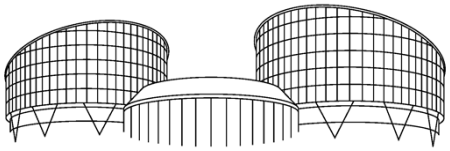

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF K.P. v. POLAND

(Application no. 52641/16)

JUDGMENT

Art 5 § 3 • Excessive length of applicant's pre-trial detention amounting to over six years • Domestic courts' reliance on grounds that could not be regarded as "sufficient" to justify entire duration of detention
Art 34 • Victim • Respondent State discharged procedural obligation under Art 3 to conduct effective investigation into allegations of abuse of power by a prison officer in the context of a relationship of dependence, as a consequence of which the applicant became pregnant in detention • Applicant's failure to provide information as to why compensation was never sought for breach of personal rights in connection with ill-treatment complained of • Victim status lost

STRASBOURG

26 October 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of K.P. v. Poland,

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

Marko Bošnjak*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Ivana Jelić,
Gilberto Felici*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 52641/16) 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") by a Polish national, Ms K.P. ("the applicant"), on 30 August 2016;

the decision to give notice to the Polish Government ("the Government") of the application;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 3 October 2023,

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

INTRODUCTION

1. The application concerns the length of the applicant's detention on remand, restrictions on the applicant's family visits and allegations of abuse of power by a prison officer in the context of a relationship of dependence, as a consequence of which the applicant became pregnant while in detention.

THE FACTS

2. The applicant was born in 1984 and lives in A. She was represented by Ms A. Żurawska, a lawyer practising in Gdańsk.

3. The Government were represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. CRIMINAL PROCEEDINGS AND DETENTION

A. Investigation

5. In May 2012 the prosecution service began an investigation into allegations of fraud and money laundering by the A. company. The company

was founded by the applicant's then husband, Mr M.P., in 2009 and offered high interest rates on deposits made by some 11,000 people. In 2012 it was declared insolvent and liquidated.

6. On 30 August 2012 Mr M.P., was arrested and detained on remand in connection with the investigation.

7. On 28 September 2012 the applicant was charged with several offences, mostly relating to the financial management of companies of which she had been chair of the board of directors. On 10 October 2012 a ban on leaving the country was imposed on her.

8. On 15 April 2013 the Łódź Regional Prosecutor decided to bring further charges against the applicant. She was charged with additional offences relating to assisting her husband set up and run the A. company, which was a financial pyramid scheme. In particular, the applicant was charged with signing more than 2,000 individual deposit contracts for the benefit of the company.

B. Detention

9. On 15 April 2013 the prosecutor decided to place the applicant under arrest, and the arrest was duly made. On the same day the Łódź District Court decided to detain the applicant on remand. She informed the court that she had been undergoing treatment by a psychiatrist since August 2012.

10. On 17 May 2013 the Łódź Regional Court dismissed an appeal by the applicant against the detention order of 15 April 2013.

11. The applicant's detention on remand was subsequently extended at regular intervals.

12. On 15 June 2015 the Łódź Regional Prosecutor lodged a bill of indictment against the applicant and her husband.

13. All the decisions extending the applicant's detention relied on the following grounds. Firstly, and foremostly, it was probable that a severe sentence would be imposed given the scale of the criminal activity in which the applicant was suspected of having been involved. Moreover, the courts presumed that the applicant might interfere with the proper course of the proceedings, given the probability of a sentence of up to fifteen years' imprisonment. The domestic courts considered that the detention of the applicant was necessary given the exceptional complexity of the case, which warranted a large number of hearings and other procedural steps.

On some occasions the authorities referred to the applicant's difficult personal situation given that she had been staying in prison with her child. While they recognised that prison was not an ideal place to raise a child, this did not amount to a clear contraindication to her imprisonment.

Lastly, on many occasions the domestic authorities examined the applicant's complaints that the continuing detention amounted to a breach of the Convention; however, they considered that the extensions had been

granted only for the period necessary to complete the trial and that the total length of detention had not been unreasonable.

14. In the decisions extending the applicant's detention given between 8 April 2015 and 20 July 2016 the Gdańsk Court of Appeal referred to an incident from 2012 when the applicant had allegedly attempted to sell fifteen kilograms of gold to a person who had become a witness in the proceedings. The court found it reasonable to conclude that the risk of her interfering with the course of the proceedings was not hypothetical, but entirely real and based on concrete circumstances.

15. In a decision of 18 January 2018 extending her detention the Gdańsk Court of Appeal noted that there were still some 130 witnesses to be heard, making the continued detention of the applicant necessary.

16. In a decision of 9 January 2019, the Gdańsk Court of Appeal agreed to extend the applicant's detention but only until 15 February 2019, finding that further detention would no longer be justified unless there were new circumstances. The applicant's detention was further extended on 12 February and 10 April 2019.

17. The applicant appealed unsuccessfully against all the decisions extending her detention. On multiple occasions she applied to be released from detention and to have other preventive measures imposed, in particular bail.

