

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

FIRST SECTION

CASE OF MARCINIAK v. POLAND

(Application no. 52089/18)

JUDGMENT

STRASBOURG

2 February 2023

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



In the case of Marciniak v. Poland,

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

Péter Paczolay*, President*,
Alena Poláčková,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 52089/18) 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") on 30 October 2018 by a Polish national, Ms Elżbieta Marciniak ("the applicant"), who was born in 1966 and lives in Płock;

the decision to give notice to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs, of the complaints under Article 5 § 3 and Article 5 § 4 of the Convention concerning the length of the applicant's detention and her appeals against decisions to extend her detention on 10 May, 10 July, 4 October and 28 December 2018 and 3 April 2019, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 10 January 2023,

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

SUBJECT MATTER OF THE CASE

1. The present case concerns the allegedly excessive length of the applicant's detention on remand and the alleged failure of the domestic authorities to examine speedily appeals lodged by the applicant against decisions to extend her pre-trial detention.

2. The applicant was detained in the course of criminal proceedings which concerned, *inter alia*, tax evasion amounting to several tens of millions of Polish zlotys (PLN) and money-laundering. She was also charged with leading an organised criminal group.

3. The applicant was arrested on 5 December 2016. On 7 December 2016 the Łódź-Śródmieście District Court (*Sąd Rejonowy dla Łodzi-Śródmieścia*) ordered that the applicant be detained on remand for three months in view of a reasonable suspicion that she had committed the offences in question. The court also relied on the likelihood that the applicant might try to obstruct the proper course of the proceedings because she was facing a severe penalty, she had refused to plead guilty and she had committed the offences together with other persons. Following an appeal by the applicant, on 13 January 2017 the Łódź Regional Court (*Sąd Okręgowy*) upheld that decision.

4. On 30 May and 29 August 2017 the Łódź Regional Court extended the applicant's detention. She did not appeal against those decisions. At hearings held on 22 November 2017 and 21 February 2018, the applicant's lawyers requested her release on bail in the amount of PLN 500,000 (approximately 125,000 euros (EUR)) and PLN 2,500,000 (EUR 625,000) respectively. Those requests were dismissed and the applicant's detention was extended by the Łódź Court of Appeal (*Sąd Apelacyjny*) in decisions of 22 November 2017 and 21 February 2018.

5. Subsequently, the Łódź Court of Appeal extended the applicant's detention several times and afterwards, acting as a court of second instance, dismissed her respective appeals. The dates of the decisions are set out in the table below:

Date of decision to extend the applicant's detention	Date on which the applicant's appeal was lodged with a court	Date of dismissal of the applicant's appeal	Duration of the processing of the applicant's appeal
10 May 2018	29 May 2018	13 June 2018	15 days
10 July 2018	24 July 2018	21 August 2018	28 days
4 October 2018	5 November 2018	14 November 2018	9 days
28 December 2018	6 February 2019	20 February 2019	14 days
3 April 2019	6 May 2019	22 May 2019	16 days

6. The domestic courts, in extending the applicant's detention or dismissing her appeals, relied on a reasonable suspicion that she had committed the offences in question and on the fact that the case concerned organised crime and that she was facing a severe penalty. The courts also referred to the fact that before she was charged she had instructed her associates in respect of their depositions and had arranged for them to leave the country. Furthermore, while detained, she had tried to pressure witnesses and had sent secret messages from prison. The courts held that this showed that there was a real risk that she might abscond and interfere with evidence.

7. The courts additionally referred to the complexity of the case. Before the applicant's release, the case file had comprised 300 volumes, the investigation had identified seventy members of the organised criminal group and almost 800 charges had been brought against the suspects. In addition, 500 witnesses had been heard. As some of the witnesses were foreigners, this had required international cooperation.

8. On 24 June 2019 the Łódź Provincial Prosecutor's Office released the applicant on bail. The amount of bail was set at PLN 800,000 (EUR 200,000).

9. The applicant complained under Article 5 § 3 of the Convention that the length of her detention had been unreasonable and under Article 5 § 4 of the Convention that the domestic courts had failed to examine "speedily" her appeals against the decisions to extend her detention.

THE COURT'S ASSESSMENT

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

10. The Government argued that the applicant's complaint under Article 5 § 3 was manifestly ill-founded since the reasons relied on by the domestic courts had justified the entire duration of the applicant's detention. The case had been extremely complex and had concerned very serious criminal offences committed within an organised criminal group, and the applicant had tried to interfere with the proper conduct of the proceedings.

