



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

FOURTH SECTION

CASE OF OLEKSY v. POLAND

(Application no. 64284/01)

JUDGMENT

STRASBOURG

28 November 2006

FINAL

28/02/2007

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 Oleksy 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 7 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 64284/01) 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 Nestor Oleksy (“the applicant”), on 4 April 2000.

2. The Polish Government were represented by their Agent, Mr J. Wołasiwicz of the Ministry of Foreign Affairs.

3. On 16 September 2005 the President of the Fourth Section of the Court 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 1975 and lives in Wrocław, Poland.

5. On 30 November 1999 the applicant was arrested by the police.

6. On 2 December 1999 the Wrocław District Court (*Sąd Rejonowy*) decided to detain the applicant on remand in view of the reasonable suspicion that he had been drug trafficking.

7. On 17 February 2000 the Wrocław Regional Court (*Sąd Okręgowy*) decided to prolong the applicant’s pre-trial detention. It found that the strong suspicion against the applicant, the severity of the expected penalty,

and the need to secure the proper course of the investigation, justified holding him in detention.

8. On 17 May and 6 June 2000 the Wrocław Court of Appeal (*Sąd Apelacyjny*), upon an application by the Wrocław Regional Prosecutor (*Prokurator Okręgowy*), further prolonged the applicant's pre-trial detention. It reiterated the original grounds for keeping him in custody and added that the complexity of the case and the large number of co-accused justified the fear that, once released, the applicant would attempt to influence witnesses or abscond.

9. On 17 August 2000 the applicant was indicted before the Wrocław Regional Court.

10. On 20 November 2000 the Wrocław Regional Court held a hearing at which it further prolonged the applicant's detention until 31 January 2001. The court gave the following reasons:

"The majority of the adduced evidence has not yet been taken, and it is impossible to do this by 30 November 2000."

11. At the hearing held on 15 January 2001 the trial court again prolonged the applicant's detention until 31 March 2001 giving the following reasons:

"The grounds on which the detention on remand was ordered are still valid. At the same time it is impossible to consider all the evidence before the end of the period for which the detention had been previously prolonged; that is by 31 January 2001."

12. At the hearings on 22 June and 20 August 2001, the Wrocław Regional Court prolonged the applicant's detention, repeating the justification given in both previous decisions.

13. Subsequently, as the length of the applicant's detention had reached the statutory time-limit of 2 years laid down in Article 263 § 3 of the Code of Criminal Procedure (*Kodeks postępowania karnego*), the Regional Court applied to the Wrocław Court of Appeal asking for the applicant's detention to be prolonged beyond that term. On 14 November 2001 the Court of Appeal granted the request.

14. The applicant's numerous applications for release and appeals against decisions concerning the prolongation of his detention were to no avail.

15. On 11 April 2002 the Wrocław Regional Court convicted the applicant and sentenced him to four years' imprisonment.

16. The applicant apparently did not appeal against this judgment and it became final. On an unspecified later date the applicant was released from prison. It appears that in 2005 the applicant remained in detention in connection with another set of criminal proceedings against him.

B. The monitoring of the applicant's correspondence

17. On 31 May 2000 the Registry received the applicant's first letter to the Court of 4 April 2000. On the top of the first page of the letter there is a handwritten note: censored (*ocenzurowano*) and an illegible signature. The envelope in which the letter was delivered bears signs of having been opened and then resealed: one side had been cut open and then resealed with adhesive tape. The envelope bears a handwritten note: R[egional] P[rosecutor] Wrocław (*P.O. Wrocław*) and a stamp: Wrocław Detention Centre 2000-04-10 (*Areszt Śledczy we Wrocławiu*). The letter had been posted on 27 April 2000.

18. On 25 August 2005 the applicant complained that the Court's letter of 27 July 2005 had been censored by the authorities. The original of that letter, submitted by the applicant, is marked on the reverse side with a blue stamp "censored" (*cenzurowano*).

II. RELEVANT DOMESTIC LAW

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*). Article 249 § 5 provides that the lawyer of a detained person should be informed of the date and time of court sessions at which a decision is to be taken concerning prolongation of detention on remand.

A more detailed rendition of the relevant domestic law provisions is set out in the Court's judgment in *Celejewski v. Poland*, no. 17584/04, §§ 22 and 23, 4 May 2006.

20. 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. 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."

For a more detailed rendition of the relevant domestic law provisions, see the Court's judgment in *Michtha v. Poland*, no. 13425/02, § 33, 4 May 2006.

THE LAW

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

21. 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.”

22. The Government contested that argument. The Government considered that the applicant’s pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by “relevant” and “sufficient” grounds. These grounds were, in particular, the gravity of the charges against the applicant as well as the risk that he might obstruct the course of the proceedings. The Government further argued that the domestic authorities showed due diligence, as required in the case of detained persons. They also maintained that the proceedings were “extremely complex,” in particular due to the fact that 4 persons had been accused and the trial court “conducted extensive evidentiary procedures”.

A. Admissibility

23. The Government raised a preliminary objection that the applicant failed to exhaust domestic remedies in respect of his complaint about the unreasonable length of his detention on remand in that he failed to lodge an appeal against the first-instance judgment.

