



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

FOURTH SECTION

CASE OF JANULIS v. POLAND

(Application no. 20251/04)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Janulis v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 20251/04) 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 Adam Janulis (“the applicant”), on 19 May 2004.

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

3. The applicant alleged that his detention on remand had exceeded a “reasonable time” within the meaning of Article 5 § 3 of the Convention.

4. On 11 January 2007 the President of the Fourth Section decided to give notice of 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.

5. The Court decided to raise of its own motion a complaint under Article 8 of the Convention about the censorship of the applicant’s correspondence.

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

6. The applicant was born in 1974 and lives in Ostróda.

A. Criminal proceedings against the applicant and his detention on remand

7. The applicant was arrested on 26 March 2002 at 4 p.m. On the same day the Olsztyn District Court (*Sąd Rejonowy*) remanded the applicant in custody until 26 June 2002 in view of the reasonable suspicion that, together with three other suspects, he had stolen several cars. It also considered that keeping the applicant in detention was necessary given the risk that he might obstruct the proceedings; the court did not, however, state its reasons for taking such a view. It also stressed the severity of the anticipated sentence.

8. The applicant's appeal against the detention order was unsuccessful, as were his further appeals against decisions extending his detention and his applications for release. His detention was extended on several occasions by the Olsztyn District Court (decisions of 20 May and 23 August 2002, 4 and 14 February 2003 and 14 May 2003) and his appeals against extension were dismissed by the Olsztyn Regional Court (decisions of 26 April 2002, 17 January and 23 May 2003, 6 June 2003 and 16 April 2004). In all these decisions the courts relied on the original grounds given for the applicant's detention or simply found that the reasons for his continued detention given in their previous decisions "were still relevant".

9. On 27 September 2002 the first hearing took place. Evidence was heard from the applicant and his co-accused. The applicant behaved in an arrogant and disorderly manner and was expelled from the court room. Consequently, the hearing had to be adjourned and no witness evidence was heard that day.

10. On 14 February 2003 the Olsztyn District Court sentenced the applicant to ten years' imprisonment. On the same day the Olsztyn District Court extended the applicant's detention until 14 May 2003.

11. The applicant and two of his co-accused lodged appeals against the first-instance judgment.

12. On 15 October 2003 the Olsztyn Regional Court heard the appeals, quashed the first-instance judgment and remitted the case for retrial.

13. In the retrial proceedings the applicant unsuccessfully appealed against further decisions extending his detention. The relevant decisions on extension of his detention were given by the Olsztyn District Court and the Olsztyn Regional Court. The courts again relied on the grounds originally given for the applicant's detention. They added that there were no circumstances obliging them to release the applicant, with the result that his detention could be continued. In its decision given on 23 January 2004 the Olsztyn Regional Court dismissed the applicant's appeal against further extension. It relied on the likelihood that a severe penalty would be imposed on the applicant as well as on the reasonable suspicion, justified by the evidence collected in the proceedings before the first-instance court, that the

applicant and his co-accused would obstruct the proceedings. The court further found that the proceedings had been conducted without undue delays and that the applicant's detention had been necessary to secure the proper course of the proceedings, because the court had had to hear evidence from a certain W.K., who had previously been accused in the same set of proceedings.

14. Between 5 February 2004 and 16 July 2004 the District Court held seven hearings during which evidence was heard from eighteen witnesses.

15. Following the retrial, on 16 July 2004, the Olsztyn District Court sentenced the applicant to three years and eight months' imprisonment.

16. On the same day the applicant was released from detention.

17. The applicant, his co-accused and the prosecutor appealed against the Olsztyn District Court's judgment, which was upheld by the Olsztyn Regional Court on 15 February 2005.

B. Monitoring of the applicant's correspondence

18. On 24 February 2005 the Court received a letter from the applicant. The envelope bore the following stamp: "Censored on 14 February 2005" (*Ocenzurowano dnia 14.02.2005*), together with an illegible signature and a stamp affixed by the post office in Ostróda that read: "Envelope taken out of mail box damaged and re-taped. Ostróda, 14 February 2005" ("*Przesyłka wyjęta ze skrzynki w stanie uszkodzonym oklejona taśmą. Ostróda 14.02.2005*").

