

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

FOURTH SECTION

CASE OF KURKOWSKI v. POLAND

(Application no. 36228/06)

JUDGMENT

STRASBOURG

9 April 2013

FINAL

09/07/2013

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



In the case of Kurkowski v. Poland,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 19 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 36228/06) 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 Mariusz Kurkowski ("the applicant"), on 28 August 2006.

2. The applicant was represented by Ms B. Krzyżagórska- Żurek, a lawyer practising in Gdańsk. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz succeeded by Ms J. Chrzanowska of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that the conditions of his detention had given rise to inhuman and degrading treatment contrary to Article 3 of the Convention.

4. On 12 January 2010 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

5. The applicant was born in 1960 and lives in Gdańsk.

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

6. The applicant was a member of the management board of the Mostostal Gdańsk joint-stock company ("the company"), manufacturing ships and other industrial steel constructions.

7. On 28 November 2002 the Gdańsk District Prosecutor (*Prokuratur Rejonowy*) opened a criminal investigation into allegations that the company's management board had intentionally acted to the detriment of the enterprise (*celowe działanie na szkodę spółki*).

8. On 4 December 2004 the Gdańsk District Court (*Sąd Rejonowy*) remanded the applicant in custody on reasonable suspicion that he had committed a series of offences related to the running of the company. The court also considered that keeping the applicant in detention was justified by the severity of the penalty which could be imposed if he were convicted and the risk that he might attempt to obstruct the proceedings, especially since the applicant's and his co-accused's testimonies had been contradictory. That decision was upheld by the Gdańsk Regional Court (*Sąd Okręgowy)* on 10 January 2005.

9. The applicant's detention was subsequently extended by decisions of the Gdańsk District Court of 2 March, 1 June and 26 August 2005, which were upheld by the Gdańsk Regional Court on 30 March, 27 June and 19 September 2005 respectively. In their decisions, the domestic courts repeatedly relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged, the serious nature of the offences, the complexity of the case which involved many individuals and the risk that the applicant would obstruct the proceedings, for example, by inducing witnesses to give false testimony. The domestic courts considered the latter argument particularly relevant in light of the fact that the penalty which the applicant faced was severe. In addition, the domestic courts invoked the difficulties in obtaining evidence, including from abroad, and the need to examine several hundred witnesses and many accounting, tax and auditing experts. On 1 June 2005 the case file already consisted of one hundred volumes.

10. The applicant's pre-trial detention was further extended by decisions of the Gdańsk Regional Court of 22 December 2005, 23 May and 28 September 2006, which were upheld by the Gdańsk Court of Appeal (*Sąd Apelacyjny*) on 24 January and 13 June 2006 and a further decision of an unspecified date.

11. On 31 August 2005 and 2 February 2006 two motions for the applicant's release were rejected.

12. In the meantime, on 18 August 2005 the prosecutor lodged a bill of indictment with the Gdansk District Court against the applicant and eleven other co-accused. The applicant was charged with eleven offences including

appropriation of the company's assets, causing damage to the company and acting to the detriment of the company's creditors. The prosecutor requested to hear evidence from 30 witnesses and to have read out the testimonies of 552 other witnesses.

13. On 31 August 2005 the District Court requested the Gdansk Court of Appeal to transfer the case to the Gdansk Regional Court due to its complicated nature. On 6 September 2005 the case was remitted to the Gdańsk Regional Court.

14. The first hearing took place on 27 June 2006.

15. The applicant's detention pending trial was further extended by the first-instance court on 28 September 2006.

16. On 26 October 2006 the Gdańsk Regional Court decided to lift the preventive measure and to release the applicant. The court considered that continuing the applicant's detention was no longer necessary because two of the co-accused, who had initially been detained, had already made their statements and seven of the other co-accused had remained at liberty throughout the proceedings. For these reasons there was no need to keep the applicant in pre-trial detention.

17. It would appear that the criminal proceedings against the applicant are still pending.

B. Complaint about the unreasonable length of the criminal proceedings against the applicant

18. On 7 December 2005 the applicant complained of the unreasonable length of the criminal proceedings against him to the Minister of Justice and to the President of the Gdańsk Regional Court.

