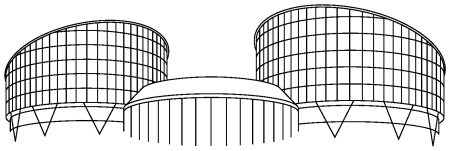

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZAGALSKI v. POLAND

(Application no. 52683/15)

JUDGMENT

STRASBOURG

19 July 2018

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

In the case of Zagalski v. Poland,

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

Aleš Pejchal, *President,*
Armen Harutyunyan,
Jovan Ilievski, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 26 June 2018,

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

PROCEDURE

1. The case originated in an application (no. 52683/15) 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 Robert Zagalski ("the applicant"), on 14 October 2015.

2. The applicant was represented by Mr R. Rynkun-Werner, a lawyer practising in Warsaw. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. On 22 June 2017 the complaint concerning the alleged violation of Article 5 § 3 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

4. The applicant was born in 1982 and lives in Warsaw.

5. On 29 November 2012 the Warsaw-Wola District Court (*Sąd Rejonowy*) ordered the applicant's detention on remand on suspicion of drug dealing, as well as facilitating and benefiting from prostitution, committed in an organised criminal group. The domestic court relied on a strong likelihood that the applicant had committed the offences in question, on the fact that he faced a severe penalty and that he was suspected of acting with accomplices. The likelihood that the applicant had committed the offences in question was established, in particular, on the basis of the testimony of a key prosecution witness (the so-called "crown witness").

6. On 8 January 2013 the Warsaw Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal against this decision. It stressed that the sole fact that the applicant faced a severe penalty and had been suspected of committing offences in an organised criminal group justified a suspicion that, if released, the applicant would try to obstruct the proceedings by influencing witnesses or his accomplices.

7. The applicant's detention on remand was extended by the Warsaw Regional Court on 21 February, 27 May and 8 August 2013. In these decisions, the court repeated the reasons originally relied on. In its decision of 21 February 2013, the Warsaw Regional Court further noted that the case against the applicant was complex, and indicated a number of steps that still had to be taken in order to terminate the investigation. The court noted that not all of those steps required the applicant's detention and urged the prosecutor to accelerate the proceedings.

8. The applicant appealed against all these decisions, without success.

9. On 21 November 2013 the Warsaw Court of Appeal (*Sąd Apelacyjny*) ordered a further extension of the applicant's detention on remand. It relied on the same grounds as previously given for his detention. The applicant appealed. The decision was upheld on appeal on 12 December 2013.

10. The bill of indictment against the applicant was lodged with the Warsaw Regional Court on 30 December 2013. The applicant was charged with ten offences committed in an organised criminal group and – in the case of some of the offences – as a re-offender. The charges included facilitating prostitution by renting an apartment to prostitutes and collecting money from them, and a number of counts of drug possession and distribution. The bill of indictment concerned altogether seventeen accused, charged with 150 offences. Later, the number of accused in the proceedings dropped to fourteen. The prosecutor requested that the court hear over 90 witnesses, including five "crown witnesses".

11. Subsequently, the applicant's detention pending trial was extended by the Warsaw Regional Court's decisions of 10 January and 7 May 2014 and by the Warsaw Court of Appeal's decisions of 30 December 2014, 28 April, 27 August and 26 November 2015, and of 25 February and 25 May 2016. The domestic courts continued to rely on the same grounds for detention as in their previous decisions. They also stressed the complexity of the case and the links between the co-accused within an organised criminal group which, according to the domestic courts, justified a suspicion that, if released, they would attempt to obstruct the proper course of the proceedings.

12. The appeals by the applicant against decisions extending his detention and all his applications for release were unsuccessful.

13. On 9 May 2016 the trial court ordered the applicant's release on bail for 80,000 Polish zlotys (PLN) (approximately 20,000 euros (EUR)). The applicant appealed against this decision, contesting the amount of bail as

excessive. On 25 May 2016 the Warsaw Court of Appeal upheld the decision. It underlined that the amount of bail had to take into consideration not only the financial situation of the applicant, but also the gravity of the charges against him. The court also stated that it had taken into consideration the fact that the applicant had abused his procedural rights in order to obstruct and delay the proceedings. It indicated that the amount in question had to be such that the prospect of its loss would constitute a genuine deterrent against any illegal activities which, until that moment, had been prevented by the applicant's detention.

14. On 30 May 2016 the Warsaw Regional Court again ordered the applicant's release on bail of PLN 80,000. It also imposed a prohibition on leaving the country. The applicant paid the security required by the court and was released on 31 May 2016.

15. The case against the applicant and his co-accused appears to be pending before the Warsaw Regional Court (no. XII K 1/14). The material includes 188 volumes.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. The relevant domestic law and practice concerning detention on remand (*tymczasowe aresztowanie*), the grounds for its extension, release from detention and rules governing other so-called "preventive measures" (*środki zapobiegawcze*) are set out in the Court's judgments in the cases of *Gołek v. Poland* (no. 31330/02, §§ 27-33, 25 April 2006), *Celejewski v. Poland* (no. 17584/04, §§ 22-23, 4 May 2006), and *Kauczor v. Poland* (no. 45219/06, § 25-33, 3 February 2009).

THE LAW

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

17. 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."

A. Admissibility

18. The Government submitted that the applicant had not exhausted the remedies provided for in Polish law, in that he had failed to appeal against

the decisions of 21 February 2013 and 10 January 2014 extending his detention. His appeal against the first of the above-mentioned decisions was rejected as being lodged outside the statutory time-limit.

