



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

FOURTH SECTION

CASE OF BOGUSŁAW KRAWCZAK v. POLAND

(Application no. 24205/06)

JUDGMENT

STRASBOURG

31 May 2011

FINAL

31/08/2011

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

In the case of Bogusław Krawczak v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Sverre Erik Jebens,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 24205/06) 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 Bogusław Antoni Krawczak (“the applicant”), on 15 May 2006.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant in essence alleged a breach of Article 3 of the Convention in that the State had failed to secure to him adequate living conditions throughout his entire detention. He moreover alleged that his detention on remand had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention. He further complained under Article 6 § 1 of the Convention that the criminal proceedings conducted against him had been unfair and that he had been unfairly denied release probation. Lastly, invoking Article 8 of the Convention, he complained that there had been disproportionate restrictions on his family visits while in detention.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952. He is currently detained in Czerwony Bór Prison.

A. The applicant's pre-trial detention and criminal proceedings

6. On 12 January 2005 the applicant was arrested in Poland and charged with trafficking large amounts of drugs from Venezuela.

7. On 14 January 2005 the Gdańsk District Court (*Sąd Rejonowy*) remanded him in custody. The decision was upheld on 18 April 2005 by the Gdańsk Regional Court (*Sąd Okręgowy*).

8. In its decision to detain the applicant, the District Court relied on a reasonable suspicion that the applicant had committed the aforementioned offence. It attached particular importance to the likelihood that a severe sentence of imprisonment would be imposed on the applicant and to the risk that he would attempt to obstruct the proceedings.

9. The applicant's pre-trial detention was subsequently extended by decisions of the Gdańsk Regional Court given on 22 March 2005 (upheld by the Gdańsk Court of Appeal (*Sąd Apelacyjny*) on 27 April 2005), on 23 June 2005, on 15 September 2005 (upheld by the Gdańsk Court of Appeal on 11 October 2005), on 13 January 2006 and on 18 April 2006 (upheld by the Gdańsk Court of Appeal on 26 April 2006).

10. In its decisions extending the applicant's detention, the Regional Court observed that it had been necessary to extend the pre-trial proceedings in order to obtain translations of certain relevant case documents from Spanish into Polish, to hear new witnesses and to supplement the original charges. It took into account the fact that the applicant had a handicapped mother, but concluded that she had been receiving adequate care and, therefore, that there were no special reasons, family-related or other, militating against the applicant's detention.

11. On 17 June 2005 the bill of indictment was lodged with the Gdańsk Regional Court.

12. On 6 October 2005 the Gdańsk Regional Court dismissed the applicant's request for release, finding that the initial grounds for his detention continued to apply.

13. On 28 December 2006 the Gdańsk Court of Appeal extended the applicant's detention, restating the grounds initially invoked for the detention order. It emphasised that the offence with which the applicant had been charged had been committed in an organised criminal group.

Consequently, the court took the view that detention on remand constituted the only measure capable of securing the proper conduct of the proceedings.

14. The applicant's appeal against the decision of the Gdańsk Court of Appeal was dismissed by the same court on 16 January 2007.

15. On 25 April 2007, 11 December 2007 and on further unspecified dates the Gdańsk Court of Appeal again extended the applicant's detention. In its decision of 11 December 2007 the court held that another extension of the applicant's detention was necessary in order to allow the trial court to examine additional evidence and hear more witnesses. The court moreover observed that one of the co-accused had also been charged in another set of proceedings and remained at the disposal of the Kraków Regional Court, which made it necessary to have him escorted from there to each of the hearings before the Gdańsk Regional Court. The applicant's appeal against this decision was dismissed on 28 December 2007.

16. On 30 December 2008 the Gdańsk Regional Court convicted the applicant as charged and sentenced him to 10 years' imprisonment.

17. On 2 March 2010 the Gdańsk Court of Appeal upheld the lower court's judgment.

18. The applicant lodged a cassation appeal and the proceedings before the Supreme Court are currently pending.

B. Detention facilities in which the applicant was held

19. On 14 January 2005 the applicant was committed to Sztum Remand Centre.

20. On 30 September 2005 he was transferred to Gdańsk Remand Centre.

21. From 12 October 2006 to 15 November 2006 the applicant was held in Kraków Remand Centre.

22. On 16 November 2006 he was transferred back to Gdańsk Remand Centre. He remained there until 6 March 2007.

23. On 7 March 2007 the applicant was once more transferred to Kraków Remand Centre and detained there until 21 March 2007.

