



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

FOURTH SECTION

CASE OF GAŚIOROWSKI v. POLAND

(Application no. 7677/02)

JUDGMENT

STRASBOURG

17 October 2006

FINAL

17/01/2007

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 Gaśiorowski v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr M. PELLONPÄÄ,

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 26 September 2006,

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

PROCEDURE

1. The case originated in an application (no. 7677/02) 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 Robert Gaśiorowski (“the applicant”), on 10 January 2002.

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

3. On 4 May 2004 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it 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 1960 and lives in Warsaw.

A. The applicant’s pre-trial detention

5. On 10 December 1999 the applicant was arrested by the police on suspicion of having committed armed robbery against a lorry driver. On 11 December 1999 the Żyrardów District Court (*Sąd Rejonowy*) ordered

that the applicant be detained on remand for 3 months. It found that in the light of the evidence obtained, in particular from his accomplices, there was a strong likelihood that the applicant had committed that offence. The court further observed that the applicant had not confessed and found that there was a risk that he might obstruct the investigation. Having regard to the severity of the penalty that could be expected, the court held that keeping the applicant in custody was necessary in order to secure the proper conduct of the proceedings. That decision was upheld on appeal on 7 January 2000.

6. On 8 March 2000 the Skierniewice Regional Court (*Sąd Okręgowy*) prolonged the applicant's detention until 10 June 2000, finding that, given that the applicant had been caught *in flagrante delicto*, there was a strong likelihood that he had committed the offence in question. The court stressed that the applicant had – like his 3 detained co-suspects – given contradictory evidence and had not confessed, which gave sufficient reasons to believe that, once released, he would obstruct the proper course of the proceedings. The applicant's continued detention was also justified by the severity of the penalty that could be expected. Moreover, evidence from ballistics and fingerprint experts – which was crucial for the determination of the role played by each co-suspect – needed to be obtained.

7. On 6 June 2000 the Łódź Court of Appeal (*Sąd Apelacyjny*) ordered that the applicant be held in custody until 10 September 2000, reiterating the grounds previously given for his detention. It further held that the gravity of the charges and the severity of the likely penalty justified the prolongation of the most severe preventive measure.

8. On 25 August 2000 a bill of indictment was filed with the Skierniewice Regional Court against the applicant and his 3 accomplices. The applicant was charged with attempted armed robbery and unlawful possession of a firearm. The bill of indictment specified that the applicant had been previously sentenced for similar offences. The prosecution asked the court to hear evidence from 23 witnesses.

9. On 30 August 2000 the Skierniewice Regional Court prolonged the applicant's detention until 31 March 2001, repeating the grounds that had been given in the previous decisions. It also held that the value of the goods that the accused had planned to steal and the previous criminal records of some of them made it likely that they would be given a heavy sentence.

10. Subsequently, apparently in November 2000, the Skierniewice Regional Court referred the case to the Płock Regional Court, finding that the latter court should deal with the matter. The ensuing jurisdictional dispute was determined on an unspecified later date by the Warsaw Court of Appeal. The latter court ordered that the case be referred to the Warsaw Regional Court since the Skierniewice Regional Court had in the meantime been closed down. On 18 June 2001 the bill of indictment was transmitted to the Warsaw Regional Court.

11. Meanwhile, on 22 March 2001, the Płock Regional Court had prolonged the applicant's detention until 30 June 2001, finding that the reasons previously given for holding him in custody were still valid.

12. On 25 June 2001 the Warsaw Regional Court prolonged the applicant's detention until 30 October 2001. On 25 October 2001 the Regional Court ordered the applicant's continued detention until 10 December 2001. In both decisions the court relied primarily on the severity of the sentence that could be expected.