18. On 23 September 2021 the applicant was released from detention.

C. Judicial proceedings

19. On 20 May 2019 the Gdańsk District Court convicted the applicant and her former husband, M.P. On that date the court started reading out the judgment (*odczytywanie wyroku*) which lasted until 16 October 2019. The applicant was sentenced to twelve years and six months' imprisonment. In July 2020 the court prepared written reasons for the judgment and the applicant lodged an appeal.

20. On 30 May 2022 the Gdańsk Court of Appeal upheld the first-instance judgment but lowered the sentence against the applicant to eleven years and six months' imprisonment.

II. RELATIONSHIP WITH T.R. AND BIRTH OF THE CHILD

A. Pregnancy and birth

21. On the day of her arrest, 15 April 2013, the applicant complained of being in a vulnerable mental state. On 17 April 2013 the governor of Łódź Prison decided to grant a request from the applicant and provided for measures of enhanced protection. The prison governor noted that although there had been no incidents so far, the applicant's case had nevertheless

received wide media coverage and some detainees or their families could have been victims of the A. company.

22. While in detention the applicant suffered from depression and various other conditions. Throughout the period referred to below the applicant received psychological help and medication, including antidepressants and psychotropic drugs.

23. After the summer of 2013 the prison officer T.R. became the education supervisor (*wychowawca oddziału*) for the applicant's ward. According to the applicant's statements to the Grudziądz District Prosecutor (see paragraph 37 below), the officer would meet her whenever she asked because of her depressed state. However, over time, she noticed that their meetings became regular and lengthy, and that it was T.R. who initiated them. While in the beginning the meetings had lasted fifteen minutes and happened only when she needed to see him, they subsequently became daily and lasted up to two hours and thirty minutes. This led to hostility from the other inmates of the ward as she was seen to be monopolising the supervisor's time. However, the applicant had been obliged to follow the supervisor's orders and to attend meetings to which he invited her. Moreover, the supervisor was the only officer with whom the inmates had any regular contact, and there was no other person to complain to about his behaviour. Afterwards, the officer started to cross boundaries, in that he would touch her clothes, speak to her affectionately, and hug her. Around February 2014, when she was in a room with officer T.R., he pushed her against the door, touched her breast and kissed her on her mouth. After that incident he let her leave the room when she asked to go. When she tried to object to his advances, officer T.R. said that nobody would believe her; he emphasised his high rank and connections with the governor of the prison. She met the prison governor only on a few occasions, in the presence of T.R., and he would always indicate that in all matters she should first speak to her supervisor.

24. In April 2014 the applicant's supervisor T.R. called her to a meeting during which he announced to her that her grandfather had died. This was a blow to the applicant, who had been very close to her grandfather. She started crying and breaking down. The officer approached her, started to kiss her, removed her trousers, and had intercourse with her. She was taken by surprise and terrified and did not feel strong enough to oppose his insistence and resolve. Afterwards, he told her to get dressed and stop crying; he called somebody to come and pick up the applicant although usually he escorted her to her cell himself. She was not officially informed of her grandfather's death until some days later, on the return of the prison governor.

25. The meetings with the supervisor T.R. continued on a daily basis and later he would come into her cell using a key which he had obtained for himself. The applicant was transferred to a cell with only one other occupant, who was working and was therefore absent for most of the day; T.R. told the applicant that the transfer had been made at his request. The supervisor was

sympathetic and nice to the applicant; he was the only friendly and interested person she could talk to. He asked her all about herself and was involved in all aspects of her daily life, including handing over her correspondence to her and referring her to a psychologist or psychiatrist.

26. After T.R. returned from his summer holiday, the applicant approached him and told him that she did not want to continue their relationship, she did not like it and did not have the strength to go on with it. Officer T.R. was outraged and started ignoring her and disregarding her requests. T.R. also behaved in a manner which the applicant understood as threatening her that her situation would deteriorate and showing her the power he had over her. He bragged that he could have her moved to another cell and that he had almost pushed another detainee to commit suicide. At some point the applicant stopped "fighting" with T.R. and they started having regular sexual intercourse again. This would happen when she was feeling down, after a hearing at which her detention had been extended or when she was otherwise upset. The situation continued until the end of November 2014, when the officer was moved to another ward.

27. In November 2014 the applicant became pregnant while in detention in Łódź Prison.

28. On 1 April 2015 the applicant was transferred to Grudziądz Prison, which has a facility for detaining women during their pregnancy and afterwards – the Mother and Child Unit (*Dom Matki i Dziecka*). Children can stay at the facility with their mothers in the first years of their lives.

29. On 12 August 2015 the applicant gave birth to a son, J. The applicant had to undergo a caesarean section as the baby's life was in danger.

30. On 26 October 2018 the Gdańsk District Court decided that the applicant should continue providing direct care to her son, who was allowed to stay with her, in the prison facility for mothers until 12 August 2019, when he would be four years old.

31. On 30 January 2020 the Gdańsk District Court decided to appoint the applicant's mother as J.'s guardian.

B. Criminal proceedings against the prison officer

32. On 13 March 2015 the prosecution service opened an investigation into the circumstances of the applicant's becoming pregnant while in detention. The applicant obtained the victim status (*pokrzywdzona*) in the proceedings; she was represented by a lawyer of her choice. She was heard by the prosecutor but refused to give evidence about the circumstances in which she had become pregnant in the detention centre.