24. From 22 March 2007 onwards the applicant was detained in Gdańsk Remand Centre.

25. Following his conviction, on 17 January 2009 he was transferred to Iława Remand Centre to serve his term of imprisonment. He remained there until 17 October 2009, with the exception of the period from 30 June 2009 to 3 September 2009 when he was detained in Racibórz Remand Centre.

26. On 18 October 2010 the applicant was transferred to Czerwony Bór Prison where he is currently detained.

C. Conditions of the applicant's detention

27. The parties gave partly differing accounts of the conditions of the applicant's detention in the above-mentioned establishments.

1. The applicant's account

28. Upon his arrest on 12 January 2005 the applicant was committed to Sztum Remand Centre where he was initially held in a cell of an unspecified size.

29. On 20 June 2006, in Gdańsk Remand Centre, he was placed with five other detainees in a cell of 16 m². The free area in the cell, furniture and other equipment excluded, amounted to approximately 1 m² per person.

30. Subsequently, on an unspecified date the applicant was transferred to a cell which measured 20 m² and was shared by six detainees. The cell in question was furnished with three bunk beds, two tables, six stools and a number of cupboards. A toilet cubicle was also inside the cell. The free area in the cell was approximately 1.5 m² per detainee.

31. From 17 October to 15 November 2006 the applicant was held in Kraków Remand Centre. Despite being a non-smoker, he was detained in a cell designated for smokers.

32. In a letter of 9 November 2009 the applicant informed the Court that he had been continuously held in a cell where the statutory requirement of 3 m² of living space per prisoner had not been respected. The toilet was not properly separated from the rest of the cell and the conditions were unhygienic.

33. In a letter of 15 October 2010 the applicant informed the Court that from 9 November 2009 to 26 November 2009 the authorities of Iława Prison had placed him together with one other detainee in a cell where the living space per detainee amounted to 2.48 m².

In the same letter he further stated that on 26 November 2009 he was moved to cell no. 18 in ward B where the requirement of 3 m² of living space per prisoner had been respected and the conditions of his detention were more or less satisfactory.

2. The Government's account

34. The Government supplied the following details concerning the conditions of the applicant's detention in each establishment.

35. As regards Gdańsk Remand Centre, the Government acknowledged that the applicant had been temporarily placed in cells where the living space per prisoner had amounted to less than 3 m². The cell space in different cells occupied by the applicant ranged from 2.26 m² to 4.06 m² per prisoner. The period during which the applicant had been detained in cells where the living space was less than 3 m² per prisoner amounted to a total of 235 days.

36. The Government explained that throughout his detention the applicant had been entitled to a one-hour daily walk in the remand centre's courtyard and to take part in various sports activities. The sanitary conditions of Gdańsk Remand Centre were adequate, the cells were properly lit and equipped with all necessary furniture.

37. With regard to Kraków Remand Centre, the Government also conceded that the applicant had been at times held in cells where the living space per prisoner amounted to less than 3 m². He was initially placed in a cell with non-smokers but at his own request he was later moved to a different cell. In this remand centre also the applicant was entitled to a one-hour daily walk in the remand centre's courtyard. The overall sanitary conditions of the remand centre were satisfactory and the applicant had been provided with the necessary products for his daily hygiene.

38. In a letter of 26 November 2009 the Government submitted that the applicant was being detained in Ilawa Remand Centre, in a cell where the statutory minimum standard of 3 m² per person was respected.

3. The applicant's actions concerning the conditions of his detention

39. The applicant lodged a complaint with the Ombudsman, complaining about the conditions of his detention in Kraków Remand Centre. He did not lodge a similar complaint in respect of Gdańsk Remand Centre because, as he explained, such a complaint would have had no prospects of success and moreover he had feared persecution by the prison authorities of Gdańsk Remand Centre.

40. The applicant did not bring a civil action in tort to seek compensation for the infringement of his personal rights on account of the conditions of his detention.