19. By letters of 18 January and 14 February 2006 the respective authorities rejected the applicant's complaint as ill-founded. The authorities considered that in the light of the complexity of the case the impugned proceedings had not been lengthy.

20. The applicant did not lodge a complaint under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time.

C. Conditions of the applicant's detention

1. Uncontested facts

21. The applicant was detained in Gdańsk Remand Centre from 4 December 2004 until 26 October 2006. During this time he was held in six different cells. The size of those cells varied between 6.74 m² and 17 m². The space per person ranged between 2.1 m² and 3.6 m².

22. Between 29 August and 1 September 2005 the applicant was detained in cell number 10, which measured 17 m² and was shared by eight detainees, including the applicant (2.1 m² per person).

23. Between 12 and 15 September 2005, the applicant was held in cell number 18, which measured 5.52 m² and was shared by two detainees, including the applicant (2.6 m² per person).

24. The cells were equipped with separate toilets.

2. Facts in dispute

(a) The applicant

25. The applicant stressed that the conditions of detention in the two- person cell were inhuman. He submitted that in each cell there had been a bunk bed (200 cm x 100 cm). However the surface of the toilet had been included in the total surface and constituted part of the 3 m² per person. The design of the cells made it impossible for two prisoners to move around freely.

26. The applicant also claimed that the food served to all detainees was of poor quality and insufficient quantity. He had to buy additional food and despite that he had lost 20 kg during his detention.

(b) The Government

27. The Government argued that the applicant had had access to clean sanitary facilities, running water and bathing facilities. The food served to him complied with the relevant standards of the Ministry of Justice. The applicant was afforded a one-hour walk per day. He could have his own television set or he could watch television in the prison's social room.

D. Restrictions on the applicant's right to visits during his detention and monitoring of his correspondence

1. Uncontested facts

28. The list of visits supplied by the Government shows that between 29 December 2004 and 6 July 2006 the applicant received 86 visits, of which 53 were meetings with his defence counsel and 1 meeting with a notary. The remaining 32 visits involved the applicant's family (wife, daughter and mother). They lasted from 40 (on one occasion) to 120 minutes but on most occasions were 90 minutes long.

29. On 13 March 2006, the authorities rejected the applicant's request to have an additional visit from his relatives. That decision did not contain any reasoning.

30. On three occasions (27 September 2005, 2 November 2005 and 11 January 2006) the applicant's contacts with his family were restricted and he was separated from the visitors by a Perspex partition.

2. Facts in dispute

(a) The applicant

31. The applicant, without specifying any details, submitted that, during his pre-trial detention, his correspondence with his family had been monitored and withheld by the authorities.

32. He also submitted that his wife and children had been allowed to visit him in the remand centre only once a month. Most of the applicant's requests to meet more often with his family had been rejected by the authorities. The applicant's family members' visits were short and without the possibility of direct contact. On several occasions he had had no direct contact with his family because he had been separated from them by a Perspex partition and they could communicate with him only by internal phone.

33. Lastly, he denied receiving a visit from a certain E.P. on 6 July 2006.

(b) The Government

34. The Government submitted that between 29 December 2004 and 5 October 2006 most of the family visits took place at a table (*przy stoliku*) in the presence of a guard. Out of the thirty-two visits of the applicant's wife, mother and youngest child, direct contact was granted on twenty-nine occasions.

35. The Government submitted that in addition to the visits listed above, the applicant received a visit from E.P. on 6 July 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

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

B. Conditions of detention

37. 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 (dec), §§ 25-54, 12 October 2010).

C. Right to visits in detention

1. Situation until 8 June 2010

38. Pursuant to Article 217 § 1 of the Code of Execution of Criminal Sentences, as applicable until 8 June 2010, a detainee was allowed to receive visitors, provided that he had obtained a visit permission ("*zezwolenie na widzenie*") from the authority at whose disposal he remained, i.e. an investigating prosecutor (at the investigative stage) or from the trial court (once the trial had begun) or from the appellate court (in appeal proceedings). A detainee was entitled to 1 one-hour long visit per month.

39. 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".

40. 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.

41. 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 transferring of any forbidden objects from or to prison.

42. 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.

