



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

FOURTH SECTION

**CASE OF DZYRUK v. POLAND**

*(Application no. 77832/01)*

JUDGMENT

STRASBOURG

4 July 2006

**FINAL**

*04/10/2006*

*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 Dzyruk v. Poland,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 June 2006,

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

**PROCEDURE**

1. The case originated in an application (no. 77832/01) 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 Jarosław Dzyruk (“the applicant”), on 25 May 2000.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 16 September 2005 the President of the Fourth Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

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

4. The applicant was born in 1963 and he is presently detained in Hrubieszów Prison, Poland.

### **A. The first set of criminal proceedings**

5. On 21 September 1999 the applicant was convicted of a driving offence by the Board for Administrative Offences at the Włodawa District Court (*Kolegium d.s. wykroczeń*). He appealed.

On 29 November 1999 the Włodawa District Court (*Sąd Rejonowy*) dismissed his appeal.

### **B. The second set of criminal proceedings**

6. On 9 March 2001 the applicant was arrested by the police. On 12 March 2001 the Włodawa District Court (*Sąd Rejonowy*) ordered that the applicant be remanded in custody in view of the existence of a reasonable suspicion that he had committed several offences of fraud. The applicant had allegedly been corresponding with several men from different countries, passing himself off as a lady wishing to meet them.

7. On 3 December 2001 the Włodawa District Court prolonged the applicant's detention, finding that it was highly probable that he had committed the offences with which he had been charged. The court further found that there was a risk that the applicant might go into hiding or obstruct the proceedings.

That decision was upheld on appeal on 17 December 2001.

8. On 31 January 2002 the applicant was indicted on charges of fraud against ten Dutch, French and German nationals who had given him money under false pretences, believing that the applicant was a woman interested in meeting and visiting them. In the correspondence with the victims the applicant had been using a false name "Narcissus Flower" (*Narcyza Kwiatek*) and had obtained from them a total of 270 German Marks and 1,600 US Dollars.

9. The applicant filed an application for release, but on 11 February 2002 the Włodawa District Court dismissed it reiterating the original grounds for the detention. The court further prolonged his detention, finding that the applicant's place of permanent residence was far from the trial court and, if released, he would obstruct the proper course of proceedings. Simultaneously, the court dismissed the applicant's request to be released on bail.

10. On 8 March, 6 June and 30 July 2002 the Włodawa District Court prolonged the applicant's detention on remand. The decisions repeated the same grounds for the applicant's detention: the reasonable suspicion against him, the severity of the anticipated sentence and the fear that he might go into hiding or otherwise obstruct the proceedings.

11. On 5 August 2002 the Włodawa District Court gave judgment. The applicant was convicted as charged and sentenced to three years' imprisonment and a fine.

12. The applicant lodged an appeal.

13. On 14 August 2002 the Lublin Regional Court released the applicant on bail. The court found that the original reasons for keeping the applicant in detention had ceased to exist since the applicant had no previous conviction and had a permanent place of residence.

14. On 15 July 2003 the Lublin Regional Court partly amended the judgment. It appears that the judgment is final.

### **C. The monitoring of the applicant's correspondence**

15. The applicant submits that during his detention his correspondence, in particular that with the Court, was censored by the authorities. In March 2001 the Włodawa District Prosecutor decided to obtain and control the correspondence from the applicant's post office box - apparently during the investigation stage. The applicant's appeals against those decisions were dismissed by the Lublin Regional Prosecutor.

16. On 4 April 2001 the Registry sent a letter to the applicant addressed to his post office box. The applicant provided the Registry with the original of this letter and complained that it had been censored by the authorities. On the top of the Registry's letter there is a stamp: "District Prosecutor Bogusław Lechocki" (*Prokurator Prokuratury Rejonowej Bogusław Lechocki*), a hand-written note: "censored, 12 June 2001" ("*Ocenzurowano, 12/06/2001*") and an illegible signature.