D. Family visits in detention

1. The applicant's account

41. The applicant submitted that during his stay in Sztum Remand Centre he had been entitled to one family visit per month. During the first visit he was allowed to see his common-law wife in person and in the presence of a police officer. During all subsequent visits he was separated from his visitors by a perspex partition and could only communicate with them via internal phone. He was only allowed to receive one visitor at a time.

42. In March 2005 the applicant's wife was refused the right to see him. According to the applicant's submissions, the authorities had explained their refusal by the fact that a personal search performed on the applicant's wife at the remand centre's entrance had allegedly revealed a prohibited "kite" message (*gryps*) and some unauthorised medication. The applicant

maintained that the authorities had unfairly mistaken his common-law wife's personal memo note for a prohibited message. He also explained that the medication she had been carrying had been her own, ordinary medication for blood circulation problems. He moreover pointed out that during the visit scheduled for that particular day he would in any event have been separated from his wife by a perspex partition, a circumstance of which both the authorities and his wife had been aware.

43. In Gdańsk Remand Centre the applicant was entitled to receive visitors once a month. He was usually separated from his visitors by a perspex partition and could communicate with them via internal phone.

44. The applicant submitted that on numerous occasions his common-law wife and other members of his family had filed repeated requests to be allowed to see him physically in person but that all these requests had been refused. He maintains that he was allowed to meet his family in a manner allowing for direct physical contact only on six occasions.

45. From the copies of documents provided by the applicant it can be seen that the requests filed by various members of his family on 12 July 2005, 5 August 2005, 29 May 2006, 9 July 2006 and on 5 September 2006 were all refused by the Gdańsk Regional Court, usually by handwritten notes made on their requests – “permission refused” (*“nie wyrażam zgody”*).

46. As a result of a request filed on 30 June 2006, on 3 July 2007 the court decided to “only exceptionally” allow the applicant's common-law wife to see him without their being physically separated (*“sąd wyjątkowo wyraża zgodę na widzenie umożliwiające kontakt bezpośredni”*).

47. Also, the applicant's own request to be allowed to have direct physical contact with his visitors, filed on 10 July 2006, was refused by the court on 18 July 2006.

48. According to a certificate issued on 25 July 2007 by the authorities of Gdańsk Remand Centre, provided by the applicant, up until 23 July 2007 he had been allowed to see:

- his common-law wife 16 times: during 9 visits they had been separated by a perspex partition and on 7 other occasions they had been allowed to have direct physical contact;
- his son P. 9 times: on 7 occasions with the perspex partition and 2 occasions with direct physical contact;
- his daughter E. once, being separated from her by the perspex partition.

2. The Government's account

49. The Government pointed out that during his stay in Gdańsk Remand Centre the applicant had been allowed to see his family 46 times, on 20 occasions in a manner allowing for direct physical contact. Nearly all

requests filed by the applicant's family members had been allowed. The visits took place on:

- 11 and 18 October 2005;
- 8, 10, 23, 25 November 2005;
- 1, 8, 13, 20 December 2005;
- 12 and 20 January 2006;
- 7 and 17 February 2006;
- 1, 10, 24 March 2006;
- 10, 12, 14 and 21 April 2006;
- 12 and 17 May 2006;
- 6, 21, 30 June 2006;
- 11 and 21 July 2006;
- 31 August 2006;
- 7 and 21 September 2006;
- 23 November 2006;
- 16 December 2006;
- 22 January 2007;
- 22 February 2007;
- 27 March 2007;
- 8 and 30 May 2007;
- 8 June 2007;
- 24 July 2007;
- 21 August 2007;
- 21 September 2007;
- 12 October 2007;
- 29 November 2007;
- 14 and 22 December 2007.

50. During his stay in Kraków Remand Centre from 7 to 21 March 2007, the applicant was not allowed to make any telephone calls and did not receive any visits.

E. Request for release on probation

51. On 19 May 2010 the Elbląg Regional Court refused to grant the applicant's request for release on probation (*warunkowe przedterminowe zwolnienie*). The court held that the applicant could not be given a positive socio-criminological forecast and that his resocialisation process had not been completed yet. It noted that the applicant's behaviour in detention had been proper, but also observed that he had been a declared member of the prison subculture in violation of prison regulations, that he had not shown a critical attitude towards his crime and, lastly, that the end of the applicant's sentence was still remote. It recalled that, according to the prevalent jurisprudence, release on probation was a kind of "reward" for

prisoners who, by their behaviour, had demonstrated that they had made substantial progress in their resocialisation.

