



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

FOURTH SECTION

CASE OF KNYTER v. POLAND

(Application no. 31820/06)

JUDGMENT

STRASBOURG

1 February 2011

FINAL

01/05/2011

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

In the case of Knyter v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 11 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 31820/06) 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 Albert Knyter (“the applicant”), on 26 July 2006.

2. The applicant was represented by Ms A. Pietraś, a lawyer practising in Gdynia. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his detention had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 12 December 2007 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1974 and lives in Gdańsk.

A. The applicant's pre-trial detention and conditions in the detention centre

6. The applicant was arrested on 4 June 2004.

7. On 5 June 2004 the Kartuzy District Court (*Sąd Rejonowy*) ordered that the applicant be detained until 4 September 2004 in order to secure the proper conduct of the proceedings and in view of the reasonable suspicion that he and other co-accused had committed the crime of harassment, deprivation of liberty and homicide.

8. The applicant's detention was repeatedly extended by several decisions of the Kartuzy District Court, the Gdańsk Regional Court (*Sąd Okręgowy*) and subsequently the Gdańsk Court of Appeal (*Sąd Apelacyjny*). The applicant's appeals were unsuccessful. In their decisions, the courts relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged, on the serious nature of the offence and on the complexity of the case.

9. The applicant lodged three applications for release and for the preventive measure to be varied. On 14 October, 3 November and 3 December 2004 the Kartuzy District Prosecutor (*Prokurator Rejonowy*) refused to vary the preventive measure, relying on a reasonable suspicion that the applicant would obstruct the proper course of the proceedings.

10. On 15 February 2005 a bill of indictment was lodged with the Gdańsk Regional Court. The applicant was charged with homicide, among other charges. The bill of indictment concerned four co-accused all of whom had been remanded in custody.

11. On 27 April 2006 the Regional Court made an application under Article 263 § 4 of the Code of Criminal Procedure to the Gdańsk Court of Appeal for the applicant's detention to be extended until 31 July 2006, because the statutory two-year time-limit on detention pending trial would soon be exceeded (Article 263 § 3 of the Code of Criminal Procedure). It emphasised that the grounds originally given for his detention were still valid and that the court was not able to proceed with the hearing of evidence, for reasons beyond its control.

12. On 4 May 2006 the Court of Appeal granted the Regional Court's application. The court relied on a strong suspicion that the applicant had committed the offences in question, which was supported by evidence from witnesses and experts. It attached importance to the seriousness of those offences and the likelihood of a severe sentence of imprisonment being imposed on the applicant. The court emphasised, however, that the trial court should take all necessary measures to organise the proceedings in a diligent manner so as to terminate the trial by 31 July 2006.

13. On 28 June 2006 the Gdańsk Court of Appeal extended the applicant's detention until 30 September 2006. The court again relied on a strong suspicion that the applicant had committed the offences in question.

It additionally considered that the need to carry out further evidence justified the extension of the applicant's detention.

14. The applicant's lawyer appealed against this decision.

15. On 12 July 2006 the Gdańsk Court of Appeal upheld the challenged decision, basically repeating the reasons given previously.

16. On 26 September 2006 the Gdańsk Court of Appeal again extended the applicant's detention, until 15 November 2006. The Court relied on the same grounds as in its decision of 28 June 2006.

17. The applicant appealed.

18. On 11 October 2006 the Gdańsk Court of Appeal upheld the challenged decision. The Court did not rely on any new arguments; it admitted that the applicant's detention had been very lengthy, because it had been imposed on him on 4 June 2004. However, it found that, taking into consideration the likelihood of a severe sentence of imprisonment, the length of detention "remained in proportional relation" to the possible penalty.

19. On 8 November 2006 the Gdańsk Court of Appeal extended the applicant's detention until 20 December 2006. No new grounds justifying the detention were invoked.