17. On 28 February 2002 the Registry received the applicant's letter of 14 February 2002. The envelope bears a hand-written note: "Włodawa District Court" (*S.R. Włodawa*). The envelope, which is addressed to the Registrar, the European Court of Human Rights, bears signs of having been opened after being sealed: its right side had been cut open and then resealed with a white self-adhesive paper slip. It is postmarked 18 February 2002.

18. On 19 March 2002 the Registry received the applicant's letter of 5 March 2002. The envelope, which is addressed to the Registrar, the European Court of Human Rights, bears a hand-written note: "Włodawa District Court" (*SR Włodawa*). The envelope bears signs of having been opened after being sealed: its right side had been cut open and then resealed with five white self-adhesive paper slips. It is postmarked 8 March 2002.

## II. RELEVANT DOMESTIC LAW

### A. Preventive measures, including detention on remand

19. The Code of Criminal Procedure of 1997, which entered into force on 1 September 1998, defines detention on remand as one of the so-called “preventive measures” (*środki zapobiegawcze*). The other measures are bail (*poręczenie majątkowe*), police supervision (*dozór policji*), guarantee by a responsible person (*poręczenie osoby godnej zaufania*), guarantee by a social entity (*poręczenie społeczne*), temporary ban on engaging in a given activity (*zawieszenie oskarżonego w określonej działalności*) and prohibition on leaving the country (*zakaz opuszczania kraju*).

Article 249 § 1 sets out the general grounds for imposition of the preventive measures. That provision reads:

“Preventive measures may be imposed in order to ensure the proper conduct of proceedings and, exceptionally, also in order to prevent an accused committing another serious offence; they may be imposed only if evidence gathered shows a significant probability that an accused has committed an offence.”

20. Article 258 lists grounds for detention on remand. It provides, in so far as relevant:

“1. Detention on remand may be imposed if:

(1) there is a reasonable risk that an accused will abscond or go into hiding, in particular when his identity cannot be established or when he has no permanent abode [in Poland];

(2) there is a justified fear that an accused will attempt to induce [witnesses or co-defendants] to give false testimony or to obstruct the proper course of proceedings by any other unlawful means;

2. If an accused has been charged with a serious offence or an offence for the commission of which he may be liable to a statutory maximum sentence of at least 8 years’ imprisonment, or if a court of first instance has sentenced him to at least 3 years’ imprisonment, the need to continue detention to ensure the proper conduct of proceedings may be based on the likelihood that a severe penalty will be imposed.”

21. The Code sets out the margin of discretion as to the continuation of a specific preventive measure. Article 257 reads, in so far as relevant:

“1. Detention on remand shall not be imposed if another preventive measure is sufficient.”

Article 259, in its relevant part, reads:

“1. If there are no special reasons to the contrary, detention on remand shall be lifted, in particular if depriving an accused of his liberty would:

(1) seriously jeopardise his life or health; or

(2) entail excessively harsh consequences for the accused or his family.”

The 1997 Code not only sets out maximum statutory time-limits for detention on remand but also, in Article 252 § 2, lays down that the relevant court – within those time-limits – must in each detention decision determine the exact time for which detention shall continue.

22. Article 263 sets out time-limits for detention. In the version applicable up to 20 July 2000 it provided:

“1. Imposing detention in the course of an investigation, the court shall determine its term for a period not exceeding 3 months.

2. If, due to the particular circumstances of the case, an investigation cannot be terminated within the term referred to in paragraph 1, the court of first instance competent to deal with the case may – if need be and on application made by the [relevant] prosecutor – prolong detention for a period [or periods] which as a whole may not exceed 12 months.

3. The whole period of detention on remand until the date on which the first conviction at first instance is imposed may not exceed 2 years.

4. Only the Supreme Court may, on application made by the court before which the case is pending or, at the investigation stage, on application made by the Prosecutor General, prolong detention on remand for a further fixed period exceeding the periods referred to in paragraphs 2 and 3, when it is necessary in connection with a stay of the proceedings, a prolonged psychiatric observation of the accused, a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad, when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome.”