52. On 22 June 2010 the Gdańsk Court of Appeal dismissed the applicant's appeal. It restated the reasons invoked for the decision of the lower court. In addition, it considered that the fact that the applicant had never throughout his detention been given a disciplinary penalty and that he had received a dozen or so rewards for his behaviour (*nagroda*) could not suffice to conclude that his socio-criminological forecast should be regarded as positive. The court further invoked the applicant's membership of the prison subculture, the serious nature of his criminal conviction and his lack of remorse in respect of the committed crime.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Conditions of detention

53. A detailed description of the relevant domestic law and practice concerning general rules governing conditions of detention in Poland and domestic remedies available to detainees alleging that conditions of their detention are 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 decision given by the Court in the case of *Latak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

B. Length of pre-trial detention

54. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "preventive measures" (*środki zapobiegawcze*) are set out 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).

55. 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. Right to visits in detention

56. Pursuant to Article 217 § 1 of the Code of Execution of Criminal Sentences, a detainee is allowed to receive visitors, provided that he has obtained a visit permission (“*zezwoleńie na widzenie*”) from the authority at whose disposal he remains, i.e. an investigating prosecutor (at the investigative stage) or from the trial court (once the trial has begun) or from the appellate court (in appeal proceedings). A detainee is entitled to a single, one-hour long visit per month.

57. According to paragraphs 2 and 3, a visit should take place in the presence of a prison guard in a manner making it impossible for a detainee to have direct contact with a visitor but the authority which issued the permission may set other conditions. In practice, there are 3 types of visits: an “open visit”, a “supervised visit” (*widzenie w obecności funkcjonariusza Służby Więziennej*) and a “closed visit”.

58. An open visit takes place in a common room designated for visits. Each detainee and his visitors have at their disposal a table at which they may sit together and can have an unrestricted conversation and direct physical contact. Several detainees receive visits at the same time and in the same room.

59. A supervised visit takes place in the same common room but the prison guard is present at the table, controls the course of the visit, may restrict physical contact if so ordered under the visit permission, although his principal role usually is to ensure that the visit is not used for the purposes of obstructing the proceedings or achieving any unlawful aims and to prevent the transfer of any forbidden objects.

60. A closed visit takes place in a special room. A detainee is separated from his visitor by a perspex partition and they communicate through an internal phone.

III. RELEVANT INTERNATIONAL LAW MATERIALS

61. The relevant extracts from Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006, read as follows:

“Part II Conditions of imprisonment

Contact with the outside world

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance

of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so. ”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

A. The Government’s objection on grounds of exhaustion of domestic remedies

63. 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 ...”

64. 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*, cited above, in §§ 63-64). In particular, they stressed that the applicant had been moved to a cell in which he had been secured at least the statutory minimum standard space of 3 m² per person shortly after the delivery of the *Orchowski* and *Norbert Sikorski* pilot judgments. 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.

65. 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

66. The applicant in general 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 conclusion

67. The Court 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).

68. 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.*, in § 84).

69. 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 3-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).

70. In the present case the situation giving rise to the alleged violation of Article 3 ended on 26 November 2009, the date on which, according to the applicant's own statements corroborated by the Government's submissions, the applicant was placed in a cell in which the statutory minimum size requirement of 3 m² per person was respected (see above, in §§ 33 and 38). 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 his Convention claim examined by the Court, be required to seek redress at domestic level.

71. In any event, as from 6 December 2009, the date on which Article 110 § 2 (f) of the Code of Execution of Criminal Sentences entered into force, a detainee placed in conditions where the area per person is less than the statutory minimum may lodge a complaint with a domestic court and contest a decision of the prison administration to reduce his cell space (see *Łatak* cited above, §§ 42-43 and 86-87).

72. 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.

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

73. 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.”

74. The Government contested that argument.

A. Admissibility

75. 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

76. The applicant's detention began on 12 January 2005 when he was arrested on suspicion of drug trafficking committed in an organised criminal group.

77. He remained in pre-trial detention until his conviction by the court of first-instance on 30 December 2008. To the Court's knowledge, the applicant's conviction has not been to-date quashed.

