



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

FOURTH SECTION

CASE OF RUPRECHT v. POLAND

(Application no. 39912/06)

JUDGMENT

STRASBOURG

21 February 2012

FINAL

21/05/2012

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

In the case of Ruprecht v. Poland,

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 31 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 39912/06) 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 Marek Ruprecht (“the applicant”), on 29 August 2006.

2. The applicant was initially represented by Mr R. Bafia, a lawyer practising in Gdańsk. By a letter dated 14 December 2009 the lawyer informed the Registry that he had waived his power of attorney. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz of the Ministry of Foreign Affairs.

3. On 21 April 2008 the application was communicated 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

4. The applicant was born in 1969 and is currently detained in Sztum Remand Centre.

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

5. On 7 May 1998 the applicant was arrested on suspicion of homicide and numerous counts of robbery.

6. On 9 May 1998 the Gdynia District Court (*Sąd Rejonowy*) remanded him in custody relying on the reasonable suspicion that he had committed the offences in question.

7. The applicant's appeals against decisions prolonging his detention and all his subsequent applications for release were unsuccessful.

8. In the course of the investigation, the applicant's detention was prolonged on several occasions by the courts.

9. In 31 July 2000 a bill of indictment against the applicant and seven other persons was lodged with the Gdańsk Regional Court. The applicant was charged with, *inter alia*, homicide, attempted homicide, kidnapping and illegal possession of firearms.

10. On 29 July 2003 the Gdańsk Regional Court (*Sąd Okręgowy*) found the applicant guilty as charged and sentenced him to life-imprisonment. The applicant appealed.

11. On 16 December 2004, the Gdańsk Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case.

12. On 25 August 2005 the Gdańsk Regional Court severed some of the charges against the applicant and assigned them to a separate set of proceedings ("the second set of proceedings"). Both the initial set of proceedings and the second set of proceedings were conducted before the Gdańsk Regional Court.

13. The applicant's detention was further extended in the course of the trial.

14. In all their detention decisions the authorities repeatedly relied on a strong suspicion that the applicant had committed the offences in question, which was supported by evidence from witnesses and by experts' opinions. They underlined the grave nature of those offences, emphasising the charges against the applicant, and the likelihood of a severe sentence of imprisonment being imposed on him. The courts further considered that keeping the applicant in detention was necessary to secure the proper conduct of the proceedings. Lastly, the courts found no special grounds, as specified in Article 259 § 1 of the Code of Criminal Procedure, that would justify lifting the detention and imposing a less severe measure.

15. On 14 November 2006 the Gdańsk Court of Appeal decided to lift the applicant's pre-trial detention in the second set of proceedings. The applicant remained in custody, as the pre-trial detention ordered in the initial set of proceedings had further been extended.

16. Following the remittal of the case in the initial set of proceedings, the Gdańsk Regional Court gave its judgment on 24 August 2007. The applicant was found guilty as charged and sentenced to life-imprisonment.

17. In the second set of proceedings, on 15 April 2008, the Gdańsk Regional Court convicted the applicant and sentenced him to 10 years' imprisonment.

18. It appears that the appeal proceedings in both sets of the proceedings are pending before the domestic courts.

B. Censorship of the applicant's correspondence

19. On 7 and 15 May 2007, the applicant received four postcards from some alleged family members and friends bearing stamps "censored" ("*cenzurowano*").

C. The applicant's contacts with visitors

20. On 15 May 2007 a judge of Gdańsk Regional Court dismissed the applicant's motion to allow a visit in the Gdańsk Remand Centre from a certain J. Ch., who was, as alleged by the applicant, his cousin. The decision read as follows:

"a word 'cousin' is a broad notion, Mr. J. Ch. remains therefore, in the court's view, a stranger, whereas visits are granted to close persons."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Rules concerning preventive measures, in particular detention on remand

21. 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 presented in the Court's judgments in the cases of *Kudła v. Poland* [GC], no. 30210/96, §§ 75-79, ECHR 2000-XI; *Bagiński v. Poland*, no. 37444/97, §§ 42-46, 11 October 2005; and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

B. Rules concerning monitoring of a detainee's correspondence

22. The relevant domestic law and practice concerning the censorship of prisoners' correspondence are set out in the Court's judgments in the cases of *Mocny v. Poland* (dec.), no. 47672/09, 30 November 2010 and *Kliza v. Poland*, no. 8363/04, §§ 29-34, 6 September 2007.

