

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

FIRST SECTION

CASE OF RUSSJAN v. POLAND

(Application no. 79509/17)

JUDGMENT

STRASBOURG

27 October 2022

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



In the case of Russjan v. Poland,

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

Erik Wennerström*, President,*
Krzysztof Wojtyczek*,*
Lorraine Schembri Orland*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 6 October 2022,

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

PROCEDURE

1. The case originated in an application against Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 November 2017.

2. The applicant was represented by Mr K. Szocik, a lawyer practising in Gdańsk.

3. The Polish Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the excessive length of his pre-trial detention.

THE LAW

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

6. The applicant complained that his pre-trial detention had been unreasonably long. He relied on Article 5 § 3 of the Convention, which reads as follows:

Article 5 § 3

"3. 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."

7. The Court observes 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, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

8. In the leading cases of *Kauczor v. Poland,* no. 45219/06, 3 February 2009, and *Celejewski v. Poland,* no. 17584/04, 4 May 2006, the Court already found a violation in respect of issues similar to those in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicant's pre-trial detention was excessive.

10. These complaints are therefore admissible and disclose a breach of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. 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."

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Kauczor,* cited above), the Court considers it reasonable to award the sums indicated in the appended table.

13. The Court further considers it appropriate that the default interest rate 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 application admissible;

2. *Holds* that this application discloses a breach of Article 5 § 3 of the Convention concerning the excessive length of pre-trial detention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 27 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Erik Wennerström President

APPENDIX

Application raising complaints under Article 5 § 3 of the Convention (excessive length of pre-trial detention)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Court which issued detention order / examined appeal	Length of detention	Specific defects	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
79509/17 09/11/2017	**Tomasz Zbigniew RUSSJAN** 1970	Szocik Krzysztof Gdańsk	26/01/2015 to 17/01/2020	the Gdańsk-Południe District Court; 27/01/2015, case no. X kp 84/15 (first detention on remand); the Gdańsk Court of Appeal, 19/12/2019, case no. II AKp 263/19, (extending the detention and setting the amount of bail)	4 year(s) and 11 month(s) and 23 day(s)	use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice; failure to examine the possibility, as the case progressed, of applying other measures to secure attendance at the trial; fragility and repetitiveness of the reasoning employed by the courts, as the case progressed; failure to conduct the proceedings with due diligence during the period of detention	4,500	250

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.