On 20 July 2000 paragraph 4 was amended and since then the competence to prolong detention beyond the time-limits set out in paragraphs 2 and 3 has been vested in the court of appeal within whose jurisdiction the offence in question has been committed.

## **B. Censorship of correspondence**

### *1. The Code of Execution of Criminal Sentences 1997*

23. Rules relating to means of controlling correspondence of persons involved in criminal proceedings are set out in the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*) (“the 1997 Code”) which entered into force on 1 September 1998.

24. The relevant part of Article 103 § 1 of the Code provides as follows:

“Convicts (...) have a right to lodge complaints with institutions established by international treaties ratified by the Republic of Poland concerning the protection of human rights. Correspondence in those cases (...) shall be sent to the addressee without delay and shall not be censored.”

25. Article 214 § 1 reads as follows:

“Unless exceptions are provided for in the present Chapter, a detainee shall enjoy at least the same rights as are secured to a convicted person serving a sentence of imprisonment under the ordinary regime in a closed prison. No restrictions shall be applied to him except such as are necessary to secure the proper conduct of criminal proceedings, to maintain order and security in a remand centre and to prevent demoralisation of detainees.”

26. Article 217 § 1 reads, in so far as relevant, as follows:

“(…) detainee’s correspondence shall be censored by [the authority at whose disposal he remains], unless the authority decides otherwise.”

Article 242 § 5 reads as follows:

“The prohibition of censorship shall also mean the prohibition of acquainting oneself with the content of the letter.”

2. *The Rules of Detention on Remand 1998*

27. On 1 September 1998 the Rules of Detention on Remand (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu wykonywania tymczasowego aresztowania*) entered into force.

§ 36 of the Rules provides:

“The detainee’s correspondence, including the correspondence with the international institutions for the protection of human rights, which act on the basis of international agreements ratified by the Republic of Poland, with the Ombudsman and public and local government institutions, is mailed through the intermediary of the organ at whose disposal he remains.”

3. *The Code of Criminal Procedure*

28. Article 218 of the Code concerns seizure of correspondence by a decision of prosecution authorities. It provides as follows:

“1. Offices, institutions and entities operating in post and telecommunications fields, customs houses, and transportation institutions and companies, shall be obligated to surrender to the court or prosecutor upon demand included in their order, any correspondence or transmissions significant to the pending proceedings. Only the court and a prosecutor shall be entitled to open them or to order their opening.

3. Correspondence and transmissions irrelevant to the criminal proceedings should be returned to the appropriate offices, institutions or companies as set forth in § 1, without delay.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

29. The applicant complained that the length of his detention on remand had been unreasonable. He relied on Article 5 § 3 of the Convention, which 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.”

30. The Government contested that argument.

#### A. Admissibility

31. 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*

32. The Court notes that the applicant was detained on remand on 9 March 2001 and the first-instance judgment in his case was given on 5 August 2002. Consequently, the period to be taken into consideration lasted 1 year and almost 5 months.

##### *2. The reasonableness of the length of detention*

###### **(a) Arguments before the Court**

33. The applicant submitted that the length of his pre-trial detention was unjustified. The charges against him were not serious and since the victims lived abroad there was no risk of his bringing pressure to bear on them or otherwise obstructing the proceedings. He argued that the detention in his case had been prolonged automatically and that the authorities had relied on identical reasons for prolonging it. The applicant further complained that he had not been released on bail.

34. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It was justified on “relevant” and “sufficient” grounds. One of those grounds was the risk that the applicant

might interfere with the course of proceedings. The charges laid against him carried a severe penalty.

The Government further submitted that the domestic courts acted diligently and speedily, in particular having regard to the complexity of the case.

**(b) The Court's assessment**

*(i) Principles established under the Court's case-law*

35. Under the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, p. 15, § 30, and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI). The Convention case-law has developed four basic acceptable reasons for refusing bail: the risk that the accused will fail to appear for trial and the risk that the accused, if released, would take action to prejudice the administration of justice or commit further offences or cause public disorder (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 59, ECHR 2003-IX (extracts)). The danger of absconding cannot be gauged solely on the basis of the severity of the possible sentence; it must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify pre-trial detention. In this context regard must be had in particular to the character of the person involved, his morals, his assets, his links with the State in which he is being prosecuted and his international contacts (see *W. v. Switzerland*, judgment of 26 January 1993, Series A no. 254-A, § 33 with further references, and *Smirnova*, cited above, § 60).