11. The applicant contested those arguments.

12. The general principles concerning the right to "trial within a reasonable time" or to release pending trial, as guaranteed by Article 5 § 3 of the Convention, have been summarised in *Kudła v. Poland* ([GC], no. 30210/96, § 110, ECHR 2000-XI) and *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 84-91, 5 July 2016).

13. The applicant's detention started on 5 December 2016 and ended on 24 June 2019, when she was released. It follows that the period to be taken into account amounts to two years, six months and eighteen days.

14. The suspicion that the applicant had committed the criminal offences in question was supported by evidence relied on by the domestic courts and initially warranted her detention.

15. The risk of the applicant's absconding and interfering with the proper conduct of the investigation was substantiated by the fact that she had helped other persons involved in the case to leave Poland. She had also instructed witnesses in respect of their testimony and had tried to contact co-defendants while she was in detention (see paragraph 6 above). It follows that the extension of the applicant's detention was warranted by "relevant" and "sufficient" reasons.

16. In view of the scale of the alleged criminal offences, the complexity of tax evasion and money-laundering cases in general, the international assistance required in the case and the scale of the alleged organised criminal group, the case was inevitably time-consuming. Nothing in the case file suggests that there were undue delays attributable to the authorities. Consequently, the Court concludes that the investigation was conducted with due diligence.

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

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

18. With reference to the complaint under Article 5 § 4 of the Convention, the Government emphasised that only the period after the lodging of the applicant's appeals should be taken into consideration for the purposes of this Article. They further argued that the domestic courts had acted with the requisite diligence and that this complaint was manifestly ill-founded.

19. The applicant maintained her complaint.

20. The Court notes that the applicant calculated the delays in the examination of her appeals starting from the dates of the respective decisions of the Łódź Court of Appeal. However, it is more appropriate to calculate the time that elapsed from the moment when the defence lodged the appeal, because the preceding period cannot be attributed to the State (see *Khodorkovskiy v. Russia*, no. 5829/04, § 247, 31 May 2011).

21. The periods in question amount to (in ascending order) nine, fourteen, fifteen, sixteen and twenty-eight days (see paragraph 5 above). The Court reiterates that where the original detention order was imposed by a court in a procedure offering appropriate guarantees of due process, and where the domestic law provides for a system of appeal, the Court is prepared to tolerate longer periods of review in the proceedings before the second-instance court (see *Shcherbina v. Russia*, no. 41970/11, § 65, 26 June 2014). Since in the present case the detention orders were given by a judicial authority, the Court concludes that delays of up to sixteen days do not amount to a breach of the "speediness" requirement of Article 5 § 4. It follows that the length of the examination of the applicant's appeals against the Łódź Court of Appeal's decisions of 10 May, 4 October and 28 December 2018 and 3 April 2019 does not amount to a breach of the "speediness" requirement of Article 5 § 4 but is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention..

22. However, the applicant's appeal against the detention order of 10 July 2018 was examined after twenty-eight days. The Government have not provided arguments capable of justifying such a delay. In the light of its well-established case-law (see, among many other authorities, *Baranowski v. Poland*, no. 28358/95, §§ 68-77, ECHR 2000-III; *Shcherbina*, cited above, §§ 62-65; and *Khodorkovskiy*, cited above, §§ 243-48), and having examined all the material before it, the Court concludes that this complaint is admissible and discloses a violation of Article 5 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 717,113 Polish zlotys (PLN) in respect of pecuniary damage. She submitted that during her detention a building belonging to her had been destroyed. She also claimed 50,000 euros (EUR) in respect of non-pecuniary damage and PLN 235,455.49 in respect of costs

and expenses incurred before the domestic courts and PLN 6,000 in respect of those incurred before the Court.

24. The Government argued that the above amounts were unsubstantiated and unreasonably high. Should the Court establish that there had been violations of Article 5 §§ 3 and 4 of the Convention, the Government invited it to rule that the finding of a violation constituted in itself sufficient just satisfaction.

25. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 1,600 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

26. Having regard to the documents in its possession which are of a general nature, the Court considers that the applicant did not substantiate her claim in respect of costs and expenses incurred before the domestic courts. Furthermore, although she was initially represented before the Court, she had withdrawn her power of attorney before she submitted her observations. Consequently, the Court dismisses the applicant's entire claim in respect of costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 4 of the Convention concerning the applicant's appeal against the decision of 10 July 2018 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention concerning the applicant's appeal against the decision of 10 July 2018;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,600 (one thousand six hundred euros) to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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 2 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President