20. On 14 December 2006 the Gdańsk Court of Appeal extended the applicant's detention until 31 January 2007. The Court of Appeal granted the Regional Court's request, which stated that the detention should be extended because the trial could not be terminated due to the illness of one of the judges. The Court of Appeal considered that the trial was "in its final phase". It did not, however, rely on any new grounds justifying the extended detention. It only repeated the argument which had been used before, namely that the severity of the sentence faced by the applicant created in itself a risk that he might tamper with evidence or otherwise obstruct the proceedings.

21. On 30 January 2007 the Gdańsk Regional Court sentenced the applicant to six years' imprisonment. He was found guilty of false imprisonment, ill-treatment and unintentionally causing the death of a human being.

22. The applicant, the other co-accused and the prosecutor lodged appeals against the first-instance judgment.

23. On 18 September 2007 the Gdańsk Court of Appeal extended the applicant's detention until 31 December 2007 "taking into account that the appellate proceedings were still pending".

24. On 4 October 2007 the Gdańsk Court of Appeal quashed the first-instance judgment and remitted the case to the Gdańsk Regional Court.

25. On 8 October 2008 the Gdańsk Court of Appeal, having examined the applicant's appeal against further extension of his detention ordered by the Gdańsk Regional Court's decision of 26 September 2008, released the applicant from detention. The Court of Appeal considered that after such a

long period of detention the Regional Court should have demonstrated the existence of grounds of detention other than those on which the courts had relied previously, supported by particular circumstances justifying their existence. In the Court of Appeal's view, the Regional Court had failed to do so.

26. The criminal proceedings against the applicant are still pending.

B. Conditions of the applicant's detention

27. The applicant submitted that during the whole period of his detention the cells allocated to him were designed for four but were shared by six prisoners. The applicant was detained in at least four detention centres, in Ustka, Słupsk, Gdańsk and Stargard Szczeciński.

28. The Government submitted information only as regards the applicant's detention in the Gdańsk Detention Centre. The applicant was detained there from 3 March 2005 to 16 February 2007, from 7 to 13 September 2007, and from 19 October 2007 to 8 October 2008, when he was released. As regards these periods it was confirmed by the Government that the area of the cells in which the applicant was detained remained consistently below three square metres.

C. Restrictions on the applicant's personal contact with his family

29. On 27 July 2005 and 19 September 2006 the Gdańsk Regional Court refused to allow the applicant's family to visit him in person (*widzenie przy stoliku*).

30. By a letter from the court of 7 June 2006 the applicant was informed that personal contact with his family would be allowed "on the same basis as before", that is, "on the phone".

31. At the initial stage of detention, on 7 March, 11 April and 5 May 2005, the applicant was allowed to talk to his wife on the phone. Subsequently, on 6 June and 5 July 2005 he was allowed visits from his wife. On 22 August 2005 his brother and mother visited him. Later, the applicant's wife visited him on numerous occasions: in 2005 on 3 October, 9 November and 19 December, and in 2006 on 14 March, 11 April, 3 May, 8 June, 10 July, 8 August, 5 September, 5 October and 6 November. On several occasions the applicant's wife visited him with his mother. His mother visited him on at least six other occasions. In October and December 2007 and in February 2008 the applicant was also visited by his brother and cousins.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. A detailed description of the relevant domestic law and practice concerning general rules governing conditions of detention in Poland and domestic remedies available to detainees alleging that conditions of their detention are 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 decision given by the Court in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

33. The relevant domestic law and practice concerning the imposition of detention on remand, (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other “preventive measures” (*środki zapobiegawcze*) are stated in the Court's judgments in the cases of *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

34. The relevant domestic law and practice concerning visits by detainees' families to detention centres are described in the Court's judgment in *Mazgaj v. Poland*, no. 41656/02, §§ 33-36, 21 September 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant alleged a breach of Article 3 of the Convention in that he had been detained in overcrowded cells and that the State had failed to secure adequate living conditions for him throughout his detention. He maintained that during the whole period of his detention the cells allocated to him were designed for four but were shared by six prisoners.