2. Situation as from 8 June 2010

(a) Constitutional Court's judgment of 2 July 2009 (no. K. 1/07)

43. The judgment was given following an application, lodged by the Ombudsman on 2 January 2007, alleging that Article 217 § 1 of the Code of Execution of Criminal Sentences was incompatible with a number of constitutional provisions, including the principle of protection of private and family life (Article 47 of the Constitution), the principle of proportionality (Article 31 § 3 of the Constitution), Article 8 of the Convention and Article 37 of the United Nations Convention on the Rights of the Child. The Constitutional Court's judgment became effective on 8 July 2009, the date of its publication in the Journal of Laws (*Dziennik Ustaw*).

44. The Constitutional Court ruled that Article 217 § 1, in so far as it did not specify the reasons for refusing family visits to those in pre-trial detention, was incompatible with the above provisions. The court held that this provision did not indicate with sufficient clarity the limitations on a detainee's constitutional right to protection of private and family life. The court also considered that Article 217 § 1 was incompatible with the Constitution in so far as it did not provide for a possibility to appeal against a prosecutor's decision to refuse a family visit to those in pre-trial detention.

(b) Amendments to the Code of Execution of Criminal Sentences

45. On 5 November 2009 Parliament adopted amendments to Article 217 of the Code of Execution of Criminal Sentences. In particular, subparagraphs 1a-1f were added. These provisions stipulate that a detainee is entitled to at least one family visit per month. In addition, they indicate specific conditions for refusing a family visit to a detainee and provide an appeal procedure against such a refusal. The amendments entered into force on 8 June 2010.

D. Remedies against unreasonable length of proceedings

46. The relevant domestic law and practice concerning remedies for excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time, (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act") are stated in the Court's decisions in the cases of *Charzyński v. Poland*, no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V; and *Ratajczyk v. Poland,* no. 11215/02 (dec.), ECHR 2005-VIII; and in its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained that the conditions of his detention in the Gdansk Detention Centre (overcrowding and lack of adequate food) amounted to inhuman and degrading treatment contrary to Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

48. The Government contested that argument.

A. Admissibility

1. The Government's preliminary objection

49. The Government submitted that the applicant could have had recourse to administrative authorities i.e. a complaint to the penitentiary authorities. They further stressed that on 26 October 2006 the applicant had been released from the Gdansk Remand Centre. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed and that the applicant should have brought 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.

50. 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.

51. The applicant in general disagreed with the above arguments and maintained that the remedies suggested by the Government could not be considered "effective" for the purposes of Article 35 § 1 of the Convention.

52. The Court has already examined a similar objection based on exhaustion of domestic remedies raised by the Government in the above-mentioned case of *Łatak 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 complaints (see *Łatak v. Poland,* cited above §§ 71-85).

53. 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).

54. In the present case the situation giving rise to the alleged violation of Article 3 ended on 26 October 2006 when the applicant was released from the Gdansk Remand Centre. The Court considers, therefore, that since the relevant civil action under Articles 24 and 448 of the Civil Code is barred by a three-year statute of limitation, the applicant cannot presently be required to avail himself of the civil remedy in question.

55. Moreover, the Court reiterates that in its pilot judgments in the cases of *Orchowski* and *Norbert Sikorski* (see *Orchowski*, cited above, § 96 and *Norbert Sikorski*, cited above, §§ 100-101) it has already held that the findings made by the Constitutional Court and by this Court that overcrowding in Polish detention facilities was of a structural nature, "undermined the effectiveness of any domestic remedy available, making them theoretical and illusory and incapable of providing redress in respect of the applicant's complaint" at the time when those applicants lodged their applications with the Court (ibid. § 111 and § 121 respectively). This conclusion equally applies to the present case which was lodged on 28 August 2006.

56. Accordingly, the Court dismisses the Government's preliminary objection as to the non-exhaustion of domestic remedies.

2. Overcrowding

57. The Court concludes that the complaint about detention in an overcrowded cell is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

3. Lack of adequate food

(a) The parties' submissions

58. The applicant submitted that the quality of food served in the Gdansk Detention Centre was very bad. Despite buying extra food, during the two years he had spent in detention he had lost 20 kg.

59. The Government argued that the food served to the applicant complied with the relevant standards of the Ministry of Justice.

