



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

FOURTH SECTION

CASE OF RADUCKI v. POLAND

(Application no. 10274/08)

JUDGMENT

STRASBOURG

22 February 2011

FINAL

22/05/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Raducki v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 1 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 10274/08) 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 Raducki (“the applicant”), on 15 February 2008.

2. The applicant was represented by Ms M. Gąsiorowska, a lawyer practising in Warsaw. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the length of his pre-trial detention had been excessive.

4. On 9 June 2008 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1969 and lives in Łódź.

A. Criminal proceedings against the applicant and his pre-trial detention

6. On 27 December 2001 the applicant was arrested on suspicion of murder and attempted murder committed in an organised criminal group.

7. On 28 December 2001 the Łódź District Court (*Sąd Rejonowy*) remanded him in custody, relying on a reasonable suspicion that he had committed the offences in question. It attached importance to the serious nature of those offences and the likelihood of a severe prison sentence being imposed on the applicant. It further considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings, given the risk that he might tamper with evidence, induce witnesses to give false testimony or go into hiding.

8. An appeal by the applicant against the detention order, and likewise his further appeals against some of the decisions extending his detention and all his subsequent applications for release and appeals against refusals to release him, were unsuccessful. In his applications and appeals, he argued that his lengthy detention had violated the relevant provisions of the Code of Criminal Procedure.

9. In the course of the investigation, the applicant's detention was extended on several occasions, namely, on 22 March 2002 (to 29 May 2002), 21 May 2002 (to 29 September 2002) and 20 September 2002 (to 14 October 2002). In all their decisions on the matter the courts relied on the original grounds given for the applicant's detention. They also stressed that owing to the complexity of the case and the large volume of evidence, the investigation had still not been completed.

10. On an unspecified date, the prosecution filed a bill of indictment with the Łódź Regional Court (*Sąd Okręgowy*). The bill of indictment comprised numerous charges of murder, attempted murder, extortion and illegal possession of firearms brought against fifteen defendants. The applicant was charged with murder and attempted murder committed in an organised criminal group.

11. During the trial the courts further extended the applicant's pre-trial detention on several occasions, namely, on 24 December 2002 (to 27 December 2003), 9 December 2003 (to 30 April 2004), 14 April 2004 (to 31 December 2004), 21 December 2004 (to 30 June 2005), 22 June 2005 (to 31 December 2005), 21 December 2005 (to 30 April 2006), 26 April 2006 (to 31 July 2006), on 21 November 2007 (to 9 March 2008) and 26 February 2008 (to 9 September 2008). They repeated the grounds previously given for the applicant's continued detention. The courts relied especially on the complexity of the case, the large number of co-accused and the substantial volume of evidence to be examined. Finally, they attached importance to the relations between the accused who were all alleged members of an organised criminal group.

12. On 4 November 2003 the trial court held the first hearing. It subsequently held some 78 hearings in the case.

13. On 9 June 2006 the Łódź Regional Court found the applicant guilty as charged and sentenced him to life imprisonment. The applicant appealed.

14. On 13 and 15 November 2007 the Łódź Court of Appeal (*Sąd Apelacyjny*) held hearings.

15. On 21 November 2007 the Łódź Court of Appeal quashed the first-instance judgment in respect of the applicant and remitted the case.

16. On 26 September 2008 the applicant was released from custody and placed under police supervision.

17. The proceedings before the Łódź Regional Court are still pending.

B. Conditions of the applicant's detention

18. On 27 December 2001 the applicant was committed to Sieradz Remand Centre. Since that date he has been continuously detained in turn in Płock Remand Centre, Łódź Remand Centre, Opole Remand Centre and Głubczyce Remand Centre. On 27 March 2007 he was transferred back to Łódź Remand Centre where he remained until his release on 26 September 2008.

19. The parties gave partly differing accounts of the conditions of the applicant's detention.

20. In his initial application to the Court the applicant maintained that during his detention in Łódź Remand Centre he had been held in overcrowded cells in conditions which did not comply with the basic standards of hygiene. In his letter to the Court of 16 June 2008 he extended his allegations to the remaining penitentiary facilities.