78. Accordingly, the period to be taken into consideration amounts to almost 4 years.

2. The parties' submissions

79. The applicant submitted that his detention had been exceedingly long. He further stressed that there was no indication that he had attempted to obstruct the proper course of the proceedings in any way.

80. The Government maintained that in the present case all the criteria for the application and extension of the applicant's pre-trial detention had been met and that the authorities had displayed "special diligence" in conducting the proceedings. They underlined that the investigation proceedings had been conducted against the applicant and 6 other accused, all of whom had been charged with a total of 12 offences, including trafficking in large quantities of drugs. The Government pointed out that the case file had consisted of 22 volumes of documents. In the Government's view, the national authorities had conducted the judicial proceedings diligently, holding on average two hearings each month – thus, a total of 73 hearings from the beginning of the proceedings on 25 March 2005 until 16 April 2008, the date on which the Government's written observations on the merits were filed. The Government considered that the grounds invoked by the domestic courts as reasons for the extension of the applicant's pre-trial detention had been relevant and sufficient to justify its overall duration.

3. The Court's assessment

(a) General principles

81. 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; *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-4, ECHR 2006-X, with further references).

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

82. 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 severity of the penalty to which he was liable, (3) the need to secure the proper conduct of the proceedings, particularly the risk that he might attempt to tamper with evidence, and (4) the complexity of the case (see paragraphs 8, 10, 12, 13 and 15 above).

83. The applicant was charged with drug trafficking committed in an organised criminal group (see paragraph 13 above). In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

84. The Court notes that in the present case none of the decisions which extended the applicant's detention contained reasoned and convincing arguments regarding the risk that the applicant would tamper with evidence, intimidate witnesses or attempt to otherwise disrupt the proper course of the trial. Therefore, in the absence of a compelling demonstration of the risk which the applicant's release would have created for the proper course of the proceedings, this argument cannot justify the whole period of the applicant's detention.

85. Furthermore, according to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see *Micha v. Poland*, no. 13425/02, § 49, 4 May 2006).

86. As regards the complexity of the case, the Court's attention has been drawn to the nature of the charges, the number of accused (7) and the voluminous documentation. It appears, however, that the authorities referred to the complexity of the case in a very general manner.

87. The Court is of the opinion that while all the above factors could justify even a relatively long period of detention, they did not give the domestic courts an unlimited power to prolong this measure. Moreover, it seems that the authorities failed to envisage the possibility of imposing other preventive measures on the applicant.

88. Lastly, the Court notes that the domestic courts, in particular the Court of Appeal, often referred to the fact that one of the co-accused had remained at the disposal of another investigative authority and to the difficulties resulting from that fact, in particular to the problems in escorting that person to the hearings conducted in the applicant's case. In this respect, the Court considers that the primary responsibility for the proper organisation of criminal proceedings and for securing the timely and effective participation of all parties thereto lies ultimately with the State, all the more so in situations such as the present one, where the person whose presence at the hearings is required remains at the disposal of another State authority.

89. Having regard to the foregoing, and 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 with an international dimension, the Court concludes that the grounds invoked by the domestic authorities could

not justify the overall period of the applicant's detention. In these circumstances, it considers that it is not necessary to examine whether the proceedings were conducted with special diligence.

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

III. ALLEGED VIOLATIONS OF THE RIGHT TO A FAIR TRIAL UNDER ARTICLE 6 § 1 OF THE CONVENTION

91. In a letter received by the Court on 15 January 2009 the applicant, relying on Article 5 of the Convention, alleged that the criminal proceedings conducted against him were unfair in that the court had arbitrarily assessed the evidence.

92. In another letter of 7 June 2010 the applicant complained under Articles 3, 10 and 14 of the Convention, alleging that the authorities unfairly refused to release him on probation (*warunkowe przedterminowe zwolnienie*).

93. The Court considers that both new complaints should be examined from the standpoint of Article 6 § 1 of the Convention which provides, in so far as relevant:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

A. Unfairness of the criminal proceedings

94. The Court notes that according to the information in the case file, the criminal proceedings against the applicant are currently pending before the Supreme Court.

95. The complaint concerning the alleged unfairness of the trial is, therefore, premature and must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

B. Refusal to release on probation

96. The Court notes that the proceedings for the applicant's release on probation did not involve the determination of his criminal charge, it having already been determined by the applicant's final conviction. Therefore, the Court concludes that the criminal limb of Article 6 § 1 does not come into play (*Enea v. Italy* [GC], no. 74912/01, § 97).

