

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

FOURTH SECTION

CASE OF MATCZAK v. POLAND

(Application no. 26649/12)

JUDGMENT

STRASBOURG

23 February 2016

This judgment is final. It may be subject to editorial revision.



In the case of Matczak v. Poland,

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

Nona Tsotsoria, *President,*
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 2 February 2016,

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

PROCEDURE

1. The case originated in an application (no. 26649/12) 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 Kamil Matczak ("the applicant"), on 18 April 2012.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant alleged that his detention on remand exceeded a "reasonable time" within the meaning of Article 5 § 3 of the Convention.

4. On 19 March 2015 the complaint concerning the alleged violation of Article 5 § 3 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987 and lives in Słomczyn.

A. First set of criminal proceedings against the applicant

6. On 6 April 2009 the applicant was arrested on charges of participation in an organised and armed criminal group involved in extortions and procuring of several violent offences committed while acting in an organised criminal group.

7. The investigation against the applicant and some other persons was conducted by the Warsaw Prosecutor of Appeal (*Prokuratura Apelacyjna*).

8. On 8 April 2009 the Warsaw Wola District Court (*Sąd Rejonowy*) remanded the applicant in custody, relying on the reasonable suspicion that he had committed the offences in question. The court considered that, whereas the statements of a co-accused were the key evidence against the applicant, they were corroborated by the other evidence gathered in the case. It further considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings. In the court's view the risk that the applicant might obstruct the proceedings resulted from the fact that he had been charged with membership in an organised criminal group. The court further noted in this connection that one of the charges against the applicant concerned witness tampering by means of violence. It also stressed the severity of the anticipated sentence which might encourage the accused to interfere with the conduct of the proceedings.

9. On 5 June 2009 the Warsaw Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal against this decision. The court underlined, in particular, that the credibility of the statements of the co-accused was confirmed by evidence given by several witnesses. Consequently, the suspicion against the applicant could indeed be considered as reasonable. The Regional Court also agreed with the District Court that the circumstances of the case justified the suspicion that a severe penalty might be imposed on the applicant.

10. The applicant's pre-trial detention was subsequently extended by the Warsaw Regional Court on 2 July, 28 September and 7 December 2009 and on 18 January 2010. The court relied on the same grounds as previously. It also stressed that a possible severe penalty which might be imposed on the applicant might incite him to interfere with the conduct of the proceedings, especially that not all members of the organised group in question had been arrested at that time. It further noted that because of complicated nature of the case the proceedings could not be terminated earlier and that less preventive measures would not be capable of securing the proper conduct of the proceedings.

11. On 19 March 2010 the bill of indictment against the applicant was lodged with the Warsaw Regional Court. The applicant was indicted as charged. The bill of indictment concerned altogether nine accused charged with thirty six offences. It contained seventy-six pages. The prosecutor requested the trial court to hear twenty-six witnesses.

12. On 29 March 2010 the Warsaw Regional Court extended the applicant's detention until 31 July 2010. The court relied on the reasonable suspicion that the applicant had committed the offences, the severity of the anticipated penalty and the need to secure the proper conduct of the proceedings due to the organised character of the criminal activities in question.

13. The applicant's detention pending trial was subsequently prolonged by further decisions of the Warsaw Regional Court.

14. The applicant's appeal against the decision of that court of 23 December 2010 was dismissed by the Warsaw Court of Appeal (*Sąd Apelacyjny*) on 20 January 2011.

15. Meanwhile, the trial was started on 19 July 2010. The trial court held fourteen hearings.

16. On 31 March 2011 the Warsaw Regional Court gave judgment. It convicted the applicant as charged and sentenced him to a cumulative penalty of seven years' imprisonment.

17. The applicant and the other defendants appealed.

18. On 20 December 2011 the Warsaw Court of Appeal quashed the first-instance judgment and remitted the case.

19. On the same day the Warsaw Court of Appeal extended the applicant's detention. It considered that the reasons previously given remained valid. In particular, there was still a need to secure the proper conduct of the proceedings, in the light of the judgment of 20 December 2011.

20. On 10 April 2012 the same court again extended the applicant's detention.

21. The applicant's appeals against the above decisions were dismissed by the Warsaw Court of Appeal on 17 January and on 17 May 2012, respectively.

22. On 19 October 2012 the Warsaw Regional Court decided to lift the detention on remand referring, in particular, to its length. The court considered that the length of proceedings resulted from reasons unrelated to the defendants (sickness of a judge) and that they should not suffer "negative consequences" of the fact that the proceedings could not be concluded in time.

23. The prosecutor appealed.

24. On 6 December 2012 the Warsaw Court of Appeal quashed the contested decision finding the lower court's reasoning insufficient.

