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

FIRST SECTION

DECISION

Application no. 57953/16
Adrian KORNAUS
against Poland

The European Court of Human Rights (First Section), sitting on 6 September 2022 as a Committee composed of:

Lorraine Schembri Orland*, President,*
Krzysztof Wojtyczek*,*
Ioannis Ktistakis*, Judges,*

and Liv Tigerstedt, Deputy Section Registrar,

Having regard to:

the application (no. 57953/16) 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") on 29 September 2016 by a Polish national, Mr Adrian Kornaus ("the applicant"), who was born in 1990 and lives in Tarnów, and was represented before the Court by Mr D. Prusak, a lawyer practising in Tarnów;

the decision to give notice of the complaints concerning Article 5 §§ 1 and 5 of the Convention to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The present case concerns the applicant's allegedly delayed release from prison following issuance of a cumulative sentence and the domestic authorities' refusal to award him compensation in this respect.

2. The applicant was convicted in the following sets of criminal proceedings: II K 806/07, II K 168/08, II K 41/08, II K 153/09 and II K 650/10.

3. He asked the Tarnów Regional Court to determine a cumulative sentence combining the convictions in cases II K 806/07, II K 168/08 and II K 41/08. On 26 June 2014 the Tarnów Regional Court gave a cumulative judgment (*wyrok łączny*) with a sentence of three years' and eight months' imprisonment, which combined the convictions imposed in the cases as requested by the applicant. It discontinued the proceedings in so far as they concerned the determination of a cumulative sentence in respect of cases nos. II K 153/09 and II K 650/10. Those sentences were to be executed separately.

4. The applicant's lawyer appealed, but subsequently withdrew the appeal. The judgment of 26 June 2014 became final.

5. On 8, 11 and 21 August 2014 the applicant's lawyer asked the relevant court to release the applicant, submitting that he had already served the sentence of three years and eight months.

6. On 20 August 2014 the Regional Court ordered the enforcement of the cumulative sentence and sent the relevant information to the detention centre where the applicant was imprisoned. On 21 August 2014 the detention centre asked the Regional Court to specify the terms of imprisonment already served by the applicant. The court clarified that the applicant had served the sentence imposed in case no. II K 153/09 between 6 April 2011 and 6 April 2012 and that he had finished serving the cumulative sentence on 3 May 2014. As his detention had exceeded the term of imprisonment imposed on him, he was released on the same day (21 August 2014).

7. The applicant lodged a claim for compensation in respect of his allegedly unlawful detention between 26 June and 21 August 2014. He sought 40,000 Polish zlotys (PLN – approximately 10,000 euros (EUR)). On 13 June 2015 the Tarnów District Court awarded the applicant PLN 5,500 (approximately EUR 1,350), noting that his sentence had come to an end on 3 May 2014. The court noted that Article 576 § 2 of the Code of Criminal Procedure was clear and that the applicant should have been released on the day of the delivery of the cumulative judgment and not when it had become final. It thus found that his detention between 26 June and 21 August 2014 had not had any legal basis.

8. The applicant appealed, complaining about the amount of compensation awarded.

9. On 25 February 2016 the Nowy Sącz Regional Court amended the first-instance judgment and dismissed the applicant's claim. The court did not share the view that the applicant should have been released on 26 June 2014. It noted that, under Article 576 § 2 of the Code of Criminal Procedure, a convicted person could be released immediately if the cumulative sentence was equal to or more lenient than the sentence already served. The court considered that, in principle, his release should have been ordered on the day when the cumulative judgment had been delivered, and not on the day when it had become final, even though the relevant provision did not clarify that