Article 3 of the Convention provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The Government's objection on exhaustion of domestic remedies

Article 35 § 1 of the Convention reads, in so far as relevant, as follows:

“1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...”

36. The Government first submitted that the applicant had been detained in the Gdańsk Detention Centre from 3 March 2005 until 16 February 2007, from 7 to 13 September 2007, and from 19 October 2007 until 8 October 2008, when he was released. As regards these periods it was confirmed by the Government that the applicant had been detained in cells in which the statutory minimum size of three square metres had not been respected. The Government did not however submit any information as regards conditions in the detention centres in which the applicant had been detained outside the above-mentioned periods.

37. The Government argued that the applicant had not exhausted domestic remedies available to him, as required by Article 35 § 1 of the Convention. They raised a preliminary objection similar to that relied on in the case of *Latak v. Poland* (cited above, §§ 63-64). In particular, the applicant should bring a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code in order to seek compensation for the alleged violation.

38. 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.

B. The applicant's position

39. The applicant's lawyer did not submit any comments on this matter.

C. The Court's conclusion

40. The Court has already examined the same objection raised by the Government in the above mentioned case of *Latak 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 cases. (see *Latak*, cited above, §§ 71-85).

41. In so doing, the Court had regard to the fact that on the date of the adoption of its decision there were 271 cases pending before it where the applicants had raised complaints similar in substance, alleging a violation of Article 3 in that at various times and for various periods they had been adversely affected by the same structural problem, having been detained in overcrowded, insanitary cells (*ibid.* § 84).

42. 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).

43. In the present case the situation giving rise to the alleged violation of Article 3 ended on 8 October 2008 the date on which the applicant was released. That being so and having regard to the fact that he still has adequate time to prepare and lodge with the Polish civil courts an action under Article 24 taken in conjunction with Article 448 of the Civil Code, he should, before having his Convention claim examined by the Court, be required to seek redress at domestic level.

44. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

45. The applicant complained that the length of his detention had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, 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.”

46. The Government contested that argument.

A. Admissibility

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

B. Merits

1. Period to be taken into consideration

48. The applicant's detention started on 4 June 2004, when he was arrested on suspicion of, *inter alia*, homicide. On 30 January 2007 the Gdańsk Regional Court convicted him of false imprisonment, ill-treatment and unintentionally causing the death of a human being. As from that date he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a) and consequently that period of his detention falls outside the scope of Article 5 § 3 (see for comparison *Kudła v. Poland* [GC], no. 30210/96, § 104 et seq., ECHR 2000-XI).

49. On 4 October 2007 the Gdańsk Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 8 October 2008 when the applicant was released.

Accordingly, the period to be taken into consideration amounts to three years, eight months and two days.

2. The parties' submissions

(a) The applicant

50. The applicant's lawyer submitted in general terms that the complaint under Article 5 § 3 of the Convention was justified.

(b) The Government

51. The Government considered that the applicant's detention satisfied the requirements of Article 5 § 3. They submitted that the detention had been duly justified and that during the entire period the authorities had given relevant and sufficient reasons for extending it. The Government further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case.

3. The Court's assessment

(a) General principles

52. 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-..., with further references).

(b) Application of the above principles in the present case

53. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he was liable; (3) the need to secure the proper conduct of the proceedings and the risk that the applicant might tamper with evidence. As regards the latter, they did not, however, give any specific grounds for their opinion. (see paragraphs 9 and 20 above).

54. The Court accepts that the reasonable suspicion against the applicant of having committed offences could initially warrant his detention. Also, the need to obtain voluminous evidence and to determine the degree of alleged

responsibility of each of the defendants, against whom numerous charges of serious offences had been laid, constituted valid grounds for the applicant's initial detention.

55. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts, namely, the severity of the anticipated sentence and the risk that the applicant would tamper with evidence, were “relevant” and “sufficient” (see *Kudła*, cited above, § 111).

