



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

FOURTH SECTION

CASE OF OCHLIK v. POLAND

(Application no. 8260/04)

JUDGMENT

STRASBOURG

29 July 2008

FINAL

29/10/2008

This judgment may be subject to editorial revision.

In the case of Ochlik v. Poland,

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

Giovanni Bonello, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 8260/04) 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 Aleksander Ochlik (“the applicant”), on 17 February 2004.

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

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

4. On 8 January 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Wrocław.

6. On 19 July 2001 the applicant was arrested by the police on suspicion of having committed several burglaries and robberies together with several accomplices.

7. On 20 July 2001 the Jawor District Court (*Sąd Rejonowy*) decided to place the applicant in pre-trial detention on the basis of a reasonable suspicion that he had committed the offences. The court also considered that, given the likely severity of the penalty, it was probable that the applicant would interfere with the course of proceedings and he might go into hiding. Moreover, the court considered that there was a risk that the applicant would bring pressure to bear on witnesses or his accomplices.

8. On 4 October and 20 December 2001 the Wrocław Regional Court (*Sąd Okręgowy*) extended the applicant's detention, finding that the original reasons for it were still valid. The court referred also to the risk of his absconding, considering that the applicant rarely stayed at his official place of residence and "had been avoiding contact with the police officers, who were looking for him".

9. On 18 June 2002 the Wrocław Court of Appeal (*Sąd Apelacyjny*), upon an application from the Wrocław Regional Prosecutor (*Prokurator Okręgowy*), further extended the applicant's pre-trial detention.

10. Subsequently, the applicant and ten co-accused were indicted before the Wrocław Regional Court (*Sąd Okręgowy*).

11. On 19 September 2002 the Wrocław Regional Court extended the applicant's pre-trial detention. In a very brief reasoning the court stated that there was a reasonable suspicion against the applicant and that, given the likely heavy sentence and the fact that the applicant had acted in a criminal group, only his detention could secure the proper course of the proceedings.

12. Subsequently, as the length of the applicant's detention had reached the statutory time-limit of two 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 for the applicant's detention to be extended beyond that term.

13. On 10 June, 18 September and 16 December 2003 the Wrocław Court of Appeal extended the applicant's detention and that of his three co-accused. The court relied on the existence of a reasonable suspicion that the applicant had committed the offences with which he had been charged. Moreover, the court referred to the nature of the offences and the risk that, given the likely severity of the penalty, the applicant would obstruct the proceedings or go into hiding. Lastly, the Court of Appeal examined the course of the proceedings before the trial court and found that their length had not been excessive, bearing in mind the number of accused involved and complexity of the case. It also stated that despite the fact that hearings had been held several times per week, over 130 witnesses still had to be heard.

14. On 25 February and 18 June 2004 the Wrocław Court of Appeal further extended the applicant's detention in two decisions. Both decisions repeated the same grounds for the applicant's detention: the reasonable suspicion against him, the severity of the likely sentence and the need to

secure the proper conduct of the proceedings. The Court of Appeal stressed that it expected the trial court to finish the proceedings soon, in particular given the length of time the accused had spent in detention so far. In the second of the above-mentioned decisions the court established that, although the applicant's detention had been long, it was justified by the particular circumstances of the case, in particular its complexity.

15. The applicant's numerous requests for release during his pre-trial detention were to no avail.

16. On 13 August 2004 the Wrocław Regional Court convicted the applicant and sentenced him to seven years' imprisonment. The applicant appealed against the judgment.

17. On 11 May 2005 the Wrocław Court of Appeal dismissed the applicant's appeal. The court upheld the judgment in respect of nine accused and quashed it as regards two others.

B. The monitoring of the applicant's correspondence

18. On 16 February 2004 the applicant sent his first letter to the Court indicating his intention to lodge an application. The top right corner of the letter bears a red stamp "censored" (*cenzurowano*). The envelope in which the letter was delivered bears signs of opening after having been sealed: its left side has been cut open and then resealed with sellotape. The envelope also bears the stamp of the Wrocław Detention Centre and a handwritten note: W[roćła]-W R[egional] C[ourt].