13. On 23 November 2001 the Court of Appeal dismissed the applicant's appeal against the decision of 25 October 2001 prolonging his detention. It found that the applicant's continued detention on the basis of Article 258 § 2 of the Code of Criminal Procedure remained valid. Having regard to the nature of the alleged offences, the circumstances in which they had been committed and the fact that the applicant had committed similar offences in the past, the Court of Appeal found that there was a very strong likelihood that he would be given a heavy sentence. It further held that Article 258 § 2 of the Code of Criminal Procedure established a kind of presumption to the effect that the likelihood of a severe penalty being imposed on an accused might induce him to obstruct the proceedings.

14. Since on 10 December 2001 the length of the applicant's pre-trial detention reached the statutory 2-year time-limit laid down in Article 263 § 3 of the Code of Criminal Procedure, all further decisions prolonging his detention on remand were given by the Warsaw Court of Appeal.

15. The relevant decisions were taken on the following dates: on 7 December 2001 (extending his detention until 28 February 2002), 26 February 2002 (ordering his continued detention until 30 April 2002 and having regard to the particular complexity of the case) and on a later unspecified date in April 2002 (extending his detention for a further period). In its decision of 7 December 2001, the Court of Appeal found that prolongation of the applicant's detention beyond the statutory 2-year time-limit was justified under Article 263 § 4 on account of major insurmountable difficulties, referring in this connection to the above-mentioned jurisdictional dispute.

16. The Regional Court listed the first hearing for 7 October 2001 but the trial could not be started since the case file was with another court. Two hearings listed for 7 and 16 November 2001 were adjourned due to the change of the applicant's counsel and the need for the latter to prepare for the hearing. Two further hearings listed for 10 December 2001 and 11 January 2002 were also adjourned (at the defendants' request and because of the absence of the applicant's counsel respectively). As a result, the trial started on 15 January 2002. Further hearings were held on 31 January, 21 February, 12 and 24 April, 29 May and 10 June 2002.

17. On 13 June 2002 the Warsaw Regional Court convicted the applicant of attempted armed robbery and, having regard to his previous criminal

record, sentenced him to seven years' imprisonment. It acquitted the applicant of the charge of unlawful possession of a firearm. It also prolonged his detention until 30 September 2002.

18. The prosecutor and all the defendants appealed.

19. On 19 December 2002 the Warsaw Court of Appeal quashed the first-instance judgment and remitted the case. It ordered that the applicant be kept in detention pending the retrial until 30 March 2003 in view of the reasonable suspicion that he had committed the offence with which he had been charged and the severity of the likely sentence.

20. On 6 March 2003 the Warsaw Regional Court extended the applicant's detention until 30 June 2003, holding that the grounds originally given for his detention were still valid. It further held that keeping him in detention was sufficiently justified by the severity of the likely sentence and the need to secure the proper conduct of the trial. Subsequent decisions prolonging the applicant's detention were given by the Regional Court on the following dates: 26 June 2003 (ordering his continued detention until 30 September 2003), 1 September 2003 (extending his detention until 31 October 2003) and 23 October 2003 (ordering his continued detention until 31 January 2004). The court held that the grounds previously given for his continued detention were still valid.

21. On 13 January 2004 the Regional Court prolonged the applicant's detention until 30 April 2004, relying on the severity of the likely sentence and the associated risk that the applicant might obstruct the proceedings. The applicant appealed. On 10 February 2004 the Court of Appeal ordered the applicant's release and placed him under police supervision. It held that further prolongation of the applicant's detention was unjustified, since the Regional Court had not put forward any arguments warranting the continued application of the most severe preventive measure. In particular, the Regional Court had not indicated any concrete grounds which would justify the risk that the applicant might obstruct the proceedings. The applicant was released on the same day.

22. Prior to 10 February 2004, the applicant made numerous, unsuccessful applications for release and appealed, likewise unsuccessfully, against refusals to release him and decisions extending his detention.

23. On 5 May 2004 the Warsaw Regional Court convicted the applicant of attempted armed robbery and sentenced him to seven years' imprisonment. The applicant appealed.