36. It falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions dismissing the applications for release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention.

37. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV, and *Jablonski v. Poland*, no. 33492/96, § 80, 21 December 2000).

(ii) *Application of the principles to the circumstances of the present case*

38. The Court observes that in the present case the authorities relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and the severity of the anticipated sentence. They repeated those grounds in all their decisions. The domestic courts also considered that the continuation of the applicant’s detention was necessary to secure the proper conduct of the proceedings. In this respect they vaguely referred to a risk that the applicant might go into hiding. They further found that he might interfere with the conduct of the proceedings basing their suspicion, without specifying any details, on a letter sent by the applicant at the beginning of the investigation. In the subsequent decisions the courts referred to the danger that the applicant would interfere with the conduct of the proceedings basing it solely on the severity of the possible sentence.

39. The Court accepts that the suspicion against the applicant of having committed the offences and the need to secure the proper conduct of the proceedings might initially justify his detention. However, with the passage of time, these grounds became less relevant and cannot justify the entire period of 1 year and almost 5 months during which the most serious preventive measure against the applicant had been imposed (see *Malik v. Poland*, no. 57477/00, § 45, 4 April 2006).

Moreover, the authorities relied heavily on the likelihood that a severe sentence would be imposed on the applicant given the serious nature of the offences at issue. In this respect, the Court agrees that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

40. The Court observes further that the applicant was detained on charges of fraud. This offence, even though it carried a severe penalty, was not a violent crime. The applicant acted without accomplices and the main evidence against him was letters sent to him by victims and collected from his post-box. It does not appear therefore that his case presented particular

difficulties for the investigation authorities and for the courts to determine the facts and mount a case against the perpetrator.

Moreover, the applicant had not been previously convicted and had a permanent place of residence in Poland. However, those circumstances were only taken into consideration by the authorities after the first-instance judgment had been given against the applicant (see paragraph 13 above). In this connection the Court considers that the fact relied on by the domestic authorities that the applicant's place of residence was far from the trial court does not appear material (see paragraph 9 above).

41. The Court also notes that there is no specific indication that during the entire period in question the authorities envisaged the possibility of imposing other preventive measures on the applicant— such as bail or police supervision – except for one decision given in February 2002 when the court had examined his application to be released on bail.

In this context the Court would emphasise that “other preventive measures” are expressly foreseen by Polish law to secure the proper conduct of the criminal proceedings (see paragraphs 19 and 21 above) and that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures for ensuring his appearance at the trial. Indeed, that Article lays down not only 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 *Jablonski*, cited above, § 83).

42. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not “relevant” and “sufficient” to justify the applicant's being kept in detention for almost 1 year and 5 months.

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

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

43. The applicant complained that both sets of criminal proceedings against him were unfair and that he was innocent. He relied on Article 6 of the Convention, which is so far as relevant provides as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

44. The Court notes that it is not clear whether in the second set of proceedings the applicant lodged a cassation appeal with the Supreme Court. However, even assuming that the applicant exhausted domestic remedies, the Court reiterates that it is not called upon to deal with errors of fact and law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

45. In relation to both sets of criminal proceedings against the applicant, the Court observes that he does not allege any particular failure to respect his right to a fair hearing. Assessing each set of criminal proceedings against the applicant as a whole, it finds no indication that they were unfairly conducted.

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

### III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

46. The applicant further alleged a breach of Article 8 of the Convention on account of the fact that his correspondence, in particular that with the Court, was censored by the authorities. This Article, 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.”

47. The Government refrained from expressing their opinion on the admissibility and merits of the complaint under Article 8.