25. On 9 January 2013, after reexamination of the case, the Warsaw Regional Court decided to extend the applicant's detention. The court relied on the reasonable suspicion that the applicant had committed the offences in question. It considered that there was no risk of absconding; nevertheless, keeping the applicant in detention was justified by severe penalty to which he was liable and by the risk that he might obstruct the proceedings. The court also referred to the fact, relied on by the court which had imposed the detention on the applicant (see paragraph 8 above), that one of the charges against him concerned witness tampering by means of violence.

26. On 12 February 2013 the Warsaw Court of Appeal quashed that decision for procedural reasons.

27. On 6 March 2013 the Warsaw Regional Court extended the applicant's detention for a period of three months. It relied on the severity of the anticipated penalty and the need to secure the proper conduct of the

proceedings in finding that keeping the applicant in custody was necessary. It also noted that the length of the proceedings resulted mainly from the complexity of the case.

28. On 18 April 2013 the Warsaw Court of Appeal dismissed the applicant's appeal against the above mentioned decision.

29. On 5 June 2013 the applicant's detention on remand was lifted. He remained in detention due to a preventive measure imposed on him in another set of proceedings (see below).

30. The proceedings are still pending before the Warsaw Regional Court.

B. Second set of criminal proceedings against the applicant

31. On 18 June 2012 the Warsaw Prosecutor of Appeal charged the applicant with participation in an organised and armed criminal group involved in drug trafficking and with several offences of drug trafficking.

32. On 20 June 2012 the Warsaw Śródmieście District Court remanded the applicant in custody, relying on the reasonable suspicion that he had committed the offences in question. The court also referred to the severity of the anticipated penalty and the need to secure the proper conduct of the proceedings. It considered that the risk that the applicant might obstruct the proceedings resulted from the gravity of accusations against him.

33. On 17 July 2012 the Warsaw Regional Court dismissed the applicant's appeal against this decision.

34. The applicant's pre-trial detention was subsequently extended by the decisions of the Warsaw Regional Court of 11 September and 11 December 2012 and of 21 February 2013, and of the Warsaw Court of Appeal of 18 June and 22 August 2013. The courts continually justified their decisions by the existence of a reasonable suspicion that the applicant had committed the offences in question. They also referred to the likelihood of a heavy prison sentence being imposed on him after conviction. They emphasised the need to secure the process of obtaining evidence and the complex character of the case. They also considered that the risk that the applicant might obstruct the proceedings resulted from the fact that he had been charged with offences committed in an organised and armed criminal group.

35. The applicant appealed against all of the above decisions but to no avail.

36. Meanwhile, on 28 June 2013 the investigation concerning the charge of membership in an organised criminal group was discontinued as it concerned substantially the same matter as the other set of criminal proceedings against the applicant, at that time pending before the Warsaw Regional Court (see above).

37. On an unspecified date in 2013 the charges against the applicant and some of the defendants were severed to a separate set of proceedings.

38. On 5 September 2013 the bill of indictment containing 187 pages was lodged with the Warsaw Regional Court. The applicant was charged with several instances of drug trafficking committed in an organised criminal group. The bill of indictment concerned altogether twenty-six accused charged with 168 offences. The prosecutor requested the trial court to hear fifty-eight witnesses.

39. The applicant's detention pending trial was extended by the Warsaw Regional Court on 17 September and 17 December 2013 and on 20 January 2014. The court repeatedly relied on the reasonable suspicion against the applicant, the severity of anticipated penalty and the risk that the applicant might obstruct the proceedings due to the organised character of the offences in question. It also noted that despite the complexity of the case the trial court had conducted the proceedings in a timely and diligent manner.

40. The applicant's appeals against the above decisions and, likewise, his applications for release were unsuccessful.

41. On 25 June 2014 the Warsaw Regional Court ordered that the applicant's detention on remand be lifted on condition that he paid the bail in the sum of 80,000 Polish zlotys.

42. The bail was paid and the applicant was released on 2 July 2014. The court also imposed on him police supervision and a ban on leaving the country.

43. The proceedings are still pending before the Warsaw Regional Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

44. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, 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 August 2006.

THE LAW

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

45. 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."

46. The Government contested that argument.

A. Admissibility

47. 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 and scope of the case

48. The Court first notes that the applicant complains about his detention in two sets of criminal proceedings.

In the first set of proceedings the applicant had been detained from 8 April 2009, when he was arrested, until 5 June 2013, when the detention order was lifted. However, on 31 March 2011 the first-instance judgment convicting the applicant was given. As from that date he was detained "after conviction by a competent court", within the meaning of Article 5 § 1 (a) and, consequently, that period of his detention falls outside the scope of Article 5 § 3 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104). The first-instance judgment was subsequently quashed by the appellate court on 20 December 2011. Accordingly, the periods to be taken into consideration under Article 5 § 3 lasted from 8 April 2009 until 31 March 2011 and from 20 December 2011 until 5 June 2013 and amounted to three years and almost six months altogether.