19. On 10 January 2005 the applicant sent a letter to the Court. The envelope in which the letter was delivered bears a stamp "Wrocław Detention Centre 11 January 2005" and a blue stamp "Censored" (*ocenzurowano*).

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

21. The relevant domestic law concerning the censorship of prisoners' correspondence is set out in the Court's judgment in the case of *Micha v. Poland*, no. 13425/02, §§ 33-39, 4 May 2006.

THE LAW

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

22. The applicant complained that the length of his pre-trial detention had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

23. The Government contested that argument.

A. Admissibility

24. 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

25. The applicant's detention started on 19 July 2001, when he was arrested on suspicion of having committed several burglaries. On 13 August 2004 the Wrocław Regional Court convicted him as charged.

Accordingly, the period to be taken into consideration amounts to three years and twenty-six days.

2. The parties' submissions

26. The applicant generally submitted that he had been kept in detention pending trial for an unjustified period of time.

27. 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. Those grounds were, in particular, the gravity of the charges against the applicant and risk of his tampering with evidence and obstructing the proper course of the proceedings. As regards the risk of absconding the Government noted that the applicant “had rarely stayed at his place of residence and had been avoiding contacts with the police officers, who were looking for him, and had not confessed to his crimes.” They further underlined that although the case had not concerned an

organised crime, nevertheless it had been very complex because it had involved twenty co-accused, against whom eighty charges had been laid.

The Government argued that the domestic authorities had shown due diligence, as required in cases against detained persons, and that the length of the applicant's detention was attributable to the exceptional complexity of the case.

3. *The Court's assessment*

(a) **General principles**

28. The Court reiterates that the general principles regarding the right "to trial within a reasonable time or to release pending trial", as guaranteed by Article 5 § 3 of the Convention, have been set out in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110 et seq., ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-..., with further references).

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

29. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on two grounds: the severity of the penalty to which he was liable and the need to secure the proper conduct of the proceedings given the risk that the applicant might tamper with evidence or go into hiding. As regards the latter, they relied on the fact that prior to his arrest the applicant had rarely stayed at his place of residence and had avoided the police (see paragraph 8 above).

30. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences could initially warrant his detention. Also, the need to determine the degree of the alleged responsibility of each of the defendants against whom numerous charges of serious offences had been laid constituted valid grounds for the applicant's initial detention. However, the applicant was detained on charges of having committed several burglaries and sentenced to seven years' imprisonment. Even though the applicant was eventually found guilty of the numerous offences and the proceedings were directed against eleven co-accused, 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*, cited above, § 37, and *Malik v. Poland*, no. 57477/00, § 49, 4 April 2006).

31. According to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that he would obstruct the proceedings. However, the Court would reiterate that, while the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the gravity of the charges cannot by itself justify long periods of pre-trial detention (see *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

32. The Court notes that the authorities justified a risk of the applicant's going into hiding by the fact that he "had rarely stayed at his official place of residence". However, it is not clear whether prior to his arrest the applicant had actually gone into hiding and no arrest warrant had been issued against him. Even assuming that this ground justified keeping him in custody in the initial stages of the proceedings, it gradually lost its force and relevance as the proceedings progressed. Given the absence of any further attempt on the part of the applicant to obstruct the proceedings, it is difficult to accept that it could justify the conclusion that the risk of his tampering with evidence or going into hiding persisted during the entire period that he spent in custody (see *Harazin v. Poland*, no. 38227/02, § 42, 10 January 2006, and *Duda v. Poland*, no. 67016/01, § 41, 19 December 2006).

33. Lastly, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative means of guaranteeing 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 *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000).

In the present case the Court notes that there is no express indication that during the entire period of the applicant's pre-trial detention the authorities envisaged any other guarantees of his appearance at trial. Nor did they give any consideration to the possibility of ensuring his presence at trial by imposing on him other "preventive measures" expressly foreseen by Polish law to secure the proper conduct of criminal proceedings.