97. As regards the civil limb of Article 6, it should be recalled that although, in the past, the jurisprudence of the Court and of the Commission customarily held that complaints relating to the examination of requests for

release from prison or to issues regarding the modalities of execution of penalty of imprisonment fall outside the scope of Article 6 § 1 (*Neumeister v. Austria*, 1936/63, 27 June 1968, § 22-3, Series A no. 8; *A.B. v. Switzerland*, no. 20872/92, Commission decision of 22 February 1995, Decisions and Reports (D.R.) 80, p. 66; *Lorsé and Others v. the Netherlands*, no. 52750/99, 4 February 2003; *Montcornet de Caumont v. France* (dec.), no. 59290/00, ECHR 2003-VII), there has recently been a certain change of its jurisprudence with regard to procedures instituted in the penitentiary context. For instance, the Court has held Article 6 § 1 to be applicable, under its civil limb, to proceedings concerning security measures and penitentiary discipline (*Enea*, cited above, § 98; *Ganci v. Italy*, no. 41576/98, § 20-6, ECHR 2003-XI; *Musumeci v. Italy*, no. 33695/96, § 36, 11 January 2005; *Gülmez v. Turkey*, no. 16330/02, § 27-31, 20 May 2008; *Stegarescu and Bahrin v. Portugal*, no. 46194/06, § 35-9, 6 April 2010) and, more recently, also in the context of proceedings for temporary release from prison (see *Boulois v. Luxembourg*, no. 37575/04, § 55-66, 14 December 2010, currently pending before the Grand Chamber).

98. The Court does not, however, deem it necessary to ascertain whether the proceedings instituted by the applicant with a view to being released on probation concerned a “dispute” over a “right”, within the meaning of Article 6 § 1, and whether this putative right was “civil” in nature, for the following reasons.

99. Even assuming the applicability of Article 6 § 1 of the Convention to the proceedings complained of by the applicant, the Court notes that, in the present case, the applicant had his request for release examined by domestic courts at two levels of jurisdiction. The courts dismissed the applicant’s request by well-reasoned and convincing decisions which do not disclose any appearance of arbitrariness or any unfairness on their part (see paragraphs 51 and 52 above). Having regard to the above circumstances, the Court concludes that the applicant was not deprived of his “right to a fair (...) hearing”, required by Article 6 § 1 of the Convention.

100. It follows that the complaint about the unfairness of the proceedings for release on probation is manifestly ill-founded within the meaning of Article 35 § 3 a) and must be rejected in accordance with Article 35 § 4.

IV. ALLEGED VIOLATION OF ARTICLE 8 § 1 OF THE CONVENTION

101. Invoking Article 8 of the Convention, the applicant complained that throughout his detention there had been disproportionate restrictions on his family visits in prison in that he had been unnecessarily separated from his visitors by a perspex partition and could only talk to them via internal phone. Article 8 of the Convention provides, in so far as relevant:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

102. The Government contested that argument.

A. Admissibility

103. The Court notes that this part of the application 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. The parties' arguments

104. The Government submitted that being separated from visitors by a perspex partition and only being able to talk to them via internal phone was the general rule for persons detained on remand and a normal situation, entirely in line with the relevant provisions of the Code of Enforcement of Criminal Sentences, concerning visits of persons in pre-trial detention. Exceptions to this rule could only be decided by the domestic authority, i.e. the court or the prosecutor, and they were facultative in that the authority was not bound by the law to decide in this respect. For this reason, being separated from visitors by a partition and communicating with them via internal phone had not constituted an “interference” with the applicant’s right to respect for his family life.

105. The Government further maintained that the applicant had been able to receive visits from his family from the very beginning of his detention, i.e. from 12 January 2005, and they stressed that nearly all of the requests filed by the members of the applicant’s family had been allowed. The Government took the view that no restrictions had been placed on the applicant’s contact with his visitors. They concluded that certain limitations on the applicant’s private and family life had been inherent in the fact of his being deprived of liberty and that they had been necessary to secure the proper conduct of the criminal proceedings conducted against him. In their view, the domestic authorities had maintained a balance between the need to secure the proper course of the proceedings and the applicant’s rights.