24. However, the Court observes that the Government’s objection is confined to a mere assertion and no information of any judicial practice relating thereto has been provided. In the absence of such evidence, the Court finds that the Government have failed to substantiate their contention that an appeal against the judgment of the trial court should be considered an effective remedy for the applicant’s complaint under Article 5 § 3 of the Convention.

25. Accordingly, the Court rejects the Government’s preliminary objection. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. The Court therefore declares it admissible.

B. Merits

1. Principles established under the Court's case-law

26. 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).

27. The presumption is in favour of release. As established in *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, p.37, § 4), the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...).

28. Continued detention therefore 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).

29. 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 established 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 (see *McKay*, cited above, § 43).

30. 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).

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

31. The Court firstly notes that the applicant was detained on remand on 30 November 1999 and that the first-instance judgment in his case was given on 11 April 2002. Consequently, the period to be taken into consideration lasted 2 years, 4 months and 11 days.

32. 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, on the severity of the sentence that might be imposed and a risk that the applicant might abscond or influence the witnesses. They repeated those grounds in all their decisions without advancing any other justifications for prolonging the applicant’s detention. Moreover, the reasoning of most of those decisions was limited to a brief indication that the reasons for the applicant’s detention were still valid.

33. 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 2 years and over 4 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).

34. 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).

35. The Court observes further that the applicant was detained on charges of drug trafficking for which he was eventually sentenced to 4 years’ imprisonment. Although the applicant acted with accomplices there is no indication that he was a member of an organised criminal group. 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 as would undoubtedly have been the case had the proceedings concerned organised crime (see *Celejewski*

v. Poland, no. 17584/04, § 37, 4 May 2006; *Dudek v. Poland*, no. 633/03, § 36, 4 May 2006).

36. 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.

In this context the Court would emphasise that “other preventive measures” are expressly foreseen by Polish law to secure the proper conduct of criminal proceedings 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).

37. 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 2 years, 4 months and 11 days.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

The Court considered it appropriate to raise *ex officio* the issue of Poland’s compliance with Article 8 of the Convention on account of the monitoring of the applicant’s correspondence. 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.”

A. The submissions before the Court

1. *The Government’s preliminary objection*

38. The Government raised an objection under Article 35 § 1 alleging that the applicant had failed to submit his complaint under Article 8 of the Convention within the six-month time-limit. The Government argued that “the applicant submitted to the Court the letter bearing the stamp “censored” in 2005, while the proceedings in his case were terminated in 2002.”

39. However, the Court notes that the issue of Poland's compliance with Article 8 of the Convention on account of the alleged censoring of the applicant's letter of April 2000 was raised by the Court *ex officio*. As regards the applicant's complaint that the Court's letter of 27 July 2005 addressed to him had been censored, it was raised by him in his letter of 25 August 2005 and thus less than six months from the date on which the alleged interference took place.

40. Accordingly, the Court rejects the Government's preliminary objection. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. The Court will therefore declare it admissible.

2. The arguments of the parties

41. The applicant generally argued that his rights had been violated and that his correspondence with the Court has been censored by the authorities.

42. The Government submitted that the case did not disclose a breach of Article 8 because there was no evidence that the applicant's correspondence with the Court had been censored. In this connection they argued that there was no stamp marked "censored" on the letter of 4 April 2000 and that "only a hand-written note was placed on the letter without any official stamp that could testify that this activity was performed by the domestic authority". As regards the second letter complained of, which had a stamp, the Government maintained that it could not constitute proof of censorship either as it had no "signature, a date or a name of an organ which might have stamped it".

B. The Court's assessment

1. Principles established under the Court's case-law

43. 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).

44. It is of utmost importance for the effective operation of the system of individual application instituted by Article 34 that 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).

45. 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

46. The Court firstly notes the letter sent by the applicant to the Court on 4 April 2000 bears on the first page a handwritten note “censored” and an illegible signature. It was received in an envelope which bears signs of having been opened and then resealed and has on it a handwritten note “District Prosecutor Wrocław” and a stamp: “Wrocław Detention Centre, 10 April 2000” (see paragraph 17 above). The letter had been posted 17 days later, on 27 April 2000.

47. The Court next observes that the letter of 4 April 2001 sent to the applicant by the Court’s Registry bears a stamp “censored” on the reverse side of the letter.

In those circumstances, the Court has no alternative but to assume that both letters had been opened and read by the authorities and that the sending of the first letter had been delayed.

48. It follows that there had been 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”

49. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court notes that the first interference complained of took place during the investigation stage. As regards the second letter, it appears that during the material time the

applicant had been detained in connection with another set of criminal proceedings against him.

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 applicant's letter to the Court, and of the Court Registry's letter to him, 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".

50. 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

51. 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

52. The applicant did not claim any particular sum in respect of pecuniary and non-pecuniary damage. He left that matter to the Court's discretion and asked the Court to award him just satisfaction in the amount it finds appropriate.

53. The Government asked the Court to rule that a finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and national economic circumstances.

54. 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 1,500 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

55. The applicant did not claim reimbursement of costs and expenses incurred before the domestic courts and the Court.

C. Default interest

56. 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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, 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 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 28 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President