19. The Court notes that the applicant submitted evidence that he had indeed appealed against the two decisions in question. While it is true that the appeal against the decision of 21 February 2013 lodged by the applicant was declared inadmissible as being lodged outside the statutory time-limit, at the same time, the applicant's lawyer lodged an appeal against this decision. The latter appeal was dismissed by the Warsaw Court of Appeal on 9 April 2013. As, under domestic law, both the defendant and his lawyer were entitled to lodge an appeal against the decision concerning detention on remand, the Court finds that in order to conclude that the applicant has exhausted this remedy, it is sufficient to establish that his lawyer lodged an appeal on his behalf.

20. Having regard to the material in the case file, the Court finds that the applicant (either himself or acting through his lawyer) appealed against all the decisions concerning the extension of his detention on remand.

21. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court 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

22. The applicant's detention lasted from 29 November 2012, when he was detained on remand, until 31 May 2016, when he was released on bail. It thus lasted three years and six months.

2. The parties' submissions

(a) The applicant

23. The applicant maintained that the length of his pre-trial detention had been excessive and unreasonable. In his opinion, the domestic courts had extended his detention "automatically", without providing relevant and sufficient reasons for keeping him in detention for such a long period. He underlined in particular that he had not been charged with a serious offence for which the penalty of a minimum of three years' imprisonment was provided by the domestic law (*zbrodnia*).

(b) The Government

24. The Government maintained that in the present case, all the criteria for the application and extension of pre-trial detention had been met. The applicant's detention had been justified by the reasonable suspicion that he

had committed the offences with which he had been charged, the serious nature of the offences and the severity of the anticipated penalty. The Government indicated that the applicant had been accused of acting as a re-offender.

25. In their opinion, the case had been very complex due to the fact that it concerned an organised criminal group, involved a significant number of persons accused of committing 150 offences, and demanded the assessment of extensive evidence, including a number of expert reports. The case further required legal assistance from the authorities in the Netherlands. These factors contributed to the length of the proceedings and therefore had an impact on the length of the applicant's detention. The Government also stressed that the links between the co-accused persons made it appear likely that, if released, they would have attempted to obstruct the proper course of the proceedings. The Government pointed out that this risk had not been illusory, since the applicant had taken a number of actions aimed at disrupting the proceedings. They noted in particular that during the hearings held in 2014 and 2015, the applicant had provoked the witnesses, tried to influence their testimony, disrupted their questioning and interrupted the presiding judge. In consequence, he had contributed to the length of the proceedings.

26. Moreover, the Government submitted that the applicant's detention had ended as soon as the domestic court had found it no longer necessary. Lastly, in the Government's opinion, the domestic authorities had shown special diligence in dealing with the case.

3. The Court's assessment

(a) General principles

27. The Court reiterates 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 judgments (see, among many other authorities, *Kudła v. Poland* [GC], cited above, §§ 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, ECHR 2016 (extracts)).

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

28. In their detention decisions, the domestic courts relied on the reasonable suspicion that the applicant had committed the offences in question, 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 offences committed in an organised criminal group (see paragraphs 5-11 above). The judicial authorities also considered that in

view of the complexity of the case, which involved numerous co-accused, multiple charges and a number of witness statements, including the testimony of five "crown witnesses", the applicant's detention was necessary to secure the proper conduct of the proceedings.

29. The Court accepts that the reasonable suspicion that the applicant had committed the offences in question and the severity of the anticipated penalty might have justified his initial detention. Also, the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted a valid ground for the applicant's initial detention. 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). 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 for instance *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001; and *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006).

30. In addition, the judicial authorities had presumed the risk of obstruction of the proceedings, basing themselves on the fact that the applicant had been charged with offences committed in an organised criminal group. In this regard, 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 in the trial courts (see *Celejewski v. Poland*, no. 17584/04, § 36, 4 August 2006). However, it does not give the authorities unlimited power to extend this preventive measure. 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 continued 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; and *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 (see *Pasiński v. Poland*, no. 6356/04, § 44, 20 June 2006).

31. The Court notes that in all the decisions extending the applicant's detention, the domestic courts relied on the organised nature of the alleged criminal activity. No other specific substantiation of the risk that the applicant would tamper with evidence, intimidate witnesses or otherwise disrupt the proceedings emerged (see *Ruprecht v. Poland*, no. 39912/06, § 39, 21 February 2012). The Government relied on the allegations of the applicant's misconduct during the hearings (aimed at provoking the witnesses, influencing their testimony and disrupting questioning) and the fact that the applicant had abused his procedural rights, *inter alia*, by

submitting unfounded applications. However, they offered no documents or other evidence substantiating those allegations. Therefore, with the passage of time, the grounds relied on became less relevant and cannot justify the entire period of over three years and six months for which the most serious preventive measure against the applicant was imposed (see *Ślusarczyk v. Poland*, no. 23463/04, § 156, 28 October 2014).

32. Having regard to the foregoing, even taking into account the complexity of the case against the applicant and his co-accused, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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."

A. Damage

35. The applicant claimed EUR 6,000 euros in respect of non-pecuniary damage.

36. The Government contested the claim as excessive.

37. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,500 under this head.

B. Costs and expenses

38. The applicant did not make any claims for costs and expenses.

C. Default interest

39. The Court 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 complaint concerning the excessive length of detention on remand under Article 5 § 3 of the Convention admissible;

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

3. Holds
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, 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 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 19 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Aleš Pejchal President