



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

FOURTH SECTION

CASE OF LESIAK v. POLAND

(Application no. 19218/07)

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 Lesiak 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. 19218/07) 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 Zofia Lesiak (“the applicant”), on 23 April 2007.

2. The applicant was represented by Mr L. Wójcik, a lawyer practising in Opole. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that the length of her detention pending trial had been excessive.

4. On 19 November 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Criminal proceedings against the applicant

5. The applicant was born in 1964 and lives in Zabrze.

6. On 27 April 2006 the applicant was remanded in custody by an order of the Katowice District Court on suspicion of having committed money laundering while acting in an organised criminal gang.

7. The applicant appealed. On 31 May 2006 the Katowice Regional Court upheld the decision to remand her in custody.

8. Shortly after her arrival in Lubliniec Detention Centre, the applicant was examined by the prison doctor. She informed him that she did not suffer from any illnesses and that she was not taking any special medication.

9. On 2 June 2006 the applicant complained to the prison doctor of pain in the chest area. The doctor diagnosed vegetative neurosis and prescribed the appropriate medication.

10. On 24 July 2006 the Katowice District Court extended the applicant's detention, referring to the need to conduct further investigations. This decision was upheld by the Regional Court on 30 August 2006.

11. On 28 July 2006 the applicant again complained of chest pain and was placed under observation. On 1, 13 and 20 September 2006 she reported the same symptoms and was prescribed medication.

12. On 11 September 2006 the District Court again extended the applicant's detention. It referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant. It also relied on the risk that the applicant might tamper with evidence, given the nature of the charges against her and the fact that she had acted in concert with the co-accused. This decision was upheld by the Katowice Regional Court on 11 October 2006.

13. The applicant submits that in September 2006 she discovered a lump in her breast during a self-examination. She informed the prison doctor on 27 October 2006. The prison doctor confirmed that there was a lump in the applicant's left breast and sent her to the Breast Disease Clinic in Zabrze. During the consultation, which took place on 12 December 2006, a doctor confirmed the existence of the lump and ordered that she undergo a mammography.

14. The applicant's detention was subsequently extended on 7 December 2006. The District Court referred to the reasons previously given.

15. The mammography was performed on 11 January 2007.

16. On 16 January 2007 the Katowice Regional Prosecutor refused the applicant's motion for a change of the preventive measure. He considered that according to a cardiologist's opinion the applicant could be kept in detention pending trial. He also stressed that an expert oncologist had been asked to prepare an opinion on the applicant's state of health.

17. The applicant subsequently again asked for a change of the preventive measure. On 7 February 2007 the prosecutor considered that since he had not yet received the expert oncologist's opinion he could not decide on the applicant's release. However, he stressed that, according to the

information provided by the expert, the applicant could, if necessary, be operated on in the surgical ward of the prison hospital.

18. The expert oncologist submitted his opinion on 16 February 2007. He stated that the lump should be removed and sent for a histopathological examination. He confirmed that the operation could be performed in the surgical ward of the prison hospital. Referring to the opinion, on 27 February 2007 the prosecutor dismissed the applicant's motion for a change of the preventive measure.

19. On 1 March 2007 the District Court extended the applicant's detention, referring to the reasons previously given.

20. On 15 March 2007 the applicant underwent surgery in the prison hospital. She had the lump removed from her breast.

21. The applicant's detention was subsequently extended on 25 April 2007, 25 July 2007 and 3 August 2007. The applicant's appeals against those decisions were dismissed.

22. Meanwhile, on 9 July 2007 the prosecutor considered that there was no reason for the applicant to be released and that she could be treated in the prison hospital.

23. On 26 July 2007 an act of indictment was filed with the Katowice Regional Court. The applicant was charged with money laundering committed while acting in an organised criminal gang. The indictment concerned fifteen co-accused.

24. On 23 November 2007 the Katowice Regional Court ordered the applicant's release on bail (20,000 Polish zlotys). The court held that keeping the applicant in custody was no longer necessary to ensure the proper course of the proceedings.