C. Rules concerning a detainee's contact with the outside world

23. The relevant domestic provisions are contained in the “new” Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*) of 6 June 1997, which entered into force on 1 September 1998 and replaced the one formerly in force. Under Article 217 of the Code a detainee is allowed to receive visitors, provided that he obtained permission from the competent authority.

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

24. On 3 October 2011 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* ((preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and informed the Court that they were ready to accept that there had been a violation of the applicant's rights under Article 5 § 3 of the Convention as a result of the excessive length of the detention in the applicant's case. In respect of non-pecuniary damage, the Government proposed to award the applicant 9,000 Polish zlotys (PLN). The Government invited the Court to strike out the application in accordance with Article 37 of the Convention. The applicant objected to the proposal.

25. The Court observes that, as it has already held on many occasions, it may be appropriate under certain circumstances to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. It will depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; and *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

26. According to the Court's case-law, the amount proposed in a unilateral declaration may be considered a sufficient basis for striking out an application or part thereof. The Court will have regard in this connection to the compatibility of the amount with its own awards in similar cases, bearing in mind the principles which it has developed for assessing the amount of non-pecuniary compensation to be awarded in respect of the unreasonable length of pre-trial detention (see *Kauczor v. Poland*, no. 45219/06, 3 February 2009 with further references).

27. On the facts and for the reasons set out above, in particular the amount of compensation proposed, the Court finds that the Government have failed to provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *conversely*, *Spółka z o.o. WAZA v. Poland* (striking out), no. 11602/02, 26 June 2007).

28. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

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

29. 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.”

30. The Government failed to submit any observations.

A. Admissibility

31. The Court notes that 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. *Period to be taken into consideration*

32. The applicant's detention started on 7 May 1998, when he was arrested on suspicion of homicide and robbery. On 29 July 2003 the Gdańsk Regional Court found the applicant guilty as charged and sentenced him to life-imprisonment (see paragraph 10 above). As from that date the applicant 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*, cited above, § 104). On 16 December 2004 the Gdańsk Court of Appeal quashed the Regional Court's judgment. Following that date his detention was again covered by Article 5 § 3.

On 14 November 2006 the Gdańsk Court of Appeal lifted the applicant's detention in the second set of criminal proceedings (see paragraph 15 above), but the applicant remained in custody with respect to the first set of criminal proceedings against him. The applicant's detention continued until 24 August 2007, when the Gdańsk Regional Court convicted the applicant of all the charges and sentenced him to life-imprisonment (see paragraph 16 above). After that date the applicant's detention was again outside the scope of Article 5 § 3 of the Convention.

33. Accordingly, the period to be taken into consideration amounts to seven years and some eleven months.

2. The Court's assessment

(a) General principles

34. The Court recalls 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* cited above, § 110 *et seq.*, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., 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 three 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, given the risk that the applicant might tamper with evidence or induce the witnesses to give false testimonies, in the light of a possibility of a severe sentence being imposed on him.

36. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to secure the proper conduct of the proceedings constituted valid grounds for the applicant's initial detention.

37. However, with the passage of time, those grounds became less and less relevant. The Court must therefore establish whether the other grounds adduced by the courts – namely, the severity of the anticipated sentence and the risk that the applicant would disrupt the proceedings – were "relevant" and "sufficient" (see *Kudła* cited above, § 111).