(b) The Court's assessment

60. The Court notes the applicant's allegation about the poor quality of food, which is disputed by the Government. The Court further considers that while failure to provide food in accordance with the general nutritional

tables and menus in prison may put at risk the health of detainees (compare *Rotaru v. Moldova*, no. 51216/06, § 37, 15 February 2011), it has not been established that such was the situation in the present case. In addition, the applicant has failed to provide any evidence that he had raised the substance of this complaint with the prison administration. Consequently, it follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The parties' submissions

(a) The applicant

61. The applicant submitted that the conditions of his detention in the Gdansk Detention Centre had fallen short of standards compatible with Article 3 of the Convention. In particular, he complained that he had been detained in overcrowded cells. In addition, the conditions of detention had been inhuman. The design of cells made it impossible for two detainees sharing the same cell to move around freely. Cells were equipped with separate toilets but the surface of the toilet was included in the calculation of the surface of the cell.

(b) The Government

62. The Government listed the cells in which the applicant was kept in the Gdansk Detention Centre. They acknowledged that between 29 August and 1 September 2005 and between 12 and 15 September 2005 the space per person in the applicant's cells had been inferior to 3m². They argued, however, that the applicant had not suffered inhuman or degrading treatment which attained the minimum level of severity within the meaning of Article 3 of the Convention.

2. The Court's assessment

63. A restatement of the general principles concerning the examination of conditions of detention under Article 3 may be found in the Court's judgment in *Orchowski v. Poland* (cited above, §§ 119-229).

64. The Court has already found in its two pilot judgments in the cases of *Orchowski v. Poland* and *Norbert Sikorski v. Poland* that, for many years, namely from 2000 until at least mid-2008, overcrowding in Polish prisons and remand centres had revealed a structural problem consisting of "a practice that [was] incompatible with the Convention" (see *Orchowski,* cited above, § 151, and *Norbert Sikorski*, cited above, §§ 155-156).

65. The Court notes that in the instant case the Government acknowledged that during two periods (eight days in total) of the applicant's detention in the Gdansk Remand Centre the personal space afforded to him was below 3 square metres (see paragraph 53 above).

66. Contrary to the case of *Dmitriy Rozhin (see Dmitriy Rozhin v. Russia*, no. 4265/06, § 52, 23 October 2012), where the applicant spent 11 days in a disciplinary cell and was afforded less than 2 m² per person, the Court notes that in the present case, the applicant spent 4 days in a cell in which he was afforded approximately 2.1 m² of floor space per person. Subsequently, he spent a period of 4 days, in a cell where he was afforded approximately 2.6 m² of floor space per person (see paragraphs 22 and 23 above).

67. The Court considers having regard to the brevity of the applicant's stay in these cells (two periods of four days), that the conditions of the applicant's detention did not reach the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention (see *Dmitriy Rozhin* cited above § 53, *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 138, 17 January 2012).

68. It follows that there has been no violation of Article 3 of the Convention.

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

69. 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 its relevant part, reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

70. The Government did not contest the admissibility of this complaint.

71. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

72. The period to be taken into consideration began on 4 December 2004 and ended on 26 October 2006; it accordingly lasted one year, ten months and twenty-two days.

2. The parties' submissions

(a) The applicant

73. The applicant submitted that his detention on remand had been exceedingly long.

(b) The Government

74. The Government maintained that in the present case all the criteria for the application and extension of pre-trial detention had been met. The applicant's detention was justified by the reasonable suspicion that the applicant had committed the offences with which he had been charged, the serious nature of the offences and the severity of the anticipated penalty. In addition, the risk of obstructing the proceedings or tampering with evidence had been increased as a result of the significant financial damage which he allegedly caused to the company. In their opinion the case had been very complex due to its commercial nature and the contradictory testimonies of the applicant and the co-accused. At the moment of lodging the bill of indictment against the applicant the case file had already consisted of 107 volumes and related to 61 crimes allegedly committed by 12 accused. Lastly, in the Government's opinion, the domestic authorities showed special diligence in the case.

3. The Court's assessment

75. 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* cited above, § 110 *et seq*; and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

76. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely: the serious nature of the offences with which he had been charged, the severity of the penalty to which he was liable and the risk that the applicant might tamper with evidence.