25. It would appear that the criminal proceedings against the applicant are pending.

B. Monitoring of the applicant's correspondence

26. At the time of lodging her application with the Court the applicant had been detained in the course of criminal proceedings against her.

27. On 3 May 2007 the Registry of the Court received the applicant's first letter, an application form dated 20 April 2007. The envelope bears a handwritten note reading "censored on 25 April 2007" (*ocenzurowano*) and an illegible signature. It also bears a stamp reading "Lubliniec prison" (*Zakład Karny w Lublińcu*).

C. Circumstances relating to the applicant's contact with her family

28. On 30 August 2006 the Katowice Regional Prosecutor informed the applicant that her family could visit her every three weeks.

29. On 19 March 2007 the applicant was again informed by the Katowice Regional Prosecutor that her children could visit her every three weeks.

30. During the investigation, and subsequently once the trial had started, the applicant's children visited the applicant on average every three weeks.

II. RELEVANT DOMESTIC LAW AND PRACTICE

31. The relevant domestic law and practice concerning the imposition of pre-trial detention (*tymczasowe aresztowanie*), the grounds for its extension, release from detention and rules governing other “preventive measures” (*środki zapobiegawcze*) are set out 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 May 2006).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that the medical care provided to her in detention was inadequate and that her health had deteriorated. She invoked Article 3 of the Convention, which reads as follows:

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

33. The Government contested that argument.

34. The Government submitted a preliminary objection, claiming that the applicant had failed to exhaust the domestic remedies available to her. In particular, they submitted that the applicant could have, but had not, made use of the remedies of a compensatory nature governed by the provisions of Articles 23 and 24 of the Civil Code, in conjunction with Article 445 or Article 448 of the Civil Code, in order to bring an action for compensation for the alleged damage to her health sustained as a result of the inadequate conditions of her detention.

35. The Government further maintained that the evidence gathered did not indicate that the applicant had suffered inhuman or degrading treatment throughout the period of her detention. They stressed that the medical opinions did not indicate that the applicant suffered from any serious health problems that required hospitalisation outside the prison hospital. In their opinion, the quality of medical care within the penitentiary system was similar to non-prison medical care. Lastly, they noted that the consultation at the Breast Disease Clinic took place on 12 December 2006 and the

mammography was performed on 11 January 2007, that is, only one month later.

36. The Government concluded that the applicant had received appropriate treatment given her state of health throughout the entire period of her detention. Furthermore, her state of health had been carefully monitored by the authorities.

37. The applicant argued that she had received sporadic and unclear diagnosis from a prison doctor specialising in orthopaedics. In reply to her repeated complaints about chest pain, she had been placed under observation and prescribed medication by the same doctor. Subsequently, after the prison doctor had confirmed the presence of a lump in her breast on 27 October 2006 she was sent for a consultation in the Breast Disease Clinic on 12 December 2006. The mammography had been performed on 11 January 2007, that is, four months after the discovery of the lump.

38. The applicant concluded that throughout her detention she had not been treated by a specialist in the relevant medical field. She had not been able to choose the method of treatment and her complaints relating to her health had often been dismissed.

39. As regards the Government's preliminary objection as to the exhaustion of domestic remedies, the Court does not find it necessary to examine it, as the present complaint is in any event inadmissible for the following reasons.

40. The Court firstly reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-IV, § 52).

41. The Court reiterates that although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example, by providing them with the requisite medical assistance (*Mouisel v. France*, no. 67263/01, § 40, ECHR 2002 IX, and *Jalloh v. Germany* [GC], no. 54810/00, § 69, ECHR 2006-IX).

42. The Court observes that there are three particular elements to be considered in relation to the compatibility of an applicant's health with his or her stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of his or her the state of health (see *Mouisel*, *ibid.*, §§ 40-42; *Melnik v. Ukraine*, no. 72286/01, § 94, 28 March 2006; and *Rivière v. France*, no. 33834/03, § 63, 11 July 2006).