33. The prosecutor heard other witnesses, in particular a high-ranking officer at Łódź Prison and the Director of the Regional Inspectorate of the Prison Service, who indicated officer T.R. as the most probable father of the applicant's child. Such suspicions were based in particular on notes by the

psychologists who had informed T.R.'s superiors that T.R. had been conducting daily, lengthy, unsupervised meetings with the applicant. Moreover, the prosecutor noted that in the disciplinary proceedings against T.R. which were conducted simultaneously (see paragraphs 43-47 below) it had been established that the officer had engaged in contact with the applicant that was other than professional. The disciplinary files disclosed six incidents between August 2014 and January 2015, including unauthorised handling of the applicant's correspondence, organising unscheduled meetings with a psychiatrist for her, organising daily and lengthy unsupervised meetings, and taking the keys to her cell with the agreement of other officers. The prosecutor noted that no record of the meetings between the applicant and T.R. had been kept as they had taken place within the same ward. They had happened in an office which was not covered by video monitoring and the prison regulations did not impose any limits on the frequency of meetings between detainees and the supervising officer. The prosecutor also heard officer T.R., who denied having had any intimate contact with the applicant.

34. On 16 December 2015 the Łódź District Prosecutor discontinued the investigation.

35. The applicant's lawyer appealed, submitting in particular that the prosecutor had failed to carry out a DNA test to confirm paternity in respect of officer T.R., who had in the meantime been named by the applicant as the father of her child. Moreover, the lawyer submitted that the officer in question had been disciplined for "establishing an illegal relationship with [the applicant], trying to arrange meetings with her, making it possible for himself to have unlimited and uncontrolled access to [the applicant] by obtaining unauthorised keys to her cell, expressing an unjustified interest in her personal life, failing to keep an appropriate distance from her, being deliberately misleading and giving false information to his superiors concerning the circumstances of [the applicant's] becoming pregnant". In addition, the applicant had previously been heard under conditions which did not allow her to express herself because she had remained detained in the same facility where officer T.R. continued to work. For that reason, in March 2015 she had refused to give any details or to testify who had made her pregnant and in what circumstances.

36. On 9 August 2016 the Łódź District Court (II Kp 243/16) allowed the applicant's appeal and quashed the prosecutor's decision.

37. On 28 September 2016 the applicant was heard by the Grudziądz District Prosecutor (see paragraphs 23-26 above for the detailed account provided by her). The applicant indicated that after having discovered her pregnancy she had remained in the same prison in which T.R. was still working. For that reason, when she had been heard by the prosecutor, she had not been ready to testify against T.R. The prison officers and the prison governor had suggested that she should remain silent; she had been blamed for the impact on the administration of the prison of the media interest in her

becoming pregnant, as various internal checks had had to be carried out in the prison.

38. On 7 October 2016 the applicant again asked the prosecutor to carry out a DNA test on her son in order to confirm T.R.'s paternity of the child.

39. On 27 September 2018 T.R. was indicted before the Łódź District Court on charges of abuse of power proscribed by Article 231 and sexual abuse in the context of a relationship of dependence proscribed by Article 199 § 1 of the Criminal Code. The indictment stated as follows:

> "[T.R. was charged that] in the period from February to November 2014 in Łódź, being a public officer, contrary to the provisions [of the Prison Service Act], through the abuse of a relationship of dependence with a detainee resulting from his position as an educator in the ward, he made contact with the victim for purposes other than those resulting from his official duties and induced the victim (*doprowadził pokrzywdzoną*) to submit to sexual acts including acts resulting in the pregnancy of the detainee, thus acting to the detriment of the individual interest of [the applicant] and of the public interest by failing to ensure the correct execution of the preventive measure against the accused and by undermining the authority of the Prison Service."

40. In November 2018 the applicant joined the proceedings as an auxiliary prosecutor (*oskarzycielka posiłkowa*).

41. On 12 March 2019 the Łódź District Court convicted officer T.R. of abuse of power under Article 231 § 1 of the Criminal Code and sexual abuse in the context of a relationship of dependence under Article 199 § 1 of the Criminal Code, and sentenced him to one year's imprisonment suspended on probation for a period of three years. The court ordered a fine of 5,000 Polish zlotys (PLN) and prohibited him from holding a position in the Prison Service for a period of five years. T.R. was convicted as charged (see paragraph 39 above), save for a small modification in the description of the offence in that "exceeded his powers" was added.

42. Since the parties did not appeal against the judgment, no written reasons were given, and it became final on 30 March 2019.