106. The applicant argued that the limitations placed on his contact with his family had been unnecessary and unjustified.

2. The Court's assessment

(a) General principles

107. The Court recalls that detention, similar to any other measure depriving a person of his liberty, entails inherent limitations on private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see *Klamecki v. Poland* (no. 2), no. 31583/96, § 144, 3 April 2003; *Lesiak v. Poland*, no. 19218/07, § 73, 1 February 2011). Furthermore, as prescribed by the relevant provision of the European Prison Rules, the arrangements for family visits in detention shall be such as to allow detainees to maintain and develop family relationships in as normal a manner as possible.

108. Restrictions such as limitations on the number of family visits, supervision of those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visiting arrangements constitute an interference with his rights under Article 8 but are not, of themselves, in breach of that provision (see e.g. *Kučera v. Slovakia*, no. 48666/99, § 127-8, ECHR 2007-IX).

109. Nevertheless, any restriction of that kind must be "in accordance with the law", must pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, must be justified as being "necessary in a democratic society".

110. As to the latter criterion, the Court would further reiterate that the notion of "necessity" for the purposes of Article 8 means that the interference must be motivated by a pressing social need, whose existence must be demonstrated by the respondent State, and in particular, that it must be proportionate to the legitimate aim pursued. When assessing whether an interference was "necessary" the Court will take into account the margin of appreciation left to the State authorities (see, among other authorities, *Płoski v. Poland*, no. 26761/95, § 35, 12 November 2002; and *Bagiński v. Poland*, no. 37444/97, § 89, 11 October 2005).

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

(i) Existence of interference

111. The Court notes that from the beginning of his detention in January 2005, the applicant had been entitled to at least one family visit per month and that these visits indeed took place, except for the incident with the applicant's common-law wife in March 2005 (see paragraph 42 above).

Moreover, in the light of the observations filed both by the applicant and by the Government, it can be seen that while a certain number of the applicant's family visits were conducted in a manner allowing the visitors to have direct physical contact with the applicant, on a number of occasions they were separated from him by a perspex partition and communicated with him via internal phone (see paragraphs 41-50 above).

112. The Court considers that the fact of being frequently separated from his family members by a partition and having to communicate with them only via internal phone, during short and relatively infrequent – usually one per month – visits, amounted to “interference” with the exercise of the applicant's rights guaranteed by Article 8 of the Convention.

(ii) Whether the interference was “in accordance with the law”

113. The Court observes that the contested measures were applied under Article 217 of the Code of Execution of Criminal Sentences. This provision, as applicable at the material time, gave the relevant authority (prosecutor or court) the power to grant permission for family visits in prison and to determine the manner in which they were to be conducted. The Court also notes that, pursuant to the rule contained in § 2 of the cited provision, visitors are not allowed to have direct physical contact with the person detained on remand and the visits are supervised by a prison guard, unless the authority which issued the permission decides otherwise (see paragraph 59 above). The Court is consequently satisfied that the interference was “in accordance with the law”.

(iii) Whether the interference pursued a “legitimate aim”

114. The Court recalls that cases concerning organised crime are, by their very nature, characterised by the existence of a substantial risk that a detainee might collude with other co-accused or otherwise obstruct the proceedings with the help of visitors (see *Bak*, cited above, § 57). The impugned measures can accordingly be considered as having been taken in pursuance of “the prevention of disorder and crime”, which is a legitimate aim under Article 8.

(iv) Whether the interference was “necessary in a democratic society”

115. It remains for the Court to ascertain whether the authorities struck a fair balance between the need to secure the proper conduct of the proceedings in the applicant's case and his right to respect for his family life while in detention.

116. The Court first of all observes, on the basis of statements made by both the applicant and the Government, that throughout his detention the applicant regularly received visits from his common-law wife and other members of his family. It cannot therefore be held that the authorities have prevented him from contacting his children and his family.

117. The Court accepts that, initially, due to the nature of the applicant's charges involving organised crime, recourse to certain restrictions could have been considered reasonably necessary from the point of view of the aims pursued by the authorities, even though it unavoidably resulted in negative consequences for the applicant's family life. The authorities' interest in limiting visitors' physical access to the applicant might also be to a certain extent regarded as justified in the light of the incident with the applicant's common-law wife in March 2005 (described above at paragraph 41).