77. The Court notes that the applicant was charged with a series of offences related to the running of a company. It is true that the applicant was not charged with being a member of an organised criminal group (*a contrario Bąk v. Poland*, no. 7870/04, § 57, 16 January 2007). However, the proceedings in the present case involved 11 other co-accused, several hundred witnesses and the need to obtain evidence from abroad (see paragraphs 8 and 9 above).

78. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences and the severity of the penalty constituted relevant grounds for the applicant's initial detention. The need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from a large number of witnesses also constituted a valid ground for maintaining the applicant's detention.

79. The Court takes note of the fact that when the authorities could no longer justify the applicant's protracted detention, they released the applicant (see paragraph 16 above).

80. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were "relevant" and "sufficient" to justify holding him in custody for the entire relevant period, namely nearly one year and eleven months.

81. It therefore remains to be ascertained whether the national authorities displayed "special diligence" in the conduct of the proceedings.

82. In this regard, the Court observes that the investigation was of significant complexity, regard being had to the number of co-accused and the fact that it concerned complicated financial and commercial issues. The Court further does not discern any significant periods of inactivity in the investigation or the initial phase of the trial. For these reasons, the Court considers that during the relevant period the domestic authorities handled the applicant's case with necessary diligence.

83. Having regard to the foregoing, the Court finds that there has been no violation of Article 5 § 3 of the Convention

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

84. The applicant further complained under Article 8, submitting that the restrictions on visits from his family throughout his detention, in particular with his youngest child and mother, put an exceptionally severe strain on him.

Article 8, in so far as-relevant, reads as follows:

> ""1. Everyone has the right to respect for his ... family life... .
>
> 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."

A. Admissibility

85. The Government did not contest the admissibility of this complaint.

86. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Principles deriving from the Court's case-law

87. The relevant general principles are set out in the Piechowicz and Horych judgments (see, *Piechowicz* cited above § 212; *Horych* cited above, §§ 122-124). The Court would nevertheless reiterate that any interference by a public authority with a detainee's right to respect for family life should be lawful, must pursue one or more legitimate aims listed in paragraph 2 of Article 8 and, in addition, must be justified as being "necessary in a democratic society" (see *Horych*, cited above, § 123).

2. Refusal of family visits

(a) The parties' arguments

(i) The applicant

88. The applicant submitted that during the period of his pre-trial detention his right to receive visits was restricted. In particular, he referred to the fact that he was only allowed to receive visits from his family once a month. In addition, during certain months his family was not allowed to visit him at all.

89. He stressed that the restrictions on his contacts with his two-year old child and his eighty-two year old mother (restricting the number of visits and preventing direct contact) proved that he had been treated in an inhuman manner.

90. The applicant concluded that these restrictions had caused him serious emotional distress and suffering. The authorities had interfered with his rights under Article 8 in an arbitrary and disproportionate manner. He asked the Court to find a violation of this provision.

(ii) The Government

91. The Government argued that the applicant's contacts with his family had not been restricted. He had been visited by his wife, child and mother on thirty-two occasions. In March 2005 and July 2006 the applicant was visited by his family on three occasions. In addition, in eight other months the applicant was visited by his family two times per month. Admittedly, the applicant was refused a visit in March 2006. However, in April 2006 the applicant saw his family twice.

92. The Government concluded that the restrictions imposed had not amounted to an interference with his rights under Article 8 of the Convention. In view of the foregoing, the Government considered that there had been no violation of Article 8 of the Convention.

(b) The Court's assessment

93. The Court observes that it has not been contested that at least on one occasion, namely on 13 March 2006, the applicant was refused a visit from his family and that this decision did not include any reasoning (see paragraph 29 above). Accordingly, the Court considers that the restriction on the applicant's personal contact with his family constituted an "interference" with his right to respect for his family life.

94. The Court observes that the contested measure was applied under Article 217 § 1 of the Code of Execution of Criminal Sentences. The Court further notes that 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. The law, however, provided no details as regards the conditions for granting such permission, no guidance as to how the authorities might decide whether the prohibition on visiting rights was merited in a particular case, and what factors might be relevant to that decision. It further did not provide for a possibility to appeal against the refusal of visits. The decision was left to the authorities' absolute discretion (see *Dochnal v. Poland*, no. 31622/07, § 95, 18 September 2012).