38. According to the judicial 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 reoffending, the severity of the charges cannot by itself justify long periods of pre-trial detention (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

39. Furthermore, the Court notes that in all the decisions extending the applicant's detention, no specific substantiation of the risk that the applicant would tamper with evidence, intimidate witnesses or attempt to otherwise disrupt the proceedings emerged. In the absence of any other factor capable of showing that the risk relied on actually existed, this argument cannot be accepted in the context of the entire period of the applicant's detention. There is also no indication that during any part of the period in question the authorities envisaged the possibility of imposing other preventive measures on the applicant, such as bail or police supervision.

40. Having regard to the foregoing, 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.

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

III. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION

42. The applicant complained of the censorship of the correspondence with his family members. He further complained that he had been allowed visits from family members once a month and that during the visits he had been separated from his relatives by a glass partition and talked to them through an interphone. The applicant relied on Article 8 of the Convention, which reads in so far as relevant as follows:

“1. Everyone has the right to respect for his private and family life (...) 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.”

43. As to the alleged censorship of the applicant's correspondence, the Court notes at the outset, that the alleged interference with the applicant's correspondence did not concern letters but postcards. The applicant presented four postcards from some family members and friends that bear the stamp “censored” (“*cenzurowano*”) (see paragraph 19 above). In this respect the Court observes that by definition, a postcard is intended for writing and mailing without an envelope. Consequently, anyone can easily get acquainted with a content of a postcard, without having to breach its package.

44. In any event, leaving aside whether there has been an interference with the applicant's right to respect for correspondence, the Court notes that according to Article 217 (a) paragraphs 1 and 2 of the Code of Execution of Criminal Sentences, detainee's correspondence can be censored by the authority at whose disposal the detainee remains or by the governor of the remand centre in which the detainee is held. Thus, stamping the postcards in question was in accordance with domestic law.

45. In the circumstances of the instant case, having regard to the fact that the applicant was indicted on charges of serious criminal offences and in view of the need to secure the proper conduct of the trial, the interference could reasonably be considered as necessary in a democratic society. The relevant authorities were entitled, within the margin of appreciation left to them under Article 8 § 2, to consider that the control of correspondence was necessary "for the prevention of disorder or crime".

46. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

47. As to the applicant's allegations that he was allowed one family visit per month and that he was separated from his relatives by a glass partition, the Court notes that he failed to substantiate his allegations, as he did not submit any documents in support of his claims.

48. 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.

49. In so far as the applicant complains about refusal of J.Ch's visit, the Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on private and family life. Such restrictions 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 arrangements for visits constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision (see *Kucera v. Slovakia*, no. 48666/99, §§ 127-128, 17 July 2007 and *Lorsé and Others v. the Netherlands*, no. 52750/99, § 72).

50. In the present case, contrary to the case of *Gradek* (*Gradek v. Poland*, no. 39631/06, 8 June 2010) the Gdańsk Regional Court informed the applicant about the reasons for refusal of a visit from the applicant's alleged cousin - J.Ch.. The court considered that the applicant has failed to demonstrate the degree of his and J.Ch's relationship in order to justify the visit.

51. Moreover, the Court observes the applicant has failed to provide further information concerning this incident or his relationship to J.Ch. In particular, he has not informed the Court about any other requests for visits of J.Ch. or his family members that were rejected by the authorities.

In view of the lack of evidence to the contrary the Court assumes that the refusal of the applicant's alleged cousin's visit was an isolated incident.

52. In view of the above the Courts finds no appearance of a violation of the Convention.

53. It follows that this part of the application must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. In his letter of 4 November 2008 the applicant's legal representative informed the Registry that he supported his client's claims already submitted in the application form. The applicant claimed 66,000 euros (EUR) in respect of non-pecuniary damage.

56. The Government submitted that the claim was excessive.

57. The Court considers that the applicant 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 6,000 under this head.

B. Costs and expenses

58. The applicant did not specify his claim for costs and expenses.

C. Default interest

59. 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 6,000 (six thousand 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 21 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President