118. However, it should be noted that the domestic authorities interchangeably granted the applicant different types of family visits: either in a manner which allowed him to have direct physical contact with his visitors, or in a manner preventing him from having such contact. The information provided by the applicant and by the Government – although they differ as they cover different periods of the applicant's detention (see paragraphs 41-50 above) – unequivocally demonstrate that the applicant was separated from his visitors by a perspex partition and communicated with them only via internal phone in about one half of the total number of visits. The remainder of the family visits in detention, to which the applicant was entitled, took place in the absence of any such restrictions.

119. On the basis of the material before it, the Court finds it difficult to discern any coherent pattern of application of the above-mentioned restrictions. The Government failed to provide a plausible explanation as to why during the proceedings the domestic authorities had on some occasions found it necessary to restrict the applicant's physical contact with his family while on other occasions they saw no obstacle to such contact. In the absence of a convincing explanation on the part of the authorities or of the Government, the Court concludes that the limitations on the applicant's physical contact with his family have been applied by the domestic authorities in an arbitrary and random manner.

120. It should also be added that the domestic courts did not consider any alternative means of ensuring that the applicant's contact with his family would not lead to any collusive action or otherwise obstruct the process of taking evidence, such as, for instance, subjecting the visits to supervision by a prison officer – a possibility explicitly provided for by the relevant provisions of the domestic law (see paragraph 59 above) – or to other restrictions on the nature, frequency and duration of contact (see *Eryk Kozłowski v. Poland*, no. 12269/02, § 77, 4 November 2008). Nor did they give any reasons for their decisions, limiting themselves to curt, point-blank refusals, written by hand on the requests made by the applicant and the members of his family.

121. In the circumstances, and having regard to the duration of the restrictions on the applicant's physical contact with his family and their random, arbitrary application, the Court concludes that they went beyond

what was necessary in a democratic society “to prevent disorder and crime”, putting a severe strain on the applicant and resulting in harsh consequences for his family life. The Court therefore holds that the authorities failed to maintain a fair balance between the means employed and the aim they sought to achieve.

(c) Conclusion

122. There has, accordingly, been a violation of Article 8 of the Convention in regard to the applicant’s right to respect for his family life.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

123. 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.”

A. The parties’ submissions

1. The applicant

124. The applicant did not submit any observations concerning this provision.

2. The Government

125. The Government referred to the arguments submitted previously in the case of *Figas v. Poland* (no. 7883/07, §§ 41-44, 23 June 2009).

126. The Government concluded that, bearing in mind the efforts of the Polish authorities and the legislative reforms which were and had been undertaken by them to solve the problem of the length of detention on remand, Poland could not be said to have failed to comply with its obligations under Article 46 of the Convention to obey the Court’s judgments.

B. The Court’s assessment

127. 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 of the pending cases raising an issue of excessive detention incompatible with Article 5 § 3 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.

128. In the present case, as in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 82-89 above). Consequently, the Court sees no reason to diverge from its findings made 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, paragraphs 60-62).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. 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

130. The applicant claimed EUR 36,250 (PLN 145,000) in respect of “documented” pecuniary damage and EUR 6,180 in respect of “non-documented” pecuniary damage.

131. The Government submitted that the applicant's claims were entirely groundless.

132. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this part of the claim.

133. On the other hand, it considers that the applicant must have sustained non-pecuniary damage. Consequently, ruling on an equitable basis, the Court awards the applicant EUR 2,500 EUR under that head.

B. Costs and expenses

134. The applicant also claimed PLN 40,000 for the costs and expenses incurred in the course of the proceedings in the present case. He also claimed EUR 3,300 for the costs and expenses incurred by his son in connection with the case as well as PLN 40,000 for expenses incurred in caring for his mother. He did not produce, however, any invoice or other document certifying any costs or expenses incurred in connection with the case.

135. The Government submitted that the costs and expenses claimed by the applicant were groundless, incurred voluntarily and irrelevant to the case.

136. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 and the above criteria, the Court rejects the claim for costs and expenses for lack of substantiation.

C. Default interest

137. 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* inadmissible the complaints concerning Articles 3 and 6 of the Convention and the remainder of the application admissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *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 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President