C. Disciplinary proceedings

43. On 27 November 2015 the governor of Łódź Prison found T.R. guilty of several disciplinary offences including maintaining improper contact with the applicant between September and November 2014 in that he had shown excessive interest in her personal life; had arranged regular and lengthy meetings with her; had intervened with doctors to arrange medical visits for her outside the usual course of his duties; and had breached other internal rules on dealing with detainees (including handling of the applicant's correspondence). Despite receiving an official order prohibiting any contact with the applicant, the officer had held a meeting with her on 1 January 2015 which lasted one hour and forty-four minutes. The officer had contravened the internal regulations in that between September and 30 November 2014 he had been using a special set of keys by which he had enabled himself to have

unlimited access to the applicant's cell. The officer was also found guilty of accessing pornographic websites on his work computer, as well as other websites not linked to his professional duties, in particular searches connected with calculating fertile days in human reproduction and information about pregnancy. During the investigation the officer had intentionally and knowingly misled the authorities, making it more difficult to establish the circumstances in which the applicant had become pregnant and resulting in a particularly negative image of the prison service.

44. The governor considered, however, that there was insufficient evidence to find that T.R. had abused his position to maintain relations with the applicant other than those arising from his official duties, including intimate contact as a result of which she had become pregnant. The governor noted that since the applicant had chosen not to disclose who the father of the child was, there was a presumption of paternity in favour of her husband.

The governor imposed a disciplinary punishment of transfer to a lower-grade post (demotion). Officer T.R. appealed.

45. On 15 January 2016 the Łódź Regional Director of the Prison Service (*Dyrektor Okręgowy Służby Więziennej*) quashed the ruling in respect of most of the offences and imposed a punishment of a reprimand (*nagana*) on T.R.

46. On 30 June 2016 T.R. ceased to be employed by the Prison Service.

47. The fact of the applicant's becoming pregnant while detained resulted in seven other sets of disciplinary proceedings against prison officers of various ranks and functions in the Prison Service. Most of those proceedings resulted in the officers receiving reprimands on various dates in 2015.

D. Paternity proceedings

48. On 1 June 2016 the Gdańsk District Court allowed an action brought by the applicant's husband to deny paternity of the child. The applicant admitted that the prison officer, not her husband, was the father of the child.

49. On 5 July 2016 the applicant lodged a civil claim to establish the paternity of the child and to deprive the father of parental rights. On an unspecified date the claim was granted and T.R. was declared to be the father of J. and deprived of his parental rights.

E. The applicant's trial

50. On 20 January 2016 the Gdańsk Regional Court asked Grudziądz Prison about arrangements for the applicant's son during her trial given that the child lived with the applicant at the prison and the applicant was breastfeeding him. The hearings were scheduled to take place on two or three days a week between 9 a.m. and 3 p.m. From the prison governor's response it appeared that the following options were open to the applicant: not appearing in person because breastfeeding mothers could be considered

medically unfit to participate in proceedings; having the child released into the care of a family member; or participating in the hearing by means of video-conferencing facilities.

51. The applicant repeated her requests to be present at the hearings. Moreover, she did not agree to her family taking care of her child during the hearings since he did not know anybody except her because the court had refused to allow her to have family visits. She apparently objected to participating in the hearing by video link.

52. The first hearing was held on 21 March 2016 and the applicant was present. More hearings were held in March and April 2016. The applicant participated in person and Grudziądz Prison provided care for the applicant's child during her absence.

53. On 26 April 2016 the applicant informed the court that a doctor considered her unfit to participate in hearings because her child had been ill. The applicant was present at further hearings on 7 July and 8 July 2016.

F. The Mother and Child Unit at Grudziądz Prison

54. The Government submitted the following information about the Mother and Child Unit of Grudziądz Prison. The unit had undergone major works in 2012 and included gynaecological and obstetrical wards and a sleeping area which had been renovated in 2009. The unit had rooms with beds and cots for children and large balconies; it was equipped with a children's playroom, televisions, toys, and sitting rooms with tables and chairs. A kitchen with refrigerators, microwaves and other equipment was accessible to inmates, as were bathrooms with showers and bathtubs. The unit had utility rooms including a laundry room and a garden with a playground (including a sandpit, toys, swings and slides) which the inmates could use during daylight hours. The applicant had attended various courses on preparing for the delivery and on caring for the child and breastfeeding. She had been under the care of a psychologist and had access to a paediatrician and other doctors, including specialists in various fields.

Pregnant inmates and nursing mothers had a right to receive additional food packages and longer family visits.

55. The applicant did not file any complaint concerning conditions of detention in the Mother and Child Unit.

III. FAMILY VISITS

56. Between 11 May 2013 and June 2015 the applicant received regular visits from her mother, brother, sister-in-law and other family members. The visits were allowed by the regional prosecutor, who also agreed to allow longer visits. After the bill of indictment against the applicant was lodged

with the Gdańsk Regional Court in June 2015, all requests had to be made to that court.

57. On 28 June 2015 the applicant's mother asked for permission to visit the applicant without being separated by a Perspex screen. The request bears a handwritten note dated 30 June 2015 stating: "I do not agree to the visit (witness to appear in court)".

58. On 29 June 2015 the applicant's lawyer lodged a request with the trial court asking it to allow the applicant's mother to visit her in detention. The request bears the following handwritten note: "I do not agree to a visit by [the applicant's mother] as she is an important witness in the case." The note bears an illegible signature and is dated 6 August 2015.