43. Turning to the facts of the present case the Court observes that it is undisputed that the applicant informed the prison doctor about the lump in her breast on 27 October 2006. The applicant had a consultation in a specialised clinic on 12 December 2006 (see paragraph 13 above). The mammography examination was performed on 11 January 2007 and on 15 March 2007 the applicant underwent surgery in the prison hospital (see paragraphs 15 and 20 above). In this respect, the Court reiterates that the Convention does not guarantee a right to receive medical care which would exceed the standard level of health care available to the population generally (see *Nitecki v. Poland* (dec.), no. 65653/01, 21 March 2002).

44. Contrary to the case of *Kaprykowski* (see *Kaprykowski v. Poland*, no. 23052/05, § 72, 3 February 2009) where the medical experts were of the opinion that the penitentiary system could not offer the applicant the necessary treatment, in the present case the applicant was examined on several occasions by experts who confirmed that the treatment provided to her in prison was adequate and sufficient (see paragraphs 16 and 18 above).

45. The Court cannot conclude that the national authorities did not ensure proper medical supervision of the applicant's health. The Court notes that the applicant failed to explain in a convincing manner why she considered that the medical treatment she received was inadequate or in any other way in breach of the guarantees provided for in Article 3 of the Convention.

46. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

47. The applicant complained that the length of her pre-trial detention had been excessive. She relied on Article 5 § 3 of the Convention, which, in its relevant part, 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.”

48. The Government contested that argument.

A. Admissibility

49. The Government argued that the applicant had failed to exhaust the remedies provided for by Polish law as regards her complaint under Article 5 § 3 of the Convention in that she should have lodged a constitutional complaint with the Constitutional Court.

50. The applicant disagreed with the Government's submissions.

51. The Court reiterates that it is well established in its case-law that an applicant must make normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Yaşa v. Turkey* judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 71).

52. In the present case the applicant lodged requests for the detention order to be lifted or for a more lenient preventive measure to be imposed. The Court considers that the purpose of the remedies used by the applicant was to obtain a review of her detention pending trial. In the circumstances of the case, these remedies constituted adequate and effective remedies within the meaning of Article 35 of the Convention, as their aim was to obtain her release (see *Duda v. Poland*, no. 67016/01, § 29, 19 December 2006).

53. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in previous cases against Poland (see, for example, *Feliński v. Poland*, no. 31116/03, § 40, 7 July 2009) and that the Government have not referred to any new circumstances which would lead the Court to depart from that finding.

54. Moreover, according to the established case-law, having exhausted the available remedy, the applicant was not required to embark on another attempt to obtain redress by bringing a constitutional complaint (see, for example, *Cichla v. Poland* no. 18036/03, § 26, 10 October 2006).

55. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

56. The period to be taken into consideration began on 26 April 2006 and ended on 23 November 2007; it accordingly lasted 1 year and nearly 7 months.

2. The parties' submissions

57. The applicant submitted that her detention had been exceedingly long. She further stressed that the investigation in her case had amounted to an analysis of documents and her release would have had no influence on its course. In addition, there was no indication that the applicant had attempted to obstruct the proper course of the proceedings in any way. Lastly, the

charges against her had been based on the testimony of only one of the co-accused.

58. The Government maintained that in the present case all the criteria for the application and extension of pre-trial detention had been met.

3. *The Court's assessment*

59. 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 stated in a number of the Court's previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 *et seq*, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

60. In their decisions on the applicant's detention, the authorities, in addition to the existence of a reasonable suspicion against the applicant, relied principally on three grounds, namely, the severity of the penalty to which she was liable, the need to secure the proper conduct of the proceedings and the risk that the applicant might tamper with evidence.

61. The applicant was charged with money laundering committed in an organised criminal gang (see paragraph 6 above). In the Court's view, the fact that the case concerned a member of such a criminal group should be taken into account in assessing compliance with Article 5 § 3 (see *Bqk v. Poland*, no. 7870/04, § 57, 16 January 2007).