21. The Government submitted that they could not confirm whether during his stay in Łódź Remand Centre from 16 October 2002 to 14 February 2005, from 23 February 2005 to 20 July 2006 and from 27 March 2007 to 8 August 2007 the applicant had been detained in cells with a surface area of at least 3 m² per person. However, they acknowledged that during the applicant's stay in the remand centre a penitentiary judge was regularly notified about the overcrowding in that facility. Regarding the period of the applicant's detention in Łódź Remand Centre after 8 August 2007, the Government acknowledged that the applicant had spent 171 days in cells in which the statutory minimum size of 3 m² per person had not been respected. The Government did not comment on the conditions of the applicant's detention in the remaining penitentiaries.

22. The applicant did not lodge any formal complaints with the penitentiary authorities regarding the conditions of his detention. Nor did he bring a civil action to seek compensation for the infringement of his personal rights.

C. Censorship of the applicant's correspondence

23. On 15 February and 14 May 2008 the applicant posted letters to the Court's Registry. On 25 February 2008 he posted a letter to the Ombudsman. On 19 March 2008 he posted a letter to the Helsinki Foundation for Human Rights. All acknowledgments of the posting of these letters bear a stamp "Łódź Regional Court, censored (*"ocenzurowano"*), date and illegible signature".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

24. The relevant domestic law and practice concerning the imposition of detention on remand (*tymczasowe aresztowanie*), 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 *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 May 2006.

B. Relevant statistical data

25. The relevant statistical data, recent amendments to the Code of Criminal procedure designed to streamline criminal proceedings and references to the relevant Council of Europe materials can be found in the Court's judgment in the case of *Kauczor* (see *Kauczor v. Poland*, no. 45219/06, § 27-28 and 30-35, 3 February 2009).

C. Conditions of detention

26. A detailed description of the relevant domestic law and practice concerning general rules governing the conditions of detention in Poland and domestic remedies available to detainees alleging that the conditions of their detention were inadequate are set out in the Court's pilot judgments given in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) on 22 October 2009 (see §§ 75-85 and §§ 45-88 respectively). More recent developments are described in the Court's decision in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

THE LAW

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

27. The applicant complained that the length of his pre-trial detention 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.”

28. The Government contested that argument.

A. Admissibility

29. 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

30. The applicant's detention started on 27 December 2001, when he was arrested on suspicion of murder and attempted murder. On 9 June 2006 the Łódź Regional Court convicted him as charged.

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, ECHR 2000-XI).

On 21 November 2007 the Łódź Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 26 September 2008 when the applicant was released.

31. Accordingly, the period to be taken into consideration amounts to five years, three months and seventeen days.

2. *The parties' submissions*

(a) **The applicant**

32. The applicant submitted that the period of his detention had exceeded a reasonable time within the meaning of Article 5 § 3 on the Convention. Relying on the Court's case-law, he further underlined that continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. Any system of mandatory pre-trial detention is *per se* incompatible with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty. The applicant also argued that by failing to address concrete relevant facts and by relying mainly on the gravity of the charges, the authorities extended his detention on grounds which could not be regarded as "sufficient". He concluded that the authorities had failed to justify his continued detention.

(b) **The Government**

33. The Court notes that the Government refrained from taking a position on the merits of this complaint. They maintained, however, that the proceedings in the applicant's case were particularly complex and that the applicant had been accused of serious crimes committed as a member of one of the most influential and dangerous organised criminal groups in Poland.

3. *The Court's assessment*

(a) **General principles**

34. 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], no. 30210/96, § 110 *et seq*, ECHR 2000-XI; and *McKay v. the United Kingdom*, cited above, with further references).

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

35. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on four grounds, namely, (1) the serious nature of the offences with which he had been charged, (2) the complexity of the case owing to the number of defendants and volume of evidence to be heard, (3) the severity of the penalty to which he was liable and (4) the need to secure the proper conduct of the proceedings. As regards the latter, they relied on the fact that the

applicant might interfere with witnesses and other co-accused given the fact that he was a member of an organised crime group.

36. The applicant was charged with murder and attempted murder committed in an organised criminal group (see paragraph 10 above). In the Court's view, the fact that the case concerned an alleged member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bak v. Poland*, no. 7870/04, § 57, 16 January 2007).