59. On 29 June 2015 the applicant's lawyer asked the court to give the applicant's sister-in-law permission to be present at the birth, provided that she arrived on time after being informed by the detention centre that labour had started. In addition, the document submitted by the lawyer contained requests for the applicant to be permitted to receive parcels from her family containing hygiene products for her and the baby and medication. The document bears a handwritten note stating that the court refused the request for the sister-in-law to attend the birth. The court only agreed to the applicant receiving parcels from her family. On 6 July 2015 the Gdańsk Regional Court informed the applicant's lawyer by letter of that decision.

60. On 29 June 2015 the applicant's lawyer asked the court to allow him to meet the applicant in person and to allow the applicant to telephone him at his office. The document containing the request bears a handwritten note that the court refused the request in so far as it related to telephone calls but allowed the lawyer to meet with the applicant in person. On 6 July 2015 the Gdańsk Regional Court informed the applicant's lawyer of that decision.

61. On 20 July 2015 the applicant's sister-in-law asked the court for permission to visit the applicant accompanied by her daughter, the applicant's godchild. The request was refused by the judge on 21 July 2015 on the grounds that the sister-in-law was a witness in the case.

62. On 22 July 2015 the applicant's brother asked the court for permission to visit the applicant. The document containing the request bears a handwritten note that the request was refused on 23 July 2015.

63. On 22 July 2015 the Gdańsk Regional Court refused a request for a visit which had been submitted on 10 July 2015 by the applicant's mother.

64. The court consented on several occasions to visits by the applicant's niece.

65. On 24 August 2015 the applicant's mother asked the court to allow her to visit the applicant and her baby. She argued that she had already testified in the case and had relied on the right not to give evidence against a close relative, refusing to testify in the case. During the investigation stage of the proceedings she had visited her daughter regularly, and moreover, the applicant had just given birth to her grandchild and needed the support of her

own mother. The request was refused on 28 August 2015. The court considered that the circumstances of the case justified not applying the general rule that a detainee had the right to one family visit a month. The court also noted that it had intercepted an illegal note written by the applicant with "Mum" written on it, which had justified the assessment that the applicant would use the meeting with her mother to interfere with the proceedings.

66. The applicant's lawyer appealed against the above-mentioned decision, arguing that the applicant's mother was not an important witness in the case and had previously been allowed to visit the applicant. The lawyer added that the formal grounds of a person being a witness were not a sufficient reason to refuse visits. He also disagreed that the applicant's note had been in breach of the prison rules as it had referred only to private matters, had been intended for use in consultation with the applicant's second lawyer and had not been meant to be taken out of the prison.

67. On 16 September 2015 the Gdańsk Regional Court dismissed the appeal. In a reasoned decision the court noted that the applicant had attempted to illegally transmit a note to her mother. Moreover, the applicant's mother had been a witness in the proceedings which justified limitation of contacts between her and the applicant.

68. On 23 November 2015 the applicant's brother informed the court that he would be relying on his right not to give evidence against a close relative and did not intend to testify in the case. His statement had been made before a notary public.

69. On 30 November 2015 the applicant's mother made an identical statement before a notary public and on the same day the applicant's lawyer asked the court for permission for the mother to visit the applicant. The lawyer repeated that the applicant's mother had refused to testify against her at the investigation stage and had just reiterated her refusal. There were therefore no grounds to refuse the mother's request to visit the applicant. Moreover, the applicant had been suffering mentally as a consequence of having been detained, giving birth and being isolated from her family.

70. On 23 December 2015 the court received a medical opinion which stated that the applicant had been depressed and was deeply disturbed. The doctor stated that she needed antidepressants; however, she could only take them when she was no longer breastfeeding.

71. On 7 January 2016 the applicant's lawyer asked for permission for the applicant's mother to visit the applicant. On 18 January 2016 the lawyer repeated the request and again asked to be formally notified of the court's decision. On 22 January 2016 the court refused the request, but the letter contained no reasons. On 8 February 2016 the applicant's lawyer asked the court to notify her of the decision with written reasons. The reasons were subsequently provided and stated that the applicant's mother had been named as a witness and that she might in the future revoke her decision not to testify. The applicant's lawyer lodged an appeal but the Gdańsk Regional Court

dismissed it on 12 April 2016. The court, in a reasoned decision, found that the applicant's mother had been deeply involved in the activities of the company A. and the proper course of justice required her not meeting the applicant. However, since in the meantime the applicant's mother made statements before the trial court, she should renew a request for a family visit with the applicant.

72. Afterwards, requests for family visits were no longer refused. In particular, the applicant's mother was granted the right to visits sitting at a table in a manner enabling direct contact on 29 July, 5 September, 2 and 14 October and 6 November 2016. In 2017 some eleven requests for visits made by the applicant's mother and other relatives were all granted.

RELEVANT LEGAL FRAMEWORK

73. The Criminal Code, in so far as relevant, provides as follows:

Article 231 § 1

"A public official who, exceeding his or her authority, or not fulfilling his or her duty, acts to the detriment of a public or individual interest shall be subject to a penalty of deprivation of liberty for up to three years."