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. As regards the applicant's detention on remand

19. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other so-called "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.

B. As regards censorship of prisoners' correspondence

20. 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

21. The applicant complained that the length of his detention on remand 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.”

22. The Government contested that argument.

A. Admissibility

23. 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

24. The applicant’s detention started on 26 March 2002, when he was arrested on suspicion of having committed several counts of theft. On 14 February 2003 the Olsztyn District Court convicted him as charged.

As from that date he was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a); consequently, that period of his detention falls outside the scope of Article 5 § 3 (compare *Kudła v. Poland* [GC], no. 30210/96, § 104).

25. On 15 October 2003 the Olsztyn Regional Court quashed the applicant’s conviction. After that date his detention was again covered by Article 5 § 3. It continued until 16 July 2004, when the applicant was released.

26. Accordingly, the period to be taken into consideration amounts to one year, eight months and nineteen days.

2. *The parties' submissions*

(a) **The applicant**

27. The applicant submitted in general terms that his application lodged with the Court was justified.

(b) **The Government**

28. The Government considered that the applicant's detention on remand satisfied the requirements of Article 5 § 3. They submitted that the detention had been duly justified and that during the entire period the authorities had given relevant and sufficient reasons for extending it. The Government further submitted that the domestic courts had acted diligently and speedily, in particular taking into account the complexity of the case, the applicant's aggressive behaviour and the difficulties in hearing evidence from witnesses who on several occasions had failed to appear for questioning.

3. *The Court's assessment*

(a) **General principles**

29. The Court recalls 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*, cited above, § 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**

30. The Court agrees with the Government that the applicant's detention was indeed reviewed by the courts at regular intervals. In addition to the reasonable suspicion against the applicant, the courts relied principally on two grounds, namely (1) the severity of the penalty to which he was liable and (2) the need to secure the proper conduct of the proceedings. The Court notes that these grounds were reiterated by the courts throughout the whole period of the applicant's detention.

31. The Court accepts that the reasonable suspicion against the applicant of having committed offences warranted detaining him initially. Also, the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses, constituted valid grounds for his initial detention.

32. However, with the passage of time, those grounds became less and less relevant. The Court must therefore establish whether the other ground adduced by the courts – namely, the risk that the applicant would tamper

with evidence – was “relevant” and “sufficient” (see, *Kudła* cited above, § 111).

33. The Court is not persuaded by the Government’s argument that the risk that the applicant might tamper with evidence constituted a valid ground for the entire length of the applicant’s detention on remand. The domestic courts did not give any indications as to why they believed that the applicant, if released, might obstruct the proceedings. The Court cannot therefore accept that ground as a justification for holding the applicant in custody for the entire period.

34. According to the authorities, the likelihood of a severe sentence being imposed on the applicant created a presumption that the applicant 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 re-offending, the gravity of the charges cannot by itself justify long periods of detention on remand (see *Michta v. Poland*, cited above, §§ 49). Having regard to the above, the Court cannot accept the position adopted by the judicial authorities in the present case, namely that the presumption referred to above was by itself sufficient, after a certain lapse of time, to justify the applicant’s continued detention, without the need to indicate any concrete facts supporting the supposed risk of obstruction of the proceedings (see *Szydłowski v. Poland*, no. 1326/04, § 55; *Malikowski v. Poland*, no. 15154/03, § 54; and *Osiński v. Poland*, no. 13732/02, § 53, all judgments delivered on 16 October 2007).

35. It is true, as the Government submitted, that the case was of a certain complexity, given the number of defendants and offences as well as the volume of evidence. However, it would appear that the courts never relied on this as a factor militating against the applicant’s release.

36. The Court notes that in cases similar to the instant one, where there was no element of organised crime, it has made findings both of violation (see, for example, *Lyp v. Poland*, no. 25135/04, 13 November 2007) and no violation (see, for example, *Dzitkowski v. Poland*, no. 35833/03, 27 November 2007) of Article 5 § 3. On each occasion the particular circumstances of the case were decisive for its decision.

