be taken into consideration for the purposes of Article 5 § 3 amounts to one year and eleven months.

The majority of the Chamber was of the opinion that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. The majority pointed out that the domestic authorities did not give any consideration to the possibility of imposing on the applicant any other “preventive measure” than detention. We find this argument very weak since, as mentioned earlier, at the time when the applicant was arrested he was already subject to one of these “preventive measures” (police supervision) and it proved to be ineffective.

In accordance with the relevant domestic law¹, apart from detention on remand the other so-called “preventive measures” are bail, police supervision, guarantee by a responsible person, guarantee by a social entity, temporary ban on engaging in a given activity and prohibition on leaving the country. With regret, we cannot accept that any of these measures would be more appropriate in the circumstances of this case since, as emphasised earlier, the applicant had the profile of a serial offender involved in acts of domestic violence.

1. Code of Criminal Procedure of 1997, which entered into force on 1 September 1998.

In contrast to this judgment, the problem of domestic violence in the case-law of the European Court of Human Rights has up to now been, in our opinion, treated differently in other cases. There have been domestic violence cases where the European Court of Human Rights has found a violation of Article 2 on account of the failure of the relevant domestic authorities to take all necessary and reasonable steps to afford protection to the lives of family members (domestic violence victims)¹. In this case, we consider that the domestic authorities did what they were supposed to do in accordance with the case-law of the European Court of Human Rights: they protected the lives of family members by applying the only one meaningful measure (detention). That is an additional reason for us to dissent.

Finally, the whole period of the applicant's detention did not exceed the limit set by the domestic legislation² and accepted by the case-law of the European Court of Human Rights.

In these circumstances, regrettably, we are unable to join the majority in finding that the applicant's rights under Article 5 § 3 were violated.

1. Among others : *Opuz v. Turkey*, 9 June 2009, *Branko Tomašić and Others v. Croatia*, 15 April 2009 and *Kontrová v. Slovakia*, 24 September 2007.

2. Code of Criminal Procedure, Art. 263: " The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years".