

Cases C-354/20 ppu (L) and C-412/20 ppu (P)



Case Facts

A French applicant, married to a Polish moved to France from Poland in 2001. An administrator filed a case against the applicant for slander, the summons of which received no response. This led to the Court ordering the applicant be remanded into custody with a wanted notice to locate & detain him. After the applicant and his family went on holiday in Poland, he was arrested and detained during a routine passport check by the return journey. A request for an interpreter from the French embassy, and a lawyer was refused.

Once the court confirmed his place of residence (permanent residence in France) and that the summons were sent to the wrong addresses (his wife's address and a wrong address where the applicant never lived), questions were raised on the following:

Applicant had not known about the criminal proceedings

Applicant had not been served with the private bill of indictment

Applicant was not informed of his rights & obligations as accused

There was no reasonable ground for slander



Regardless, if slander was found to be the case, the offence only carried a fine but not a custodial sentence

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Court Assessment

Article 5 of the Convention guarantees the fundamental right to liberty and security [...] All persons are entitled to the protection of that right, that is to say, not to be deprived, or to continue to be deprived, of their liberty. Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness, as it is a fundamental principle that no detention that is arbitrary can be compatible with Article 5 § 1...

»» Was the detention lawful?

»» Does the detention comply with a procedure prescribed by [national] law?

»» Did the detention meet the proportionality requirements?

Recourse to alternative measures than detention

Para. 56 of *Ladent v. Poland*

...the domestic authorities should always **consider the application of other, less stringent, measures than detention**. In the instant case the Kraków–Śródmieście District Court do not appear to have given consideration to any preventive measures other than detention. Thus, the Court finds that the detention order imposed on the applicant in these circumstances could not be considered a proportionate measure to achieve the stated aim of securing the proper conduct of criminal proceedings, having regard in particular to the petty nature of the offence which he was alleged to have committed (see, *mutatis mutandis*, *Ambruszkiewicz*, cited above, § 32).



While Article 2(2) of ESO Framework Decision makes it clear that it does not create a right to the use of supervision in lieu of detention, courts are however required to have regard to the possibility of using an ESO.

In the case above, the Court describes detention must embody a ‘proportionality requirement’ as enshrined in Article 5 § 1 (c) of the Convention to consider whether the applicant’s detention on remand was strictly necessary to ensure his presence at the trial and whether other less stringent measures could have been sufficient for that purpose



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