62. Indeed, in cases such as the present one concerning organised criminal groups, the risk that a detainee, if released, might bring pressure to bear on witnesses or other co-accused or might otherwise obstruct the proceedings often is, by the nature of things, high.

63. The Court accepts that the reasonable suspicion that the applicant had committed a serious offence could have initially warranted her detention. The need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, including experts in finance, constituted valid grounds for maintaining the applicant's detention for the period of one year and nearly seven months.

64. The Court takes note of the fact that when the authorities could no longer justify the applicant's detention, they replaced it with a less stringent preventive measure and released the applicant on bail (see paragraph 24 above).

65. The foregoing considerations are sufficient for the Court to conclude that the grounds given for the applicant's pre-trial detention were “relevant” and “sufficient” to justify holding her in custody for the entire relevant period, namely one year and seven months.

66. It therefore remains to be ascertained whether the national authorities displayed “special diligence” in the conduct of the proceedings.

67. In this regard, the Court observes that the investigation was of considerable complexity, regard being had to the number of co-accused and the implementation of special measures required in cases concerning organised crime. The Court does not discern any significant periods of inactivity in the investigation or the initial phase of the trial. For these reasons, the Court considers that during the relevant period the domestic authorities handled the applicant's case with relative expedition.

68. Having regard to the foregoing, the Court finds that there has been no violation of Article 5 § 3 of the Convention

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF RESTRICTIONS ON FAMILY VISITS

69. The applicant complained that during her detention limitations had been placed on her contact with her children. She invoked Article 8 of the Convention, which provides as relevant:

“1. Everyone has the right to respect for his ... 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.”

70. The Government contested that argument.

71. The Government submitted that the limitations placed on the applicant's contact with her children had not amounted to an interference with her right to respect for her private life. They stressed that between 1 June 2006 and 7 November 2007 the applicant had been visited by her daughter, son and sister on 44 occasions. The applicant had been entitled to a visit every three weeks and she had made full use of this right. The Government maintained that only on one occasion had the prosecutor refused permission for a visit, namely when the applicant's sister had requested permission for exactly the same period as another family member. They concluded that some limitation of the applicant's right to contact with her family had been a normal consequence of her detention.

72. The applicant argued that limitations had been placed on her contact with her children. She further maintained that the first request for a visit had been submitted just after her arrest on 26 April 2006; however, permission to visit her in prison had been granted only on 1 June 2006.

73. 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 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).

74. 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, by themselves, in breach of that provision (*ibid.* §§ 62-63; see also *Kucera v. Slovakia*, no. 48666/99, §§ 127-128, 17 July 2007). Nevertheless, any restriction of that kind must be “in accordance with the law”, must pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, must be justified as being “necessary in a democratic society”.

75. Turning to the circumstances of the present case, the Court observes that the contested measures were applied under Article 217 of the Code of Execution of Criminal Sentences. 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.

76. The Court notes that on 2 July 2009 the Constitutional Court declared Article 217 § 1 of the Code of Execution of Criminal Sentences unconstitutional. 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 exercise of the discretion conferred on the relevant authorities to restrict visiting rights (see *Wegera v. Poland*, no. 141/07, § 74-75, 19 January 2010). For these reasons the Court has recently concluded in the case of *Gradek v. Poland*, no. 39631/06, § 47, 8 June 2010) that an unreasoned refusal of family visits in detention was not in accordance with the law.

77. However, in the present case, contrary to the case of *Gradek*, where the prosecutor refused the applicant's wife's requests by making blunt handwritten notes on her applications, the Court observes that the applicant failed to submit any documents in support of her allegations that her children's applications to visit her were refused. In fact, it appears that the applicant had regular contact with her family and that she regularly received visits from her children and her sister.

78. It follows that it has not been established that the applicant has been prevented from contacting her children and her family.