56. According to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant would obstruct the proceedings. 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 seriousness of the charges cannot of itself justify long periods of detention (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

57. The Court is not persuaded by the Government's argument that the risk that the applicant might tamper with evidence constituted a valid ground for the entire length of the applicant's detention during the judicial proceedings. The domestic courts did not give any indications as to why they believed that the applicant might obstruct the proceedings if released. The Court cannot therefore accept that ground as a justification for holding the applicant in custody for the entire period.

58. The Court also considers that, since the term of detention in the present case had been very lengthy (three years and eight months), it must be thoroughly and duly justified by the domestic authorities, both from a substantive point of view (the existence of reasons justifying keeping the applicant in detention) and from a formal point of view (a proper formulation and justification of the courts' decisions).

59. For the Court a failure on the part of the domestic authorities to fulfil the formal requirements for decisions extending detention precludes any substantive examination of the justification for continuing detention and is *per se* sufficient for finding a violation of Article 5 § 3 (see, *mutatis mutandis*, *Kubik v. Poland*, no. 12848/03, § 62, 29 January 2008, and *Janulis v. Poland*, no. 20251/04, §§38-40, 4 November 2008).

60. A failure to fulfil formal requirements may, in particular, consist in (1) simply repeating reasons for detention contained in the Code of Criminal Procedure, without explaining how they apply in a given case or (2) simply repeating reasons given in the initial phase of detention, without explaining in further decisions why continuing detention is indispensable.

61. The Court notes that the reasons relied upon by the domestic courts in their decisions to extend the applicant's detention were limited to paraphrasing the reasons for detention set out in the Code of Criminal Procedure, without explaining how they applied in the applicant's case (see paragraphs 15 and 16 above). The Gdańsk Court of Appeal, when

extending the applicant's detention beyond the statutory two-year time-limit, merely repeated the wording of the decisions previously given (see paragraph 11 above).

62. The Court would add that at no stage of the proceedings was any consideration given to the possibility of imposing on the applicant alternative, less severe, preventive measures. In this connection, the Court would reiterate that Article 5 § 3 of the Convention not only lays down the right to “trial within a reasonable time or release pending trial” but also provides that “release may be conditioned by guarantees to appear for trial” (see *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

63. The justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Kubik v. Poland*, § 64, cited above). In this case, the Court finds that the grounds given by the domestic authorities, in the absence of any proper reasoning, cannot be considered “relevant” and “sufficient” to justify the applicant's being kept in detention for nearly two years.

64. Having regard to the foregoing, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention. In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

65. The Court would point out in this connection that in its *Kauczor v. Poland* judgment it found that numerous cases have demonstrated that the excessive length of pre-trial detention in Poland revealed a structural problem consisting of “a practice that is incompatible with the Convention” (see *Kauczor v. Poland*, no. 45219/06, §§ 55-62, 3 February 2009).

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

66. The applicant further complained of the excessive length of the criminal proceedings against him. He relied on Article 6 § 1 of the Convention.

67. The Court notes that the applicant was and still is authorised because the relevant proceedings are pending - to lodge a complaint under section 5 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”). The applicant did not make use of that remedy. It follows that the complaint must be rejected for non-exhaustion of domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

68. The applicant also alleged a violation of Article 6 § 2 of the Convention, which reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

69. The Court, having examined all the material submitted to it, finds nothing in the case file that would justify the applicant's allegations as regards the alleged breach of Article 6 § 2 of the Convention. In any event, the criminal proceedings are still pending and for this reason the complaint is premature. It follows that this complaint is inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

70. The applicant further complained that his right to see members of his family during his detention had been restricted. He relied on Article 8 of the Convention.

“1. Everyone has the right to respect for his private and 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 of the complaint concerning the refusal of 27 July 2005

71. The Court notes that the present application was lodged with the Court on 26 July 2006. The refusal complained of took place on 27 July 2005. It follows that this part of the applicant's complaint is inadmissible as it was lodged after the expiry of the six-month time limit. For that reason it must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. The parties' submissions regarding the refusal of 19 September 2006

72. In their observations the Government submitted that during the period of the applicant's detention he had been allowed to see members of his family throughout the whole period of his detention. The Government produced documents to support their submissions as well as a detailed list of

dates and family members who had been allowed to visit the applicant in detention centres (see paragraph 31 above). They also confirmed that on 19 September 2006, the Regional Court had refused to allow the applicant's family to visit him.

