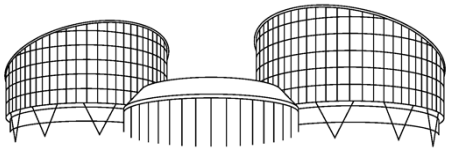

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MASŁOWSKI v. POLAND

(Application no. 7626/12)

JUDGMENT

STRASBOURG

13 January 2015

This judgment is final but it may be subject to editorial revision.

In the case of Masłowski v. Poland,

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

Päivi Hirvelä, *President,*
Zdravka Kalaydjieva,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 7626/12) 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 Masłowski ("the applicant"), on 27 January 2012.

2. The applicant was represented by Mr P. Kozanecki, a lawyer practising in Łódź. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. On 6 May 2013 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee in part. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and is currently detained in Łódź Remand Centre.

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

6. On 29 November 2006 the applicant was arrested on suspicion of committing a number of offences in an armed organised criminal group.

7. On 6 December 2006 the Łódź District Court (*Sąd Rejonowy*) remanded the applicant in custody until 28 February 2007. The court relied on a strong suspicion that the applicant had committed the offences he had been accused of. The risk of the applicant fleeing was also taken into account as a 'wanted' notice (*list gończy*) against him had been issued in October 2006. At that time he had not been residing at his permanent address and his whereabouts had not been established. The court further anticipated a heavy prison sentence to be imposed on the applicant if convicted.

8. The applicant's pre-trial detention was extended by the Łódź Regional Court (*Sąd Okręgowy*) on 27 February 2007, 26 June 2007 and on 19 September 2007. Subsequently, it was extended by the Łódź Court of Appeal (*Sąd Apelacyjny*) on 21 November 2007, 19 December 2007, 28 March 2008, 18 June 2008, 22 October 2008 and on 23 December 2008.

In their decisions to extend the applicant's pre-trial detention the courts relied on a reasonable suspicion, supported by evidence given by witnesses and other members of the criminal group, that the applicant had committed the offences in question. The courts further emphasised the risk of the applicant fleeing or obstructing the proceedings and the likelihood of a heavy prison sentence being imposed on him if convicted. The domestic courts attached importance to the complex character of the case, to the complex structure of the criminal group and the number of suspects involved and the necessity of collecting additional evidence for the inclusion in the already voluminous case file.

9. On 18 March 2009 the State Prosecutor (*Prokurator Krajowy*) lodged a bill of indictment against the applicant with the Łódź Regional Court. The applicant was charged with several counts of extortion and drug-trafficking committed in an organised and armed criminal group. The bill of indictment comprised 94 charges brought against 28 defendants. The prosecution authorities requested that 318 witnesses be heard before the court.

10. On 30 March 2009 the Łódź Court of Appeal extended the applicant's detention on remand until 31 December 2009. Subsequently, the same court ordered prolongation of his detention on 21 December 2009 (detention extended until 30 September 2010), on 22 September 2010 (detention extended until 31 March 2011) and on 23 March 2011 (detention extended until 30 September 2011). The applicant lodged a number of motions to be released as well as appeals against the decisions extending his pre-trial detention, all in vain.

In their decisions the courts repeated the grounds previously given for the applicant's detention.

11. Meanwhile, the court scheduled fifteen hearings for November and December 2009. Due to sick-leaves of the presiding judge and of some of the accused those hearings did not take place.

12. The trial was eventually opened on 18 January 2010. Subsequent scheduled hearings were adjourned due to absences of some of the co-accused and due to problems with sound system in the court room.

13. In May 2010 the Regional Court gave a severance order and decided to determine charges against two co-accused separately.

14. The bill of indictment was only finally read out to the defendants at the hearing held on 27 May 2010.

15. At the hearing of 28 May 2010 the Regional Court started taking evidence from the accused. It subsequently held fourteen hearings until the end of 2010, during which some of the accused gave evidence. Five of the scheduled hearings were adjourned due to sick-leaves of the accused. One hearing was adjourned because of the motion for disqualification of the judge lodged by one of the co-accused.

16. In 2011 the Regional Court continued taking evidence from the defendants. Of the twenty nine hearings scheduled for this year, eleven took place. The trial court adjourned fifteen hearings due to justified absences of the parties, three hearings were cancelled due to sick-leaves of the presiding judge and the lay judges.

17. Meanwhile, on 17 August 2011 the Łódź Regional Court ordered that the applicant's detention on remand be lifted on condition that he paid the bail in the sum of 20,000 Polish zlotys (PLN) within the period of two weeks from the date of the decision.

On the same date the applicant was released on bail and police supervision. He was also prohibited from leaving the country.

18. The Regional Court scheduled twenty hearings for 2012, of which six hearings were eventually held. At the hearing of 16 April 2012 the trial court started taking evidence from witnesses.

Of the fourteen hearings cancelled this year, two were adjourned because of a sick-leave of the presiding judge, three because of absences of witnesses, and the remaining nine hearings – because of absences of the parties.

19. Until 30 July 2013 the Regional Court scheduled nine hearings for 2013, of which seven were adjourned due to justified absences of the defendants.

20. The criminal proceedings against the applicant are still pending before the first-instance court.

B. Proceedings under the 2004 Act

21. On 27 April 2011 the applicant lodged a complaint with the Łódź Court of Appeal under 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 przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i*

postępowaniu sądowym bez nieuzasadnionej zwłoki – "the 2004 Act"). He sought a finding that the length of the criminal proceedings against him had been excessive and PLN 20,000 in compensation.