37. Since the term of detention in the present case was rather long (one year and eight months), it must be thoroughly and duly justified by the domestic authorities both from a substantive point of view (the existence of reasons justifying keeping the applicant in detention) and from a formal point of view (a proper formulation and justification of the courts’ decisions).

38. For the Court, a failure on the part of the domestic authorities to fulfil the formal requirements for decisions extending detention on remand precludes any substantive examination of the justification for continuing detention and is *per se* sufficient for finding a violation of Article 5 § 3 (see, *mutatis mutandis*, *Kubik v. Poland*, no. 12848/03, § 62, 29 January 2008).

39. A failure to fulfil formal requirements may, in particular, consist in (1) simply repeating reasons for detention contained in the Code of Criminal Procedure, without explaining how they apply in a given case or (2) simply repeating reasons given in the initial phase of detention, without explaining in further decisions why continuing detention is indispensable.

40. The Court notes that the reasons relied upon by the domestic courts in their decisions to prolong the applicant's detention were limited to paraphrasing the reasons for detention set out in the Code of Criminal Procedure, without explaining how they applied in the applicant's case (see paragraphs 8 and 13 above). The Olsztyn District Court, when extending the applicant's detention, merely repeated the wording of the decisions previously given. The Court also notes with concern that the Olsztyn District Court limited itself to reiterating the relevant provision of the Code of Criminal Procedure. Only in a few decisions did the domestic authorities fulfil the formal requirements referred to above (see paragraph 13 above, as regards the decision of 23 January 2004).

41. The Court would add that at no stage of the proceedings was any consideration given to the possibility of imposing on the applicant alternative, less severe, preventive measures. In this connection, the Court would reiterate that Article 5 § 3 of the Convention not only lays down 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).

42. The justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Kubik v. Poland*, § 64, cited above). In this case, the Court finds that the grounds given by the domestic authorities, in the absence of any proper reasoning, cannot be considered "relevant" and "sufficient" to justify the applicant's being kept in detention for nearly two years.

In these circumstances, it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. 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."

A. Admissibility

1. The Government's objection as to non-exhaustion of domestic remedies

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

46. 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 the secrecy of his correspondence with the Central Board of the Prison Service and the Central Electoral Office. The Regional Court held that the secrecy of an individual's correspondence was one of the personal rights protected under Article 23 of the Civil Code and that in the event of a breach a claimant could be entitled to an award of compensation for non-pecuniary damage.

47. The applicant did not comment.

2. The Court's assessment

48. 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 to obtain redress for the alleged breach of his right to respect for his correspondence.

49. Even assuming that the applicant had complained about the censorship of his letters to the Court, it has to be noted that the alleged interference with the applicant's correspondence occurred in February 2005, 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). Furthermore, the Court observes that the judgment relied on by the Government was given by a first-instance court.

50. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

3. *Conclusion as to admissibility*

51. 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. *Whether there was interference*

52. The Court notes that the envelope in which the applicant's letter was sent to the Court bore a stamp that read: "Censored on 14 February 2005", together with an illegible signature and a stamp affixed by the post office in Ostróda that read: "Envelope taken out of mail box damaged and re-taped. Ostróda, 14 February 2005".

53. The Court has held on many occasions that as long as the Polish authorities continue the practice of marking detainees' letters with a "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 *Michtha v. Poland*, no. 13425/02, § 58, 4 May 2006). It follows that in respect of the applicant's letter there was "interference" with his right to respect for his correspondence under Article 8.

2. *Whether the interference was "in accordance with the law"*

54. The Government did not indicate a specific legal basis in domestic law for the impugned interference. The Court notes that the interference took place while the applicant was in detention on remand.

55. The Court observes that, by virtue of Article 214 of the Code on Execution of Criminal Sentences, persons in detention 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, is also applicable to detained persons (see *Michtha*, cited above, § 61, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Consequently, censorship of the applicant's letter to the Court was contrary to domestic law. 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.

III. 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 10,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

59. The Government considered the applicant’s claim “groundless” and requested that it be rejected.

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 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

61. The applicant submitted no claim for costs and expenses.

C. Default interest

62. 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 the currency of the respondent State 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 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President