In the second set of proceedings the applicant's detention lasted from 20 June 2012 until 2 July 2014 and amounted to over two years.

49. The Court notes that the above periods overlap. In previous cases before the Court the complaints concerning such overlapping periods of detention were considered jointly with separate examination of the reasons given by the domestic authorities to justify the detention in different sets of criminal proceedings (see *Dombek v. Poland*, no. 75107/01, §§ 64-71, 12 December 2006, and *Piotr Kuc v. Poland*, no. 37766/02, §§ 33-38, 19 December 2006).

2. The parties' submissions

(a) The applicant

50. The applicant argued that the length of his detention had been unreasonable. In his opinion, the courts had not given "relevant" and "sufficient" reasons for keeping him in detention for such a long period.

(b) The Government

51. The Government considered that the length of the applicant's pre-trial detention in both sets of the proceedings was compatible with the standards resulting from Article 5 § 3 of the Convention. They argued that the grounds stated in the decisions of the domestic courts were "relevant" and "sufficient" to justify the entire period of the applicant's detention. These grounds were, in particular, the gravity of the charges against the applicant who had been charged with violent offences committed in an organised criminal group.

They also argued that the domestic authorities had conducted the proceedings with due diligence.

3. The Court's assessment

(a) General principles

52. 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 judgements (see, among many other authorities, *Kudła v. Poland* [GC], cited above, §§ 110 *et seq*, ECHR 2000-XI; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

(b) Application of the above principles in the present case

53. The Court firstly observes that in both sets of the proceedings the domestic courts initially relied on the reasonable suspicion that the applicant had committed the offences in question and on their serious nature, the severity of the penalty to which he was liable and the risk that he might interfere with the conduct of the proceedings, in particular since he had been charged with being a member of an organised criminal group (see paragraphs 8 and 32 above).

54. The judicial authorities also considered that in view of the complexity of both cases, which involved numerous co-accused and multiple charges, the applicant's detention was necessary to secure the proper conduct of the proceedings.

55. The Court accepts that the suspicion against the applicant of having committed the offences might initially have justified his detention, in

particular in the light of the fact that in the first set of proceedings the applicant was subsequently sentenced to a term of imprisonment.

56. In addition, the judicial authorities appeared to presume the risk of the applicant absconding or obstructing the proceedings basing themselves on the severity of the penalty that might be imposed given the serious nature of the offences. In this respect, the Court reiterates that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (see *Górski v. Poland*, no. 28904/02, § 57, 4 October 2005). The Court also acknowledges that in view of the seriousness of the accusations against the applicant the authorities could justifiably consider that such an initial risk was established. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

57. Furthermore, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised and armed criminal group. In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bąk v. Poland*, no. 7870/04, § 57, 16 January 2007). In this regard, the Court considers that the existence of a general risk flowing from the organised nature of the alleged criminal activities of the applicant may be accepted as the basis for his detention at the initial stages of the proceedings and in some circumstances also for subsequent prolongations of the detention (see *Drabek v. Poland*, no. 5270/04, § 49, 20 June 2006). The Court reiterates its case-law according to which in cases concerning organised crime a relatively longer period of detention on remand could be justified given the particular difficulties in dealing with those cases by the trial courts (see *Celejewski v. Poland*, cited above, § 36). However, it does not give the authorities unlimited power to prolong this preventive measure (see *Pasiński v. Poland*, no. 6356/04, § 44, 20 June 2006). Firstly, with the passage of time, the initial grounds for pre-trial detention become less and less relevant and the domestic courts should rely on other "relevant" and "sufficient" grounds to justify the deprivation of liberty (see, among many other authorities, *I.A. v. France*, judgment of 23 September 1998, Reports of Judgments and Decisions 1998-VII, p. 2979, § 102; *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV). Secondly, even if due to the particular circumstances of the case, detention on remand is extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be required to justify this. The Court notes in this respect that in the first set of proceedings the domestic courts on two occasions relied on the fact that the applicant had been charged among other things with witness tampering by means of violence (see paragraphs 8 and 25 above); it

considers however that this ground should have been carefully reassessed in the circumstances of the case at later stages of the proceedings.

58. In the circumstances of the present case, the domestic courts should have considered whether less restrictive means were available to secure the proper conduct of the proceedings. The Court takes into account the particular difficulty in dealing with cases concerning organised criminal groups and the fact that in the second set of proceedings the authorities decided to alter the preventive measure and release the applicant on bail after two years of detention. However, the applicant's detention on remand in connection with the first set of proceedings reached three years and almost six months. Thus, with the passage of time the grounds relied on by the authorities cannot be considered as "relevant" and "sufficient" justification for holding the applicant in detention for such a long period. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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."

60. 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 those accounts.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 5 § 3 of the Convention admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 23 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Deputy Registrar	Nona Tsotsoria President