22. On 27 July 2011 the Łódź Court of Appeal dismissed the applicant's complaint. The court found that, considering the complexity of the case and the number of co-accused who had actively tried to obstruct the proceedings, the Łódź Regional Court had conducted the proceedings in a correct and timely manner. Consequently, the appellate court refused to award the applicant compensation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Length of pre-trial detention

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

B. Length of proceedings

24. 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 set out in the Court's decisions in the cases of *Charzyński v. Poland* (dec.), no. 15212/03, §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005-VIII, and 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

25. 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."

26. By letter dated 22 October 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the application under Article 5 § 3 of the Convention concerning the length of applicant's detention on remand. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "(...) the Government wish to express by way of the unilateral declaration, their acknowledgement of the fact that the period of the applicant's pre-trial detention, was not compatible with a "reasonable time" requirement within the meaning of Article 5 § 3 of the Convention.(...)
>
> In these circumstances, and having particular regard to violation of Article 5 § 3 of the Convention, the Government declare that they offer to pay the applicant the amount of PLN 13,000, which they consider to be reasonable in the circumstances of the case. The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points. (...)
>
> The Government would respectfully suggest that the above declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.(...)"

27. The applicant indicated that he was not satisfied with the terms of the unilateral declaration and considered that the sum mentioned in the Government's declaration was unacceptably low.

28. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

29. It also recalls that in certain circumstances, it may strike out an application or part thereby under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

30. To this end, the Court examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03).

31. The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints under Article 5 § 3 of the Convention about the length of pre-trial detention (see *Kauczor v. Poland*, no. 45219/06, 3 February 2009 with further references).

32. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c)).

33. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 in fine).

34. In view of the above, it is appropriate to strike this part of the application out of the list.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLE LENGTH OF THE PROCEEDINGS

35. 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 ..."

36. The Government contested that argument.

37. The period to be taken into consideration began on 29 November 2006 and has not yet ended. It has thus lasted so far seven years and some ten months for one level of jurisdiction.

A. Admissibility

38. 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. The parties submissions

(a) The Government

39. The Government submitted that the national authorities displayed due diligence in the conduct of the proceedings in issue. They argued that the length of the proceedings was not excessive in the light of the complexity of the case, which concerned the charges of organised crime brought against several defendants. The Government further submitted that the frequent adjournments of the hearings were not attributable to the State, as they resulted from absences of the parties. They stressed that the trial court had scheduled altogether 101 hearings for a period of some three years and nine months of judicial proceedings.

(b) The applicant

40. The applicant submitted that the length of the proceedings against him was unreasonable. He stressed that he had remained in detention during a significant part of the criminal proceedings against him.

2. The Court's assessment

41. 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).

42. The Court can accept that some delays in the procedure can be explained by the fact that the domestic authorities had to deal with a very complex case which involved a number of defendants and voluminous evidence. Moreover, the proceedings concerned charges of organised crime which inevitably made the task of trying the accused considerably more difficult than in an ordinary criminal case (see *Horych v. Poland*, no. 13621/08, § 115, 17 April 2012). However, these facts in themselves cannot justify the overall length of the proceedings.

43. As regards the conduct of the applicant, the Court notes that he had not contributed to the delays in the proceedings.

44. With respect to the conduct of the authorities, the Court observes that during the judicial stage of the proceedings, between June 2009 and July 2013, the trial court held only some forty hearings, that is less than one hearing per month (see paragraphs 9-17 above). It is true that a considerable number of hearings were scheduled and that most of the adjournments were caused by reasons which could not in themselves be attributed to the trial court (see paragraphs 9-16 and 40 above). However, the duty to administer justice

expeditiously was incumbent in the first place on the domestic authorities (see *Kudła v. Poland* [GC], no. 30210/96, § 130, ECHR 2000-XI). Notwithstanding the significant difficulties which they faced in the present case, they were required to organise the trial efficiently and to ensure that the Convention guarantees were fully respected in the proceedings.

This is all the more relevant because the applicant was in custody for a substantial part of the proceedings (see paragraphs 5-6, 8 and 15 above). In this connection the Court would recall that persons kept in detention pending trial are entitled to "special diligence" on the part of the authorities (see, for example, *Abdoella v. the Netherlands*, judgment of 25 November 1992, Series A no. 248-A, p. 17, § 24; *Jabłoński v. Poland*, no. 33492/96, § 102, 21 December 2000).

Lastly, the Court notes that the proceedings, which have already lasted seven years and ten months, are still pending before the first-instance court.

45. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. Lastly, the applicant complained under Article 13 of the Convention that he had had no 'effective remedy' against the excessive length of the proceedings. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

47. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. However, the "effectiveness" of a "remedy" within the meaning of that provision does not depend on the certainty of a favourable outcome for the applicant (see *Kudła*, cited above, § 154, §§ 156-157; *Figiel v. Poland (no. 2)*, no. 38206/05, § 31, 16 September 2008).

48. The fact that in the present case the applicant's claim for just satisfaction failed does not in itself render the remedy under the 2004 Act incompatible with Article 13. The expression "effective remedy" used in Article 13 cannot be interpreted as a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits

of a complaint (see *Figiel (no. 2)*, cited above, § 33, with further references).

In the light of the foregoing, the Court considers that in the circumstances of the present case it cannot be said that the applicant's right to an effective remedy under Article 13 of the Convention has not been respected.

49. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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."

51. The applicant did not submit a claim for just satisfaction or for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Takes* note of the terms of the respondent Government's unilateral declaration as regards the complaint under Article 5 § 3 of the Convention concerning the excessive length of detention on remand;

2. *Decides* to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

3. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President