37. The Court accepts that the reasonable suspicion against the applicant of having committed the serious offences could initially warrant his detention. In addition, it notes that the authorities were faced with the difficult task of determining the facts and the degree of alleged responsibility of each of the defendants. In these circumstances, the Court also accepts that the need to examine evidence from many sources constituted relevant and sufficient grounds for the applicant's initial detention.

38. Furthermore, the judicial authorities also relied on the likelihood that a severe sentence might have been imposed on the applicant given the serious nature of the offences at issue (see paragraphs 7 and 9). However, the Court reiterates that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the gravity of the charges cannot of itself justify long periods of detention (see for instance, *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001 and *Micha v. Poland*, no. 13425/02, § 49, 4 May 2006).

39. In addition, the judicial authorities relied on the fact that the applicant had been charged with being a member of an organised criminal group. In this regard, the Court reiterates 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 (see *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005) and in some circumstances also for subsequent extensions of the detention (see *Celejewski*, cited above, § 37). It is also accepted that in such cases, involving numerous accused, the process of gathering and hearing evidence is often a difficult task. Moreover, the Court considers that in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused, or might otherwise obstruct the proceedings, is in the nature of things often particularly high.

40. While all the above factors could justify even a relatively long period of detention, they did not give the domestic courts unlimited powers to extend this measure. Even if the particular circumstances of the case required detention to be extended beyond the period generally accepted under the Court's case-law, particularly strong reasons would be needed to justify further extensions of the applicant's pre-trial detention (see *Wolf v. Poland*, no. 15667/03 and 2929/04, § 90, 16 January 2007). In this respect,

the Court observes that the applicant was held in custody for five years and three months.

41. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a case involving an organised criminal group, 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.

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant alleged a breach of Article 3 of the Convention in that he had been detained in overcrowded cells and that the State had failed to secure to him adequate conditions throughout his detention.

A. The Government's objection based on exhaustion of domestic remedies

Article 35 § 1 of the Convention reads, in so far as relevant, as follows:

“1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...”

44. The Government argued that the applicant had not exhausted domestic remedies available to him, as required by Article 35 § 1 of the Convention. They raised a preliminary objection similar to that relied on in the case of *Latak v. Poland* (see *Latak v. Poland* (dec.) no. 52070/08, 12 October 2010, §§ 63-64). In particular, they stressed that the applicant had already been released on 26 September 2008. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed and the applicant should bring a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code in order to seek compensation for the past violation.

45. In view of the foregoing, the Government invited the Court to reject the application for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

B. The applicant's position

46. The applicant disagreed with the above arguments and maintained that the remedy suggested by the Government could not be considered “effective” for the purposes of Article 35 § 1 of the Convention.

C. The Court's assessment

47. The Court has already examined the same objection raised by the Government in the above-mentioned case of *Latak v. Poland* and considered their arguments not only in the context of that particular applicant but also in respect of other actual or potential applicants with similar cases (see *Latak*, cited above, §§ 71-85).

48. In so doing, the Court had regard to the fact that on the date of the adoption of its decision there were 271 cases pending before it where the applicants had raised complaints similar in substance, alleging a violation of Article 3 in that at various times and for various periods they had been adversely affected by the same structural problem, having been detained in overcrowded, insanitary cells (*ibid.* § 84).

49. Having found that a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code could be considered an “effective remedy” for the purposes of Article 35 § 1 of the Convention as from 17 March 2010 and having regard to the three-year limitation period for lodging such an action, the Court held that essentially in all cases in which in June 2008 the alleged violation had either been remedied by placing the applicant in Convention-compliant conditions or had ended *ipso facto* because the applicant had been released, the applicants concerned should bring a civil action for the infringement of personal rights and compensation (*ibid.* § 85 and § 76 respectively).

50. In the present case, the situation giving rise to the alleged violation of Article 3 ended on 26 September 2008, the date on which the applicant was released. That being so and having regard to the fact that he still has adequate time to prepare and lodge with the Polish civil courts an action under Article 24 taken in conjunction with Article 448 of the Civil Code, he should, before having their Convention claim examined by the Court, be required to seek redress at the domestic level.

51. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant complained that whenever he was outside a prison he wore hand-cuffs joined by chains with fetters. He further complained under Article 5 § 1 (c) of the Convention about the alleged unlawfulness of his arrest. Invoking Article 8 of the Convention, the applicant also complained that his extended detention had put a severe strain on his family life. Finally, invoking the same Article, the applicant complained about the censorship of his correspondence with the Court, the Ombudsman and the Helsinki Foundation for Human Rights.

53. Regarding the applicant's complaint about the alleged unlawfulness of his arrest the Court notes that the applicant was arrested on 27 December 2001, and that he lodged his application on 15 February 2008. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

54. As to the applicant's complaint about the censorship of his correspondence the Court has held that applicants with similar complaints based on interferences which occurred after 28 June 2007 are required to avail themselves of the provisions of Articles 23 and 24 § 1 read in conjunction with Article 448 of the Civil Code, failing which they will be considered to have failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention (see *Biśta v. Poland*, no. 22807/07, § 49, 12 January 2010).

55. In the present case, the interference complained of had taken place on several occasions between February and March 2008 (see paragraph 23 above), that is to say, after 28 June 2007, the date on which the Warsaw Court of Appeal gave its judgment granting compensation for the infringement of the confidentiality of a prisoner's correspondence on account of interference with it, and thereby establishing to the Court's satisfaction that an effective remedy could be said to exist in respect of such complaints (see *Biśta* cited above § 49). That being so, the Court considers that the applicant should, as required by Article 35 § 1, first put the substance of his Convention claim under Article 8 before the domestic courts. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

56. As to the remaining complaints, the Court has examined them as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that the applicant has failed to substantiate those complaints. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

57. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

58. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, §§ 58 et seq. with further references) the Court held that the 2007

Resolution, taken together with the number of judgments already delivered and the number of pending cases raising an issue of inordinate periods of detention incompatible with Article 5 § 3, had demonstrated that the violation of the applicant's right under Article 5 § 3 of the Convention had originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which had affected, and may still affect in the future, an as yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

59. It is true that the present case concerns a person involved in an organised criminal group. However, as stated above, while this element is to be taken into account in assessing compliance with Article 5 § 3 and may justify a longer period of detention than in a case concerning an individual offender, an alleged member of an organised criminal group is also entitled to the protection against unreasonably lengthy detention afforded by this provision (see paragraphs 39-40 above). As in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 41-42 above). Moreover, as demonstrated by the ever increasing number of judgments in which the Court has found Poland to be in breach of Article 5 § 3 in respect of applicants involved in organised crime, the present case is by no means an isolated example of the imposition of unjustifiably lengthy detention but a confirmation of a practice found to be contrary to the Convention (see, among many other examples, *Celejewski v. Poland*, cited above; *Kąkol v. Poland*, no. 3994/03, 6 September 2007; *Malikowski v. Poland*, no. 15154/03, 16 October 2007; and also *Hilgartner v. Poland*, no. 37976/06, §§ 46-48, 3 March 2009, not final). Consequently, the Court sees no reason to diverge from its findings in *Kauczor* as to the existence of a structural problem and the need for the Polish State to adopt measures to remedy the situation (see *Kauczor*, cited above, §§ 60-62).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government contested the claim finding it exorbitant and significantly higher than the amounts usually awarded by the Court in similar cases.

63. 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 2,000 under this head.

B. Costs and expenses

64. The applicant also claimed 6,100 Polish zlotys (PLN) for the costs and expenses incurred before the Court.

65. The Government invited the Court to assess the amount of reimbursement of legal costs and expenses only in so far as those costs and expenses had been actually and necessarily incurred in the Court's proceedings and reasonable as to the quantum.

66. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession, the above criteria and the fact that the violation found concerned a repetitive issue, the Court considers it reasonable to award the sum of EUR 1,000 for costs and expenses for the proceedings before the Court.

C. Default interest

67. The Court considers it appropriate that the default interest 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 length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;
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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in

respect of non-pecuniary damage and EUR 1,000 (one thousand euros) for costs and expenses, plus any tax that may be chargeable, to be converted into Polish zlotys 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President