Article 199 § 1

"A person who, by abuse of a relationship of dependence or exploitation of a critical position, induces another person to have sexual intercourse or to submit to any other sexual act or to perform such an act, shall be subject to a penalty of deprivation of liberty for up to three years."

74. The provisions of the Civil Code, regarding the so-called "personal rights" (*dobra osobiste*), provide as follows:

Article 23

"The personal rights of an individual, such as in particular, health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements shall be protected by the civil law regardless of the protection laid down in other legal provisions."

Article 24 § 1

"A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of an infringement, [the person concerned] may also require the party responsible for the infringement to take the necessary steps to remove [the infringement's] consequences ... In compliance with the principles of this Code, [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AS REGARDS FAMILY VISITS

75. The applicant complained that during her detention she had been prevented from receiving visits from many members of her family for a period of approximately a year, in breach of Article 8 of the Convention, which reads as follows:

> "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."

76. By a letter of 9 February 2018, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further asked the Court to strike out this part of the application in accordance with Article 37 of the Convention.

77. The declaration provided as follows:

> "The Government hereby wish to express – by way of unilateral declaration – their acknowledgment of violation of Article 8 § 2 of the Convention on restrictions imposed on the family visits during the applicant's detention on remand. Simultaneously, the Government declare that they are ready to pay the applicant the sum of EUR 1,500 (one thousand five hundred Euro) which they consider to be reasonable in the light of the Court's case-law ... The sum referred to above, which is to cover any pecuniary and non-pecuniary damage, as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, as a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points."

78. By a letter of 4 April 2018, the applicant indicated that she was not satisfied with the terms of the unilateral declaration.

79. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. In particular, Article 37 § 1 (c) enables the Court to strike a case out of its list if

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

80. The Court also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

81. The Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

82. The Court has established in a number of cases, including cases brought against Poland, its practice concerning complaints of a violation of Article 8 of the Convention in respect of refusals to allow family visits to people in detention (see *Piechowicz v. Poland*, no. 20071/07, § 222, 17 April 2012; *Horych v. Poland*, no. 13621/08, § 132, 17 April 2012; and *Dochnal v. Poland*, no. 31622/07, § 97, 18 September 2012).

83. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c) of the Convention).

84. Moreover, in the light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this complaint (Article 37 § 1 *in fine*).

85. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, this part of the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

86. In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the complaint of a violation of Article 8 of the Convention as regards family visits.

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

87. The applicant complained under Article 5 § 3 of the Convention that her detention on remand had been excessively lengthy.

Article 5 § 3 of the Convention, in so far as relevant, reads:

> "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

88. The Court notes 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. The parties' submissions

89. The applicant maintained that the length of her pre-trial detention had been excessive and unreasonable. The detention had been extended even after all witnesses had been heard. The authorities had relied mainly on the severity of the possible sentence and disregarded all requests to apply a different preventive measure to secure the applicant's presence at the trial.

90. The Government submitted that in the present case all the criteria for pre-trial detention and its extension had been met. The applicant's detention had been justified by the reasonable suspicion that she had committed the offences with which she had been charged. The proceedings had been particularly complex and conducted diligently. The Government pointed to the fact that the case file consisted of over 15,000 volumes, each of them 200 pages long, and that the value of the losses caused to some 18,000 victims by the operation of the A. company's pyramid scheme was estimated at a total of PLN 850,000,000. The detention of the applicant had been necessary in view of the risk that she might abscond or seek to influence witnesses. Moreover, the nature of the offences with which she had been charged and the severity of the anticipated penalty had justified the entire period of her pre-trial detention.

2. The Court's assessment

91. The applicant's detention on remand started on 15 April 2013, when she was arrested (see paragraph 9 above). On 20 May 2019 the Gdańsk District Court convicted her (see paragraph 19 above). From that date on, the applicant was detained "after conviction by a competent court" within the meaning of Article 5 § 1 (a) and, consequently, the period following that date falls outside the scope of Article 5 § 3 (compare *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

92. Accordingly, the period to be taken into consideration amounted to six years, one month and five days.

93. 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, have been set out in a number of its previous judgments (see, among many other authorities, *Kudła*, cited above,

§§ 110 et seq.; *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references; and more recently *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 84-91, 5 July 2016).

94. In deciding to hold the applicant in detention during the proceedings against her, the authorities relied repeatedly on three principal grounds in addition to the reasonable suspicion against the applicant, namely (1) the serious nature of the offences with which she had been charged; (2) the severity of the penalty to which she was liable; and (3) the need to secure the proper conduct of the proceedings in view of the risk that the applicant might interfere with their course (see paragraph 13 above).

95. The applicant had been charged with several offences related to helping her husband set up and run the A. company, which was a pyramid scheme. Her actions included signing certain deposit contracts for the benefit of the company and being involved in the financial management of companies where she had been chaired of the board of directors (see paragraph 7 above).