24. On 28 September 2004 the Warsaw Court of Appeal upheld the first-instance judgment. The applicant's legal aid lawyer declined to file a cassation appeal against the Court of Appeal's judgment since he had not found any grounds on which an appeal could be based.

B. Censorship of correspondence

25. The applicant submits that during his detention his correspondence was censored by the authorities.

26. On 12 March 2002 the Registry sent the applicant a letter in reply to his first letter setting out his Convention complaints. That letter, with which an application form and accompanying documents were enclosed, was delivered to the applicant after having been controlled by the authorities. The Court's envelope bears a stamp that reads "Censored. Judge" ("*Ocenzurowano. Sędzia.*"), followed by a date "12 [April 20]02" and an illegible signature. There are two other stamps that read: "Warsaw-Białoleka Detention Centre. Received 2002-04-05" ("*Areszt Śledczy. Wpłynęło 2002-04-05*") and "Warsaw-Białoleka Detention Centre. Received 2002-04-15" ("*Areszt Śledczy. Wpłynęło 2002-04-15*").

II. RELEVANT DOMESTIC LAW

A. Preventive measures, including detention on remand

27. 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*).

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

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

29. 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 reasonable risk 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."

30. The Code sets out the conditions governing 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."

31. The 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.

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

"1. When 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 an 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 of the first conviction at first instance 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, for the purpose of a prolonged psychiatric observation of the accused or a prolonged preparation of an expert report, when evidence needs to be obtained in a particularly complex case or from abroad or when the accused has deliberately prolonged the proceedings, as well as on account of other significant obstacles that could not be overcome."

32. 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. In addition, new paragraph 5 was added. It provides:

“A decision of the Court of Appeal taken pursuant to paragraph 4 may be appealed against to the Court of Appeal sitting in a panel of three judges.”

B. Censorship of correspondence

1. The Code of Execution of Criminal Sentences 1997

33. 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*) which entered into force on 1 September 1998.

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

“Convicted persons (...) 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.”

35. 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.”

36. 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

37. 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.”

THE LAW

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

38. The applicant complained that the length of his detention on remand had been excessive. 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.”

39. The Government contested that argument.

A. Admissibility

40. 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

41. The Court observes that the applicant was arrested on 10 December 1999 and remanded in custody on 11 December 1999. On 13 June 2002 the Warsaw Regional Court convicted him of attempted armed robbery and sentenced him to seven years' imprisonment. As from that date he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a) and therefore that period of his detention falls outside the scope of Article 5 § 3 (cf. *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI). On 19 December 2002 the Warsaw Court of Appeal quashed the applicant's conviction. As from that date his detention was again covered by Article 5 § 3. It continued until 10 February 2004, when the applicant was released.

42. Consequently, the period to be taken into consideration under Article 5 § 3 lasted 3 years and nearly 8 months.

2. *The reasonableness of the length of detention*

(a) **The parties' arguments**

43. The Government argued that there had been valid reasons for holding the applicant in detention for the entire period in question. They stressed that the applicant's detention had been justified by the gravity of the charges against him and the serious suspicion that he had committed the offences in question. In the latter respect, they pointed to the fact that the applicant had been caught *in flagrante delicto*. The Government further emphasised that the applicant had been previously sentenced for similar offences. On that account, they argued that there had been a considerable risk that the applicant, if released, might obstruct the proceedings or exert pressure on witnesses during the investigation and the trial. Lastly, the Government referred to the complexity of the case, stemming from the number of defendants and witnesses to be heard as well as the number of expert reports.

44. The applicant disagreed and maintained that the length of his detention had been unreasonable.

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

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

45. The Court reiterates that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract. 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 laid down in Article 5 of the Convention (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111 with further references, ECHR 2000-XI).

46. 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, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned requirement of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated 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 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudła*, cited above, § 110).

47. The persistence of a 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. The Court must then 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 be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings. The complexity and special characteristics of the investigation are factors to be considered in this respect (see, for example, *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2399-2400, § 74, and *I.A. v. France*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2978, § 102).

