

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

FOURTH SECTION

DECISION

Application no. 1095/12
Andrzej KRASZYŃSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 31 March 2015 as a Committee composed of:

George Nicolaou, *President,*
Ledi Bianku,
Faris Vehabović, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 4 December 2011,

Having regard to the declaration submitted by the respondent Government on 4 December 2014 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Andrzej Kraszyński, is a Polish national, who was born in 1973 and is detained in Białystok.

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

On 1 September 2014 the complaint under Article 5 § 3 of the Convention had been communicated to the Government and the remainder of the application was declared inadmissible.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant was arrested on 8 September 2009 under the suspicion of having caused an immediate danger by blast of explosives and of having acquired information not destined for him by connecting to a telephone line of his wife's relatives who lived on the adjacent plot.

On 10 September 2009 the Białystok District Court decided to detain the applicant on remand for three months. The court relied on a reasonable suspicion that the applicant had committed the offences of which he was suspected and on the reasonable risk that he might obstruct the proceedings and tamper with evidence, because of the risk of a severe penalty which might be imposed on him if convicted. The court also noticed that the victims of the alleged offences were the relatives of the applicant's wife and that he might therefore try to influence their testimonies.

The applicant's lawyer appealed against this decision.

On 7 October 2009 the Białystok Regional Court, accepting the Regional Court's arguments, dismissed the appeal.

The applicant's detention was systematically extended. His appeals against the decisions extending his detention were dismissed.

In 2010 the applicant was additionally charged with having committed homicide of his mother-in-law.

As of 30 November 2010 the applicant's detention was extended by the Białystok Court of Appeal which additionally relied on "particularly complicated circumstances of the case".

On 25 May 2012 the Białystok Court of Appeal extended the applicant's detention for six further months. The court explained that the complicated circumstances of the case resulted from the fact that certain evidence especially that which concerned the applicant's use of recording devices to commit the offences in question, required the appointment of expert witnesses.

On 14 June 2013 the Białystok Regional Court found the applicant guilty of, among other things, homicide, partly acquitted him and sentenced him to 25 years' imprisonment.

According to the applicant's submissions, following the appeal lodged by the prosecutor, the first instance judgment was partly quashed and the case, in the part in which the applicant was acquitted, remitted to the first-instance court.

The applicant is still detained on remand following his conviction by the first-instance court.

B. Relevant domestic law and practice

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 *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-46, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 May 2006.

COMPLAINT

The applicant complained under Article 5 § 3 of the Convention about the excessive length of his detention on remand.

THE LAW

After failure of attempts to reach a friendly settlement, the Government informed the Court by letter of 4 December 2014 that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. 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 unreasonable duration of the applicant's detention on remand within the meaning of Article 5 § 3 of the Convention.
>
> Simultaneously, the Government declare that they are ready to pay the applicant the sum of PLN 16,000 which they consider to be reasonable in the light of the Court' s case-law and the particular circumstances of the foregoing 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 of 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 the rate equal to the marginal lending rate of the European Central Bank during the default period 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."

By letter of 4 February 2015, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the amount proposed was not satisfactory taking into account the overall length of his detention on remand.

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".

It also recalls that in certain circumstances, it may strike out an application 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.

To this end, the Court has examined the declaration carefully 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, 18 September 2007).

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).

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 the application (Article 37 § 1 (c)).

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 the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 5 § 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

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

Done in English and notified in writing on 23 April 2015.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President