96. The Court accepts that the reasonable suspicion that the applicant had committed the above-mentioned serious offences could have warranted her initial arrest. It reiterates that the persistence of a reasonable suspicion that the detainee has committed an offence is a *sine qua non* for the validity of his or her continued detention. But when the national judicial authorities first examine, "promptly" after the arrest, whether to place the arrestee in pre-trial detention, that suspicion no longer suffices, and the authorities must also give other relevant and sufficient grounds to justify the detention. Those other grounds may be a risk of flight, a risk of pressure being brought to bear on witnesses or of evidence being tampered with, a risk of collusion, a risk of reoffending, or a risk of public disorder and the related need to protect the detainee (see *Buzadji*, cited above, §§ 87-88 and 101-102, with further references).

97. According to the authorities, the likelihood of a heavy sentence being imposed on the applicant was a primary ground for her continued detention. 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 gravity of the charges cannot by itself justify long periods of detention on remand (see *Michta v. Poland*, no. 13425/02, § 49, 4 May 2006). Moreover, the risk of pressure being brought to bear on witnesses cannot be based only on the likelihood of a severe penalty, but must be linked to specific facts (see *Buzadji*, cited above, § 224, with further references).

98. In this connection the Court notes that throughout her entire six-year-long pre-trial detention the authorities heavily relied on the risk of the applicant tampering with evidence with reference primarily to the likelihood of a severe penalty. In the period of one year up to 20 July 2016, the courts additionally referred to an incident which allegedly had taken place in 2012, prior to her arrest (see paragraph 14 above). The Court thus concludes that

the alleged risks of the applicant bearing pressure on witnesses or tampering with evidence was not duly reassessed at the later stages of criminal proceedings (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 222, 28 November 2017, with further references).

99. The Court further takes note of the need to secure the proper conduct of the proceedings, especially in view of the volume of evidence and the number of alleged victims. The Court also accepts that the proceedings were of extraordinary complexity; in particular, they involved the necessity of taking evidence from over 18,000 victims and some 400 other witnesses. However, while all the above factors and the reasons relied on by the domestic courts could have warranted even a relatively long period of detention, they did not give the domestic courts the power to prolong the applicant's detention once those factors and reasons, although relevant, could no longer be said to be sufficient.

100. Having regard to the foregoing, even taking into account the fact that the courts were faced with the particularly difficult task of trying a complex case concerning a pyramid scheme, the Court concludes that the overall period of the applicant's detention was excessive since the domestic courts relied on grounds that cannot be regarded as "sufficient" to justify its entire duration.

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

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S BECOMING PREGNANT WHILE DETAINED

102. The applicant complained that she had become pregnant at Łódź Prison in circumstances giving rise to a breach of Article 3 of the Convention, which reads as follows:

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

Admissibility

1. The parties' submissions

103. The Government raised a preliminary objection of non-exhaustion of domestic remedies in that the applicant had failed to report any irregularities in T.R.'s behaviour to the prison authorities or prosecutors. During her detention the applicant had been regularly taken to court hearings and meetings with the prosecutors, to whom she should have complained about T.R. Secondly, the applicant had failed to bring a civil action under Articles 23 and 24 of the Civil Code for infringement of her personal rights with regard to her allegations of abuse and ill-treatment by a prison officer

concerning the circumstances which had led to her becoming pregnant while in detention.

104. In their second set of observations, submitted on 20 November 2020, the Government raised an argument that by its final judgment of 12 March 2019 the domestic court had found the prison officer guilty of two offences under the Criminal Code. The officer had been sentenced to imprisonment suspended on probation, a fine and a prohibition on holding any position in the Prison Service for a period of five years. In the proceedings against T.R., the applicant had been granted the victim status and became auxiliary prosecutor, but she had not appealed against the judgment. The Government emphasised that the above-mentioned conviction by the domestic court constituted an acknowledgment that the applicant's rights had been breached, in that the prison officer had abused his powers and the relationship of dependence to lead the applicant to submit to sexual intercourse resulting in pregnancy. As a result of that conviction, which had not been appealed against, the applicant could not claim to be a victim of a violation of Article 3 of the Convention.

105. The applicant originally complained that she had been treated in an inhuman and degrading manner by the prison officer T.R., which had resulted in her becoming pregnant. She also complained of the ineffectiveness of the investigation into the circumstances of her becoming pregnant in that the prosecutor had not carried out all the necessary actions and had discontinued the investigation on 16 December 2015. Her allegations against the prison officer had been serious and could have been proved easily as she had agreed to the DNA testing of her son and named the officer with whom she became pregnant. She had also described to the prosecutor on 28 September 2016 how the officer T.R. had abused her dependency, poor mental state and isolation, which had led her to submit to sexual acts with him.

106. In her second set of observations, submitted on 6 November 2020, the applicant stated that if it had not been for her determination and that of her lawyer, the officer would not have been punished for his acts. She referred to the final conviction of T.R. in the criminal proceedings which had ended on 12 March 2019. She failed to expressly indicate whether in the light of his conviction she sustained her allegations under Article 3 of the Convention. Nor did she reiterate the original complaint that the investigation into the circumstances of her becoming pregnant while detained had not been effective.