issue. However, this particular case was different, and the above-mentioned provision of the Code of Criminal Procedure was in fact not applicable because, at the time of delivery of the cumulative judgment, the applicant had still had to serve the prison sentence imposed on him in case no. II K 153/09, to be enforced between 1 March 2015 and 1 March 2016. Only after the cumulative judgment had become final had it been possible to add up and recalculate all the applicant's prison sentences, including those which did not form part of the cumulative judgment. Furthermore, only after that date had it been possible to establish the order of the enforcement of those sentences. Consequently, the dates of the terms of imprisonment had changed and the sentence imposed in case no. II K 153/09 had been noted as having been served between 6 April 2011 and 6 April 2012. Subsequently, it had been established that the applicant had finished serving his sentences on 3 May 2014. Those calculations could only have been done after the cumulative judgment had become final. The court concluded that the applicant's detention in the relevant period had been lawful.

10. The applicant complained under Article 5 §§ 1 and 5 of the Convention that he had been detained unlawfully for the period between 26 June and 21 August 2014 and that he had been denied compensation for this unlawful period of detention.

THE COURT'S ASSESSMENT

11. The Government argued that the applicant had not suffered a significant disadvantage. The applicant disagreed.

12. The Court does not find it necessary to rule on the Government's preliminary objection, since it considers that the application is in any event inadmissible for the reasons set out below.

13. The Court draws attention to the fundamentally subsidiary role of the Convention system. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. The national authorities have direct democratic legitimation and are in principle better placed than an international court to evaluate local needs and conditions (see, among other authorities, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 97, ECHR 2003-VIII; *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 98, 25 October 2012; and *Garib v. the Netherlands* [GC], no. 43494/09, § 137, 6 November 2017).

14. Under the Court's case-law on Article 5 § 1 of the Convention, all deprivation of liberty must not only be based on one of the exceptions listed in sub-paragraphs (a) to (f) but must also be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to

national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 125, ECHR 2013).

15. Where the Convention refers directly back to domestic law, as in Article 5, compliance with such law is an integral part of the obligations of the Contracting States and the Court is accordingly competent to satisfy itself of such compliance where relevant; the scope of its task in this connection, however, is subject to limits inherent in the logic of the European system of protection, since it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, *inter alia*, *Lukanov v. Bulgaria*, 20 March 1997, *Reports of Judgments and Decisions* 1997-II, and *Kemmache v. France (no. 3)*, 24 November 1994, § 42, Series A no. 296-C).

16. In the present case, on 26 June 2014 the domestic court imposed on the applicant a cumulative sentence of three years and eight months. However, the applicant still had to serve the sentence in respect of case no. II K 153/09, which had not been included in the cumulative judgment and the enforcement of which had originally been scheduled for the period between 1 March 2015 and 1 March 2016. The court of second instance, which examined the applicant's claim for compensation for the allegedly unlawful detention, clarified convincingly that the exact recalculation of the applicant's criminal sentences and the order of their enforcement had only been possible after the cumulative judgment had become final. This condition materialised on 20 August 2014 and the applicant was released on 21 August 2014, that is, immediately after it had been established that all his sentences had been served. The reasoning in the domestic court's judgment is exhaustive and convincing and there is no appearance of any arbitrariness on its part. The Court thus agrees with the domestic court that throughout the entire period in question, the applicant's deprivation of liberty had a legal basis in the domestic law and in the relevant sentences imposed by the domestic courts when convicting him.

17. It follows that the complaint under Article 5 § 1 is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

18. As regards the applicant's complaint under Article 5 § 5 of the Convention, according to the Court's case-law, this provision is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *N.C. v. Italy* [GC],

no. 24952/94, § 49, ECHR 2002-X; *Pantea v. Romania*, no. 33343/96, § 262, ECHR 2003-VI (extracts); and *Fedotov v. Russia*, no. 5140/02, § 83, 25 October 2005).

19. Since no violation of any of the paragraphs of Article 5 of the Convention has been established either by the domestic courts or by the Court, the applicant's complaint about the refusal to grant him compensation for his allegedly unlawful deprivation of liberty is likewise manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Liv Tigerstedt Deputy Registrar	Lorraine Schembri Orland President