95. The Court further observes that it had already held in similar Polish cases that Article 217 § 1 of the Code of Execution of Criminal Sentences did not indicate with reasonable clarity the scope and manner of the exercise of any discretion conferred on the relevant authorities to restrict visiting rights. In consequence, the Court has held that an unreasoned refusal to grant permission for visits was not in "accordance with the law" and found a breach of Article 8 on account of the arbitrariness of the interference (see *Wegera v. Poland*, no. 141/07, § 74-75, 19 January 2010; *Popenda v. Poland*, no. 39502/08, § 72, 9 October 2012).

96. For these reasons the Court concludes that the refusal of the family visit in the present case was not in accordance with the law. On that account it is not necessary to ascertain whether the other conditions imposed by Article 8 § 2 have been complied with.

97. There has accordingly been a violation of Article 8 of the Convention.

3. Limitations on direct contact

(a) The parties' arguments

98. The applicant also complained that he was unable to take full advantage of visits already granted or available to him each month because of the specific arrangements governing visits, which on several occasions excluded direct physical contact with the visitors. The applicant complained, without giving any details, that on some occasions he was only allowed to have the so-called "closed visits", without the possibility of direct contact as he was physically separated from his visitors by a Perspex partition and they could communicate only by internal phone.

99. The Government argued that during the vast majority of visits the applicant was afforded direct contact with his relatives. Of the thirty-two visits of the applicant's wife with the youngest child and the applicant's mother, direct contact was restricted only on three occasions, namely: on 27 September 2005, 2 November 2005 and 11 January 2006.

(b) The Court's assessment

100. The Court observes that on three occasions (27 September 2005, 2 November 2005 and 11 January 2006) he was separated from his family by a Perspex partition (see paragraph 31 above). The Court considers that this amounted to "interference" with the applicant's rights guaranteed by Article 8 of the Convention.

101. The Court further observes that the contested measure was applied under Article 217 § 2 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 determine the manner in which they were to be conducted. The Court also notes that, pursuant to the rule contained in that provision, visitors are not allowed to have direct physical contact with the person detained on remand. The Court is consequently satisfied that the interference was "in accordance with the law".

102. The Court further considers that the impugned measures can be considered as having been taken in pursuance of "the prevention of disorder and crime", which is a legitimate aim under Article 8.

103. It remains for the Court to ascertain whether a fair balance was struck between the competing public and private interests involved (see *Horych*, cited above, § 126), having regard to the legitimate aim relied on.

104. The Court accepts that in certain situations restrictions on a detainee's contact with members of his family may be compatible with

Article 8 (see *Horych* cited above § 129). However, in the present case the Government offered no explanation as to why it was necessary on these three occasions to require the applicant and his close family members to be separated by a physical barrier. In particular, no arguments have been adduced regarding the legitimacy of the aim pursued, nor as regards the necessity of imposing the measure on these specific occasions. The Court can but note that such measure had never been imposed during any of the other twenty-nine visits. The Court finds it difficult to discern any coherent pattern of application of the above-mentioned restrictions and considers that they have been applied by the domestic authorities in an arbitrary and random manner. For these reasons alone, the Court finds that the applicant's right to respect for his family life has been breached.

105. Accordingly, there has been a violation of Article 8 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

106. The applicant also complained under Article 6 § 1 of the Convention that the length of the criminal proceedings against him had been unreasonably lengthy.

107. The Court notes that the applicant failed to lodge a complaint with the domestic courts under the 2004 Act (see paragraph 20 above). It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

108. Lastly, the applicant alleged that his private correspondence had been censored.

109. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. 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

111. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

112. The Government contested this claim.

113. The Court awards the applicant EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

114. The applicant made no claim for the reimbursement of costs and expenses incurred before the domestic courts or in the proceedings before the Court.

C. Default interest

115. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 (overcrowding), 5 § 3 and 8 (refusal of family visits and limitations on direct contact with family members) admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention;

3. *Holds* that there has been no violation of Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 8 of the Convention as regards the refusal of family visits on certain occasions and limitations on direct contact with family visitors during certain visits;

5. *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 1,500 (one thousand five hundred euros) 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, plus any tax that may be chargeable;

(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;

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

Done in English, and notified in writing on 9 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President