2. The Court's assessment

107. The Court reiterates that it falls firstly to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her

of the status of "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, §§ 115-19, ECHR 2010, with further references). In cases of wilful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation to the applicant is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (ibid., § 116).

108. As regards the requirement of a thorough and effective investigation, the Court notes that the applicant made serious allegations of having suffered abuse while detained in Łódź Prison. A prison officer, her supervisor, sustained a sexual relationship with her for many months which led to her becoming pregnant. The domestic authorities opened an investigation promptly, on 13 March 2015. While initially the prosecutor discontinued the proceedings on 16 December 2015, they were resumed on 9 August 2016 after the applicant appealed. Officer T.R. was indicted on 27 September 2018 and convicted by the Łódź District Court on 12 March 2019. The court found him guilty of the offence of abuse of power in breach of Article 231 § 1 of the Criminal Code and of sexual abuse in the context of a relationship of dependence, proscribed by Article 199 § 1 of the Criminal Code. Officer T.R. was convicted and sentenced to a suspended term of imprisonment, a fine and a prohibition on holding a position in the Prison Service for a period of five years (see paragraph 41 above). The applicant actively participated in the proceedings and became an auxiliary prosecutor, but she decided not to appeal against the judgment of the Łódź District Court. The Court thus concludes that the applicant considered that the domestic court had submitted the case to careful scrutiny and had not imposed an excessively light punishment.

109. In analysing the authorities' response to the applicant's allegations, the Court will need to consider any other remedies provided for in law which could have constituted legal means capable of establishing the facts, holding those at fault accountable and providing appropriate redress to the victim (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 169, 25 June 2019). Accordingly, the Court takes note of several sets of disciplinary proceedings which were initiated swiftly after the events in question. They ended in disciplinary punishments being imposed on officer T.R., as well as on six other prison officers of various ranks (see paragraphs 43-47 above).

110. Regard being had to the above, the Court considers that the State has discharged the procedural obligation under Article 3 of the Convention to conduct an effective investigation (see *Murdalovy v. Russia*, no. 51933/08, § 91, 31 March 2020).

111. The Court lastly notes that it was open to the applicant to seek compensation from officer T.R. or the State Treasury, in particular, under Article 23 in conjunction with Article 24 § 1 of the Civil Code (see paragraph 74 above). The civil proceedings, if successful, could have led to the award of appropriate redress (see, *mutatis mutandis*, *Kornicka-Ziobro v. Poland*, no. 23037/16, § 82, 20 October 2022). The applicant did not provide any information as to why she had never sought compensation for a breach of her personal rights in connection with the ill-treatment complained of.

112. In view of its findings above, the Court upholds the Government's plea in respect of the applicant's loss of victim status. This part of the application is therefore incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

113. Lastly, the applicant complained under Articles 3 and 8 of the Convention about prenatal and postnatal care received by her and her baby at the detention centre. She complained in general that during her stay with the baby in the Grudziądz Mother and Child Unit she had had to follow many rules on pain of disciplinary sanctions.

The applicant also complained that she had been offered inadequate assistance to care for her son during the hearings in 2016 and 2017 and that having to leave her child during her lengthy absences at the trial hearings had caused her anguish and fear for her child's well-being.

114. The Government submitted that the applicant had not exhausted domestic remedies in connection with the complaints pertaining to the conditions of her prenatal care and subsequent detention with the child. In particular, she had not complained to the prison governor or lodged a civil claim for compensation during her detention or after her release. The Government provided detailed information on the organisation and equipment of the special unit for mothers and children at Grudziądz Prison (see paragraph 54 above). They argued that those conditions were very good and satisfied all the needs of mothers with small children. Moreover, several arrangements had been put in place enabling the applicant's attendance at the hearings and the child had stayed at the detention facility for mothers under the care of a nurse; other options offered to the applicant included releasing the child to the care of the applicant's mother or enabling the participation of the applicant in hearings by video link.

115. The Court takes note of the Government's description of the conditions in the Mother and Child Unit of Grudziądz Prison. It considers that the applicant did not raise any particular allegation with respect to the care provided by the prison authorities during her pregnancy or afterwards and did not substantiate her complaints under the Convention. Furthermore, the applicant failed to bring any complaints pertaining to the prenatal and postnatal care of her and her child to the attention of the domestic authorities.

116. 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 is therefore not necessary to deal with the Government's objection on non-exhaustion of domestic remedies.

117. Accordingly, the remainder of the application 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

118. 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

119. The applicant claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

120. The Government contested the claims and considered them excessive.

121. The Court awards the applicant EUR 6,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

122. The applicant did not make any claim for the costs and expenses incurred before the domestic courts or before the Court. There is therefore no call to award any sum under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Takes note* of the terms of the respondent Government's unilateral declaration in respect of the complaint under Article 8 of the Convention

regarding family visits and of the modalities for ensuring compliance with the undertakings referred to therein;

2. *Decides* to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

3. *Declares* the complaint under Article 5 § 3 of the Convention concerning the length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

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 6,500 (six thousand five hundred euros), 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, in respect of non-pecuniary damage;
   (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 26 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President