

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

FIRST SECTION

CASE OF ZUBEL v. POLAND

(Application no. 10932/18)

JUDGMENT

STRASBOURG

9 June 2022

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



In the case of Zubel v. Poland,

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

Lorraine Schembri Orland, *President,*
Krzysztof Wojtyczek,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 10932/18) 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 22 February 2018 by a Polish national, Mr Damian Zubel, born in 1975 and living in Koszalin ("the applicant") who was represented by Ms M. Kucznier, a lawyer practising in Gdańsk;

the decision to give notice of the complaint concerning the allegedly excessive length of the applicant's detention on remand to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the Government's observations;

Having deliberated in private on 17 May 2022,

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.

2. On 12 April 2015 the applicant was arrested on suspicion of setting fire to a house belonging to his partner's parents. On 14 April 2015 the Koszalin District Court (*Sąd Rejonowy*) detained him on remand for three months. The court held that there was a high probability of his having committed the offence of which he was suspected and, in the light of a potentially lengthy prison sentence being imposed, it was possible that he might attempt to obstruct the proceedings. He did not appeal against that decision.

3. The applicant's detention was extended by rulings of the Koszalin Regional Court (*Sąd Okręgowy*) of 7 July, 6 October, 24 November 2015, 22 January, 1 April and 31 August 2016. The court repeated the same grounds as the District Court for keeping the applicant in detention in all of its decisions.

4. The bill of indictment was lodged with the Koszalin Regional Court on 22 March 2016. The applicant was accused of arson and attempted murder.

5. On 18 October 2016 that court convicted the applicant as charged and sentenced him to twelve years' imprisonment.

6. On 8 March 2017 the Szczecin Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case. It found that the identified shortcomings amounted to a gross procedural injustice. In particular, it referred to the fact that a court-appointed expert had a conflict of interests and that there were serious doubts as to his impartiality. It also found that there was no evidence to prove that the applicant had intended to kill anyone. For these reasons, the appellate court ordered that the entire proceedings be repeated.

7. On 18 April 2017 the Koszalin Regional Court extended the applicant's detention on remand, relying on the same grounds as previously. On 7 June 2017 the Szczecin Court of Appeal upheld that ruling.

8. On 22 August 2017 the Koszalin Regional Court again extended the applicant's detention on remand on the same grounds. On 12 September 2017 the Szczecin Court of Appeal upheld that ruling.

9. On 22 November 2017 the Koszalin Regional Court conditionally extended the detention on remand for another three months, unless the applicant paid 30,000 Polish zlotys (PLN), (7,500 euros (EUR)). The applicant complied and was released on 27 November 2017.

10. On 25 July 2019 the applicant was convicted of destruction of property and sentenced to three years' imprisonment, with the total period of his detention on remand (two years, seven months and fourteen days) being considered as time served. He was also ordered to pay PLN 44,000 (EUR 11,000) in compensation to his victims. His lawyer appealed against that judgment on 19 August 2019, and the Koszalin District Prosecutor appealed the following day.

11. On 23 January 2020 the Szczecin Court of Appeal upheld the first-instance judgment.

12. The applicant complained under Article 5 § 3 that the length of his detention on remand had been excessive.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

13. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

14. The general principles concerning the right to a 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 et seq., ECHR 2000-XI), *McKay v. the United Kingdom* ([GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references) and *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, §§ 84-91, 5 July 2016).

15. In the present case, the Court observes that the applicant's detention on remand can be divided into two separate periods for the purpose of assessing its allegedly excessive length under Article 5 § 3 of the Convention (see, *mutatis mutandis, Piotr Baranowski v. Poland*, no. 39742/05, §§ 45-46, 2 October 2007). The first period began on 12 April 2015 when the applicant was arrested and ended on 18 October 2016 when he was convicted by the Koszalin Regional Court. The second period began on 8 March 2017 when the Szczecin Court of Appeal quashed the first-instance judgment and ended on 24 November 2017 when the applicant was released. The total length of the applicant's detention on remand thus amounted to two years, two months and twenty-four days. When extending the applicant's detention, the domestic courts consistently relied on the gravity of the charges and the likelihood that the applicant would abscond or obstruct the proceedings.

16. In the instant case, the Government has not provided arguments susceptible to justify the length the applicant's pre-trial detention throughout the period in question. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicant's detention on remand was excessive.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant did not submit any claim for just satisfaction or for costs and expenses, despite being invited by the Court to do so. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 9 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Lorraine Schembri Orland President