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

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

35. The Court raised of its own motion a complaint under Article 8 of the Convention. 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.”

36. The Government raised a preliminary objection that the applicant had failed to exhaust domestic remedies. They refrained from expressing their opinion on the merits of the complaint under Article 8.

A. Admissibility (exhaustion of domestic remedies)

37. The Government submitted that the applicant had not exhausted all available domestic remedies. He had failed to bring an action under Article 24 in conjunction with Article 448 of the Civil Code. These provisions would have allowed him to assert that by censoring his correspondence the authorities had breached his personal rights protected by the Civil Code and claim non-pecuniary damages.

38. In this connection, the Government relied on the Warsaw Regional Court's judgment of 27 November 2006 in which a prisoner had been awarded 5,000 Polish zlotys (PLN) in damages from the State Treasury for a breach of secrecy of his correspondence with the Central Board of the Prison Service and the Central Electoral Office. The Regional Court held that secrecy of correspondence was one of the personal rights protected under Article 24 of the Civil Code and that in the event of its breach a claimant may be entitled to an award of non-pecuniary damages.

39. The applicant did not comment.

40. The Court notes that the complaint under Article 8 of the Convention concerning the alleged censorship of the applicant's correspondence was raised of its own motion. The letter at issue was sent by the applicant to the Court and he could not have been aware that it had been censored by the authorities. In those circumstances, the applicant cannot be required to bring any domestic proceedings in order to obtain redress for the alleged breach of his right to respect for his correspondence.

41. Even assuming that the applicant did complain about the censorship of his letter to the Court, it has to be noted that the alleged interference with the applicant's correspondence occurred in 2004, whereas the Government relied on the Warsaw Regional Court's judgment of 27 November 2006. Any relevance that the latter judgment might possibly have in respect of the

present case is therefore reduced by the fact that it was given after the relevant time (see, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX).

42. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed (see *Lewak v. Poland*, no. 21890/03, § 26, 6 September 2007).

43. 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

44. The Court notes that on 16 February 2004 the applicant sent his first letter to the Court from the Wrocław Detention Centre. The letter bears a red stamp "censored" (*cenzurowano*) on its top right corner. The envelope bears signs of opening after having been sealed and also bears the stamp of the Wrocław Detention Centre and a handwritten note: W[roćła]-W R[egional] C[ourt].

Moreover, the envelope in which the applicant's letter of 10 January 2005 was sent to the Court from the same detention centre bears a stamp "Wrocław Detention Centre 11 January 2005" and a blue stamp "Censored" (*ocenzurowano*).

45. As regards the applicant's letter of 16 February 2004, the Court notes it was stamped "censored" right on the first page. With respect to the second letter, of 10 January 2005, 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; *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005; and *Micha*, cited above, § 58).

It follows that in respect of both of the applicant's letters there has been an "interference" with his right to respect for his correspondence under Article 8.

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

46. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court observes that, pursuant to Article 214 of the Code of Execution of Criminal Sentences, persons in pre-trial detention 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 *Micha*, cited above, § 61, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, censorship of the applicant’s two letters to the Court was contrary to the domestic law. It follows that the interference in the present case was not “in accordance with the law”.

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

48. The applicant raised a complaint under Article 6 § 1 of the Convention that the length of the proceedings in his case had exceeded a “reasonable time” within the meaning of this provision.

49. However, pursuant to Article 35 § 1 of the Convention:

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

50. The Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic court.

It was thus open to the applicant to lodge a complaint about the unreasonable length of the proceedings with the relevant domestic court in accordance with the general provisions of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*).

51. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its

continuation, and of providing adequate redress for any violation that has already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

However, in the present case there is no indication that the applicant availed himself of this remedy.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. The applicant did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the unreasonable length of the applicant's pre-trial detention and the interference with the applicant's 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.

Done in English, and notified in writing on 29 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Giovanni Bonello
President