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

FIRST SECTION

DECISION

Application no. 24414/15
Szczepan ŁACIAK
against Poland

The European Court of Human Rights (First Section), sitting on 3 April 2025 as a Committee composed of:

Alena Poláčková*, President*,
Artūrs Kučs,
Anna Adamska-Gallant*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 24414/15) 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 4 May 2015 by a Polish national, Mr Szczepan Łaciak ("the applicant"), who was born in 1973, lives in Strzelce Opolskie and, having been granted legal aid, was represented by Ms Tomasik-Łabyś, a lawyer practising in Bielsko-Biala;

the decision to give notice of the complaint concerning right to compensation for the applicant's detention on remand under Article 5 § 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 inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant complained that he had not been granted compensation for his pre-trial detention in the proceeding in which he was subsequently acquitted.

A. Main criminal proceedings against the applicant

2. On 21 March 2005 the applicant was arrested by the police; on 23 March 2005 the Bielsko-Biała District Court remanded him in custody in view of a reasonable suspicion that he had committed fraud. The applicant's appeal against this decision was dismissed on 14 April 2005 by the Rzeszow Regional Court.

3. On 20 June 2005 the applicant's detention was lifted given the fact that all investigative actions had already taken place and the applicant had anyway remained in custody (see paragraph 6 below).

4. On 10 February 2011 the Bielsko-Biała District Court acquitted the applicant of fraud (III K 604/09). The judgment was upheld by the Bielsko-Biała Regional Court on 11 April 2012.

B. Other criminal proceedings

5. Between 1997 and 2011 the applicant was convicted several times and served various prison sentences.

6. In particular, on 18 May 2005, the applicant began serving a two-year prison sentence imposed on 2 March 2005 by the Pszczyna District Court (case no. II K 728/02). On 8 November 2005 the applicant left the prison having been conditionally released.

7. Between 30 November 2005 and 3 March 2011 the applicant served another term of imprisonment.

8. On 4 July 2013 the Katowice Court of Appeal imposed a cumulative sentence of five years' imprisonment on the applicant. The court credited the period of the applicant's pre-trial detention in the present case, between 21 March and 18 May 2005, towards the cumulative term of imprisonment.

C. Application for compensation on account of unjustified pre-trial detention

9. In July 2011 the applicant lodged an application for compensation for unjustified detention on the basis of Article 552 § 4 of the Code of Criminal Procedure. He sought 100,000 Polish zlotys (PLN) in respect of non-pecuniary damage and PLN 4,500 in respect of pecuniary damage.

10. On 13 September 2013 the Bielsko-Biała Regional Court dismissed the claim. The court held that, in line with domestic law, the applicant's pre-trial detention between 21 March and 20 June 2005 had been "undoubtedly unjustified" as the applicant had been acquitted. However, the court established that the entire period of the applicant's pre-trial detention had been credited towards two terms of imprisonment imposed on him in other sets of criminal proceedings. The period of the applicant's detention between 21 March and 18 May 2005 had been credited towards the

cumulative sentence of five years' imprisonment imposed by the Katowice Court of Appeal (see paragraph 8 above), and in the period between 18 May and 20 June 2005 the applicant had served a two-year prison sentence imposed in the case no. II K 728/02 (see paragraph 6 above).

11. The Bielsko-Biała Regional Court also examined at length the evidence and the applicant's submissions as to whether, at the time the request was considered, he had suffered any pecuniary or non-pecuniary damage in consequence of the detention, which had not been compensated otherwise. It found that there had been no evidence of any pecuniary damage as the applicant had not been employed in the period preceding his arrest on 21 March 2005. With respect to non-pecuniary damage the court noted that the applicant, represented by a lawyer, had never complained about particular hardship resulting from the arrest or detention in parallel to him serving a sentence. Moreover, as established by relevant courts, the applicant continued to lead an organised crime group during his detention. In consequence the court concluded that by crediting the period of his pre-trial detention to other sentences of imprisonment the applicant had been adequately and fully compensated for any pecuniary and non-pecuniary damage allegedly suffered.

12. Upon appeal, the Katowice Court of Appeal upheld the lower court's judgment in full. It noted in particular that crediting the period of pre-trial detention towards sentences of imprisonment was a non-pecuniary nature of compensating for damage caused by unjustified pre-trial detention, that it was appropriate and, moreover, corresponded to the prevailing trend in the case-law.

13. On 21 November 2014 the Supreme Court dismissed the applicant's cassation appeal as manifestly ill-founded.

D. Complaint

14. The applicant complained under Article 5 § 5 of the Convention that he had been denied compensation for damage suffered as a result of his detention between 21 March and 20 June 2005.