79. Consequently, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF MONITORING OF THE APPLICANT'S CORRESPONDENCE

80. The Court raised of its own motion an issue under Article 8 of the Convention on account of the fact that the applicant's correspondence with

the Court had been interfered with. This provision, in its relevant part, reads:

“1. Everyone has the right to respect for ... 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.”

A. Admissibility

81. The Government submitted that the applicant had not exhausted all available domestic remedies. She had failed to bring an action under Article 24 § 2 read in conjunction with Article 448 of the Civil Code. These provisions would have allowed her both to assert that by interfering with her correspondence the authorities had breached her personal rights protected by the Civil Code and to claim compensation for non-pecuniary damage.

82. The applicant's lawyer did not comment.

83. The Court has held that applicants with similar complaints based on interferences which occurred after 28 June 2007 are required to avail themselves of the provisions of Articles 23 and 24 § 1 read in conjunction with Article 448 of the Civil Code, failing which they will be considered to have failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention (see *Biśta v. Poland*, no. 22807/07, § 49, 12 January 2010).

84. However, the alleged interference with the applicant's correspondence occurred on 20 April 2007, that is, before 28 June 2007, the date on which the Warsaw Court of Appeal gave its judgment granting compensation for the infringement of the confidentiality of a prisoner's correspondence on account of interference with it, and thereby establishing to the Court's satisfaction that an effective remedy could be said to exist in respect of such complaints (see *Biśta* cited above § 49).

85. Accordingly the remedy was not available to the applicant at the material time (see *Hinczewski v. Poland*, no. 34907/05, § 30, 5 October 2010).

86. Moreover, the complaint under Article 8 of the Convention concerning the alleged interference with the applicant's correspondence with the Registry of the Court was raised of the Court's own motion. The letter at issue was sent by the applicant to the Court and she could not have been aware that it had been intercepted by the authorities.

87. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed (see *Lewak v. Poland*, no. 21890/03, § 25, 6 September 2007, and *Wenerski v. Poland*, no. 44369/02, § 71, 20 January 2009).

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

B. Merits

1. Existence of an interference

89. The Court notes that the envelope in which the applicant sent her first letter to the Court on 20 April 2007 bears a handwritten note reading “censored” (*ocenzurowano*) and an illegible signature.

90. The Court has held on many occasions that as long as the Polish authorities continue the practice of marking detainees' letters with the “censored” stamp, the Court has no alternative but to presume that those letters have been opened and their contents read (see *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003; *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005; and *Micha* cited above, § 58).

91. It follows that in respect of the applicant's first letter there was an “interference” with her right to respect for her correspondence under Article 8.

2. Whether the interference was in accordance with the law

92. The Court notes that the interference with the applicant's right to respect for her correspondence took place when the applicant was detained pending trial.

93. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained pending trial should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition on censorship of correspondence with the European Court of Human Rights contained in Article 103 of the same Code, which expressly relates to convicted persons, was also applicable to the applicant (see *Micha*, cited above, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, the interference with the applicant's correspondence with the Court was not “in accordance with the law”.

94. Having regard to that finding, the Court does not consider it necessary to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with. Consequently, the Court finds that there has been a violation of Article 8 of the Convention as regards the applicant's letters to the Court.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 35,000 euros (EUR) in respect of pecuniary damage and EUR 65,000 in respect of non-pecuniary damage.

97. The Government contested these claims.

98. 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 800 in respect of non-pecuniary damage.

B. Costs and expenses

99. The applicant also claimed EUR 500 for the costs and expenses incurred before the Court.

100. The Government contested this claim.

101. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

102. 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 under Article 5 § 3 and Article 8 about the interference with correspondence admissible;
2. *Declares* the complaint under Article 3 inadmissible;
3. *Declares* the complaint under Article 8 as regards the refusal of family visits inadmissible;
4. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
5. *Holds* that there has been a violation of Article 8 of the Convention on account of interference with the applicant's correspondence;
6. *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 800 (eight hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) in respect of costs and expenses plus any tax that may be chargeable, to be converted into Polish zlotys at the rate applicable at 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *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