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

48. The Court observes that the judicial authorities relied, in addition to the reasonable suspicion against the applicant, on three principal grounds, namely (1) the risk that the applicant might obstruct the proceedings, given that he had not confessed and that he and his co-defendants had given contradictory evidence (2) the severity of the penalty to which the applicant was liable and the serious nature of the charges against him and (3) the complexity of the case and the need to obtain expert evidence. Furthermore, the Government submitted that the applicant’s detention was also justified by the fact that he had been previously convicted of similar offences.

49. The Court accepts that the reasonable suspicion that the applicant had committed the offences with which he had been charged may have warranted his detention in the early stage of the proceedings. However, with the passage of time that ground inevitably became less relevant. In particular, the Court considers that that ground cannot suffice to justify the entire period in issue. It must then establish whether the other grounds advanced by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of the applicant’s liberty.

50. As regards the risk of the obstruction of the proceedings, the Court cannot accept that that constituted a relevant and sufficient ground for the entire length of the applicant’s detention. Firstly, it notes that in the first two decisions on the applicant’s detention the Żyrardów District Court and the Skierniewice Regional Court held that the risk of obstruction was justified by the fact that the applicant had not confessed and that he and his co-suspects had given contradictory evidence. In so far as those courts appear to have drawn adverse inferences from the fact that the applicant had not confessed, the Court considers that their reasoning showed a manifest disregard for the principle of the presumption of innocence and cannot, in any circumstances, be relied on as a legitimate ground for deprivation of the applicant’s liberty (see *Górski v. Poland*, no. 28904/02, § 58, 4 October 2005). Secondly, the Court observes that the judicial authorities appear to

have presumed the risk that the applicant might obstruct the proceedings by basing themselves on the likelihood that a heavy sentence would be imposed on the applicant as well as on the nature of the offences in question. It notes however that the relevant decisions did not mention any argument capable of showing that these fears were well-founded. The Court considers that such a generally formulated risk based on the nature of the offences with which the applicant had been charged may possibly have justified his detention in the initial stages of the proceedings. Nevertheless, in the absence of other factors capable of showing that the risk relied on actually existed, the Court cannot accept those grounds as a justification for holding the applicant in custody for the entire period under consideration. Furthermore, it appears that this risk did not materialise following his release under police supervision on 10 February 2004.

51. The Court notes that the judicial authorities continuously relied on the likelihood that a heavy sentence might be imposed on the applicant given the serious nature of the offences with which he had been charged. In this respect, the Court recalls that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending. It acknowledges that in view of the seriousness of the charges against the applicant the authorities could justifiably consider that such a risk existed. 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). In the circumstances of the present case, the Court finds that the severity of the likely sentence alone, or in conjunction with the other grounds relied on by the authorities, cannot constitute a “relevant and sufficient ground” for holding the applicant in detention for a period of 3 years and nearly 8 months.

52. As regards the fact that the applicant had been convicted of similar offences in the past, the Court observes that, although this might have been a potentially relevant argument, the judicial authorities did not explain its importance to their assessment of risk that the applicant would abscond or interfere with the administration of justice. It appears that they regarded that consideration as relevant only from the point of view of the severity of the sentence that might be imposed on the applicant (see the Skierniewice Regional Court’s decision of 30 August 2000, paragraph 9 above). Thus, this ground cannot be taken to justify the applicant’s prolonged period of detention.

53. The Court further observes that the applicant was detained principally on charges of attempted armed robbery committed together with 3 accomplices and had been apprehended *in flagrante delicto*. The defendants had not been formally charged with acting in an organised criminal group. In these circumstances, the Court is not persuaded that the instant case presented particular difficulties for the investigation authorities

and for the courts to determine the facts and mount a case against the perpetrators as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski v Poland*, no. 17584/04, § 37, 4 May 2006).