THE COURT'S ASSESSMENT

15. The Court reiterates that Article 5 § 5 of the Convention 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 of that provision. The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Convention institutions. In this connection, the effective enjoyment of the right to compensation guaranteed by Article 5 § 5 must be ensured with a sufficient degree of

certainty (see, among other authorities, *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012).

16. In the present case the detention on remand in respect of which the applicant sought compensation lasted three months, however, this period should be divided into two separate periods relevant for the assessment of the case.

17. On 18 May 2005 the applicant started serving another prison sentence (see paragraph 6 above). Therefore, the period from 18 May to 20 June 2005 should be regarded as detention after conviction in the meaning of Article 5 § 1 (a) of the Convention. That conviction had never been quashed and there is no allegation that it was unlawful or otherwise in breach of Article 5 (§§ 1-4). The Court thus considers that with respect to this period Article 5 § 5 of the Convention is clearly not applicable and this part of the application must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

18. The previous period of the applicant's detention, from 21 March to 18 May 2005 should be regarded as pre-trial detention in the meaning of Article 5 § 1 (c) of the Convention as it was carried out for the purpose of bringing him before the competent authority on reasonable suspicion of having committed an offence. The parties disagreed as to whether the subsequent finding that the applicant's detention had been "undoubtedly unjustified" because of his acquittal equalled to that detention being in breach of the domestic law. The Government argued that no breach of domestic law or Article 5 of the Convention had been established and therefore Article 5 § 5 had not been applicable to the case. The applicant considered that his detention in the proceedings resulting in acquittal had been undoubtedly unjustified which made this detention unlawful, also under Article 5 of the Convention.

19. The Court notes that the Polish system provides for an automatic right to compensation where criminal proceedings have ended in acquittal. In such a case the detention is, under the domestic law, qualified as "undoubtedly unjustified" – as also clearly stated by the domestic courts in the applicant's case (see paragraph 10 above). They did not establish any breach of the domestic law.

20. The Court has held that where domestic law provides that the accused shall be, in the event of a final acquittal, entitled to compensation for his detention in the course of the preceding proceedings, such an "automatic" right to compensation cannot in itself be taken to imply that the detention in question were to be characterised as "unlawful" (see *Norik Poghosyan v. Armenia*, no. 63106/12, § 34, 22 October 2020).

21. The Court therefore finds that there are strong doubts as to the applicability of Article 5 § 5 to that period as well. However, even assuming that this provision was applicable, the complaint is anyway inadmissible for the following reasons.

22. Firstly, the period under consideration was credited towards another sentence of five years' imprisonment imposed by a final judgment of 4 July 2013 by the Katowice Court of Appeal. In so far as it is to be understood that the applicant complains about the decision to credit this period of his detention towards the other sentence, this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

23. Secondly, in the subsequent set of proceedings for compensation under Article 552 § 4 of the Code of Criminal Procedure, the domestic courts considered, in well-reasoned decisions, that the applicant had failed to prove the existence of any of the pecuniary or non-pecuniary damage sought and dismissed the claims (see paragraph 11 above). In this connection the Court notes that the Convention does not prevent the Contracting States from making the award of compensation conditional on the ability of the person concerned to show damage resulting from the breach (*Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no.185-A). In the present case the courts examined in detail whether the fact that the applicant's detention had been credited towards imprisonment compensated fairly and totally for any pecuniary and non-pecuniary damage actually sustained by the applicant. The Court therefore considers that sufficient consideration had been given to the issue of the damage sustained by the applicant as a result of pre-trial detention and its proportionality to the penalty to which it was credited (compare and contrast *Włoch v. Poland (no. 2)*, no. 33475/08, § 32, 10 May 2011, where no consideration was given to the issue of whether crediting a pre-trial detention towards a fine had been fair).

24. Finally, the Court would underline that, although the right to compensation guaranteed by Article 5 § 5 is primarily pecuniary in nature, this does not rule out the possibility of different forms of redress. The Court has also held that a reduction of sentence could constitute compensation within the meaning of Article 5 § 5 if it was explicitly granted to afford redress for the violation in question and it had a measurable and proportionate impact on the sentence served by the person concerned (see *Porchet v. Switzerland* (dec.), no. 36391/16, §§ 18-25, 8 October 2019).

25. Having regard to the above, and assuming that Article 5 § 5 of the Convention was applicable to the first period of the applicant's detention, the Court considers that the applicant can no longer claim to be a victim of the alleged violation of Article 5 § 5. Therefore, this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected under Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 May 2025.

Liv Tigerstedt Deputy Registrar	Alena Poláčková President