73. In her observations, the applicant's lawyer did not comment on the Government's submissions.

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

C. The Court's assessment

1. General principles

75. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him to, or, if need be, assist him in, maintaining contact with his close family (see, *mutatis mutandis*, *Messina v. Italy* (no. 2) no. 25498/94, § 61, 28 September 2000).

76. Such restrictions as limitations on the number of family visits, supervision of those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special arrangements for visits, constitute an interference with his rights under Article 8 but are not of themselves in breach of that provision (*ibid.* §§ 62-63; see also *Kucera v. Slovakia*, no. 48666/99, §§ 127-128, 17 July 2007).

77. The Court reiterates that any interference with an individual's right to respect for his private and family life will constitute a breach of Article 8, unless it was “in accordance with the law”, pursued a legitimate aim or aims under paragraph 2, and was “necessary in a democratic society” in the sense that it was proportionate to the aims sought to be achieved (see *D.G. v. Ireland*, no. 39474/98, § 104, 16 May 2002). A measure will be in accordance with the law if it satisfies three conditions. First, it must have some basis in domestic law. Second, the law must be adequately accessible: the citizen must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to a given case. Finally, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Onoufriou v. Cyprus*, no. 24407/04, § 93, 7 January 2010).

2. *Application of the above principles to the instant case*

(a) **Existence of interference**

78. The Court notes that on 19 September 2006, the Gdańsk Regional Court refused to allow the applicant personal contact with his family. No reasons were given for the refusal.

79. The Court also notes that the Government have preferred not to submit any comments on the refusal. In particular, the Government did not dispute that the restrictions on the applicant's personal contact with his family constituted an “interference” with his right to respect for his family life. The Court sees no reason to hold otherwise.

(b) **Whether the interference was “in accordance with the law”**

80. 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 of visiting rights was merited in a particular case and what factors might be relevant to that decision. It did not provide for the right to appeal against the refusal of visits and did not require the authorities to provide the persons concerned with reasons for their decision. The decision was thus left to the authorities' absolute discretion.

81. In this respect the Court notes that on 2 July 2009 the Constitutional Court declared Article 217 § 1 of the Code of Execution of Criminal Sentences unconstitutional (see, in this connection *Wegera v. Poland*, no. 141/07, §§ 29-41, 19 January 2010).

82. The Court further observes that it has already held 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 (see *Wegera*, cited above, §§ 74-75). It also found that the unreasoned refusal of family visits in detention was not in accordance with the law (see *Gradek v. Poland*, no. 39631/06, § 48, 8 June 2010).

83. In the present case the reasoning for the refusal was not given. Therefore the Court concludes that the refusal of the family visit on 19 September 2006 in the applicant's case was not in accordance with the law. There has accordingly been a violation of Article 8 § 1 of the Convention. On that account it is not necessary to ascertain whether the other conditions imposed by Article 8 § 2 have been complied with.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 200,000 euros (EUR) in respect of pecuniary and non-pecuniary damage and costs and expenses.

86. The Government considered the claim excessive.

87. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

88. The applicant's lawyer's claim for EUR 200,000 concerned also the costs and expenses (see paragraph 85 above). She did not specify, however, what part of her claim referred to the costs. Nor did she submit any information as to whether the claim concerned the costs incurred before the domestic courts or before the Court. She produced six invoices issued by other lawyers; none of them related to the proceedings before the Court. As regards the costs of her representation before the Court, no document was submitted.

89. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

90. The Court considers it appropriate that the default interest 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 complaint concerning Article 5 § 3 of the Convention and the complaint concerning Article 8 of the Convention as regards the refusal of the family visit on 19 September 2006 admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention as regards the refusal of family visit on 19 September 2006;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable on the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President