54. The Court would also emphasise that under Article 5 § 3 the authorities, when deciding whether a person should be released or detained, are obliged to consider alternative measures of ensuring his appearance at trial. Indeed, that provision proclaims not only the right to “trial within a reasonable time or to release pending trial” but also lays down that “release may be conditioned by guarantees to appear for trial” (see *Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 3, § 3; and *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

55. In the present case the Court notes that there is no specific indication that during the entire period in question, the authorities gave consideration to the possibility of ensuring the applicant’s presence at trial by imposing on him other “preventive measures” expressly foreseen by Polish law to secure the proper conduct of criminal proceedings (see paragraph 27 above).

56. What is more, it is not apparent from the relevant decisions why the judicial authorities considered that those other measures would not have ensured the applicant’s appearance before the court or in what way the applicant, had he been released, would have obstructed the course of the trial. Nor did they mention any factor indicating that there was a real risk of his absconding or obstructing the proceedings. In that regard the Court would also point out that, although such a potential danger may exist where an accused is charged with a serious offence and where the sentence faced is a long term of imprisonment, the degree of that risk cannot be gauged solely on the basis of the severity of the offence and the anticipated sentence (see *Muller v. France*, judgment of 17 March 1997, *Reports* 1997-II, p. 388, § 43).

57. The Court accordingly concludes that the reasons relied on by the courts in their decisions were not sufficient to justify the applicant’s being held in custody for 3 years and nearly 8 months.

58. That finding would, as a rule, absolve the Court from determining whether the national authorities displayed “special diligence” in the conduct of the proceedings. However, in that context the Court cannot but note that even though the applicant was indicted on 25 August 2000, the first hearing was listed only for 7 October 2001 and the trial began on 15 January 2002. The delay in the proceedings between 25 August 2000 and 7 October 2001 was caused to a large extent by the jurisdictional dispute between the courts (see paragraph 10 above). The Court finds that such a delay should be considered significant and it cannot therefore be said that the authorities displayed “special diligence” in the conduct of the criminal proceedings against the applicant.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

60. The applicant complained under Article 8 of the Convention that his correspondence with the Court had been censored. 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.”

61. The Government refrained from expressing their opinion on the admissibility and merits of the complaint, stating that they had not received any evidence of the alleged censorship.

A. Admissibility

62. 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. Existence of an interference

63. The Court notes that the envelope, in which the Registry's letter of 12 March 2002 to the applicant was sent, bears the following stamp: “Censored. Judge” (“*Ocenzurowano. Sędzia.*”), followed by a date “12 IV [20]02” and an illegible signature. There are two other stamps that read: “Warsaw-Białołęka Detention Centre. Received 2002-04-05” (“*Areszt Śledczy. Wpłynęło 2002-04-05*”) and “Warsaw-Białołęka Detention Centre. Received 2002-04-15” (“*Areszt Śledczy. Wpłynęło 2002-04-15*”).

64. The Court considers that, even if there is no separate stamp on the letter as such, there is a reasonable likelihood that the envelope had been opened by the domestic authorities. 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 and *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005, *Michta v. Poland*, no. 13425/02, § 58, 4 May 2006). It follows that there was an “interference” with the applicant’s right to respect for his correspondence under Article 8.

2. *Whether the interference was “in accordance with the law”*

65. 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 in April 2002 when the applicant had been detained on remand pending trial.

66. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, 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 same 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 applicant’s letter from the Court’s Registry was contrary to the domestic law. It follows that the interference in the present case was not “in accordance with the law”.

67. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicant claimed 273,000 Polish zlotys (PLN) in respect of pecuniary damage and 150,000 PLN in respect of non-pecuniary damage.

70. The Government argued that the applicant’s claims were exorbitant and should be rejected. They asked the Court to rule that a finding of a violation of Article 5 § 3 constituted in itself sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

71. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of violations of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant EUR 2,000 under this head.

B. Costs and expenses

72. The applicant submitted no claim in respect of costs and expenses.

C. Default interest

73. 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 application admissible;
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, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 17 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President