#### A. Admissibility

48. 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. Principles established under the Court's case-law*

49. The Court recalls that any “interference by a public authority” with the right to respect for correspondence will contravene Article 8 of the Convention unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is “necessary in a democratic society” in order to achieve them (see, among many other authorities, *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*,

25 March 1992, Series A no. 233, p. 16, § 34 and *Niedbala v. Poland* no. 27915/95, § 78).

50. As to the expression “in accordance with the law”, the Court has established three fundamental principles. The first one is that the interference in question must have some basis in domestic law. The second principle is that “the law must be adequately accessible”, a person must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to his case. The third principle is that “a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable a person 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 *Silver*, cited above, §§ 86-88).

51. It is of utmost importance for the effective operation of the system of individual application instituted by Article 34 that the applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy (see *Aydın v. Turkey*, judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, §§ 115-117). The interception of letters by prison authorities can also hinder applicants in bringing their cases to the Court (see *Klyakhin v. Russia*, no. 46082/99, § 119, 30 November 2004).

52. It is important to respect the confidentiality of correspondence with the Court since it may concern allegations against prison authorities or prison officials. The opening of letters both to and from the Court undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Campbell*, cited above, p. 22, § 62). No compelling reasons have been found to exist for monitoring or delaying an applicant’s correspondence with the Court (see *Campbell*, cited above, §§ 48 and 62; and *Peers v. Greece*, no. 28524/95, § 84, ECHR 2001-III and *Drozdowski v. Poland*, no. 20841/02, §§ 27-31, 6 December 2005).

## *2. Application of the principles to the circumstances of the present case*

### **(a) Existence of an interference**

53. The Court firstly notes that two letters sent by the applicant to the Court on 28 February and 19 March 2002 were received in envelopes which bear signs of having been opened after being sealed and have on them a hand-written note: “Włodawa District Court” (see paragraph 18 above). However, in the absence of any other evidence, for instance stamps which

could confirm that the letters had indeed been censored, the Court cannot establish beyond reasonable doubt that the authorities acquainted themselves with the contents of the applicant's letters to the Court and, subsequently, resealed the envelopes.

54. The Court observes, secondly, that the letter of 4 April 2001 sent to the applicant by the Court's Registry bears a stamp "District Prosecutor Bogusław Lechocki", a hand-written note "censored, 12 June 2001" and an illegible signature (see paragraph 17 above). It appears moreover that the applicant received that letter with over two months' delay. In those circumstances, the Court has no alternative but to presume that the Registry's letter had been opened and read by the authorities and its delivery to the applicant delayed.

It follows that it amounted to an "interference" with the applicant's right to respect for his correspondence under Article 8.

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

55. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court notes that the interference took place during the investigation stage, when the Regional Prosecutor's decision to control letters to the applicant was in force (see paragraph 15 above).

It further observes that, according to Article 214 of the 1997 Code, persons detained on remand should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the European Court of Human Rights contained in Article 103 of the 1997 Code, which expressly relates to convicted persons, was also applicable to detained persons (see *Michta v. Poland*, no. 13425/02, § 61, 4 May 2006, *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, censorship of the Registry's letter to the applicant was contrary to Article 103 of the 1997 Code.

It follows that the interference in the present case was not "in accordance with the law".

56. 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.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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**

58. The applicant claimed 21,000 Polish zlotys (PLN) in respect of pecuniary damage and 150,000 euros (EUR) in respect of non-pecuniary damage.

59. The Government considered that the claim was excessive.

60. 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 2,000 in respect of non-pecuniary damage.

##### **B. Costs and expenses**

61. The applicant also claimed PLN 2,162 for the costs and expenses incurred both before the domestic courts and before the Court.

62. The Government contested these claims.

63. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant, who was unrepresented, the sum of EUR 400 for the proceedings before the Court.

##### **C. Default interest**

64. 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 complaints concerning the length of the applicant's pre-trial detention and the monitoring of his correspondence 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;
4. *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 2,000 (two thousand euros) in respect of non-pecuniary damage and EUR 400 (four hundred euros) for 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T. L. EARLY  
Registrar

Nicolas BRATZA  
President