



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

FOURTH SECTION

CASE OF WENERSKI v. POLAND

(Application no. 44369/02)

JUDGMENT

STRASBOURG

20 January 2009

FINAL

20/04/2009

This judgment may be subject to editorial revision.

In the case of Wenerski 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,

David Thór Björgvinsson,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 44369/02) 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 Ernest Wenerski (“the applicant”), on 29 November 2002.

2. The applicant was represented by Mr J. Skrzydło, a lawyer practising in Łódź. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 17 October 2006 the Court declared the application partly inadmissible and decided to communicate to the Government the applicant’s complaints concerning his allegedly improper medical care in the detention centre and the censorship of his correspondence with the Court. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Kluczbork.

5. The applicant is a habitual offender and has a criminal record. He was charged with robbery and detained on remand in the Wołomin Detention Centre and later in the Łódź Detention Centre from 18 December 2001 to

8 August 2003, when the final judgment was given in his case. At present he is serving prison sentences after conviction for various offences.

A. Facts relating to the complaint under Article 3 of the Convention about the lack of proper medical care in a detention centre

1. The applicant's health condition

6. The applicant suffers from severe ophthalmological problems resulting from an eye injury sustained during a fight with a fellow inmate. In 1996, before he was detained, his right eye was removed. He is currently one-eyed. His problems concern mainly the socket of his extracted eye.

7. In 1998 an expert in ophthalmology, Prof. J.Sz., found it necessary to operate on the applicant's right eye socket to have the remains of the extracted eye removed. The surgery should have been performed while the applicant was released from detention. However, it did not take place, for unknown reasons.

8. In April and June 2000 different specialists from Warsaw and Bytom examined the applicant. It was suggested that he undergo a reconstruction of his right eye socket at Warsaw Medical University Hospital, which was scheduled for 14 August 2000. In a decision of 3 July 2000 the Medical Commission at Warsaw Remand Centre ordered a two-month suspension of the applicant's prison sentence. It appears that the operation was not performed as the applicant failed to appear for a preliminary examination.

9. On 14 February 2002, while the applicant was detained on remand, another specialist in ophthalmology discovered that there was a need to perform a reconstruction of his right eye socket. An operation was scheduled for 22 April 2002; it was, however, postponed until 27 May 2002, since as stated in the applicant's medical certificate of 29 April 2002, the hospital refused to perform it "under escort", which implied that he would be transported back to a detention centre's hospital immediately after the operation.

10. The surgery scheduled for 27 May 2002 was not performed since the applicant was granted neither release from detention nor a suspension of his prison sentence for the necessary period. The Government observed that on 24 May 2002 new criminal charges had been brought against the applicant and that for this reason he could not be released. In this connection, the judge in charge of the applicant's case asked the Bytom Remand Centre hospital whether the applicant's operation could be postponed. This question was answered in the negative after an examination on 22 August 2002. Moreover, the applicant was found to be in need of a different operation on his left eye, namely a vitrectomy.

11. The applicant's vitrectomy on his left eye was scheduled to be performed at the Bytom Remand Centre hospital on 3 October 2002. It was cancelled since the applicant refused to undergo this operation at the Bytom Remand Centre hospital. He protested against the conditions in which it was to take place and insisted on being treated at Warsaw Medical University Hospital.

12. On 10 June 2002 the applicant was examined in the ophthalmology ward of the Bytom Remand Centre hospital. The doctors, however, decided not to operate on the applicant's right eye socket in the Remand Centre hospital, since special facilities had to be in place. Therefore it was decided to have the operation performed at Warsaw Medical University Hospital on 22 September 2002. It was further requested that the applicant be released for the period of the operation and aftercare. The surgery did not take place since the applicant was not granted release, for unknown reasons.

13. In the meantime a doctor at Warsaw Medical University Hospital agreed to operate on the applicant's right eye socket "under escort", which did not require the applicant to be released.

14. In a letter of 8 October 2002 the hospital which had agreed to perform the operation "under escort" scheduled the operation for 19 November 2002. Furthermore, in a letter of 29 October 2002 another hospital confirmed that an operation on the applicant could be carried out "under escort".

15. An entry in the applicant's medical records dated 19 November 2002 stated that the operation should be performed immediately. For unknown reasons, the surgery did not take place.

16. On 31 December 2002 the Łódź Detention Centre informed the Wołomin District Court that an operation had been scheduled for 4 February 2003 and that any postponement of the planned treatment of the applicant might harm his health and endanger his life. Nevertheless, it transpires from the case file that the applicant was not treated on that date.

17. On 18 February 2004 the partial reconstruction of the applicant's right eye socket was performed at the Norbert Balicki Academic Clinical Hospital in Łódź. Subsequently, during a check-up on 20 October 2004 at the Bytom Remand Centre hospital, the applicant was found to be in need of a supplementary operation on his right eye socket.

18. On 10 November 2004 another specialist gave an opinion on the applicant's condition in which he stated that the operation had merely an aesthetic purpose and that it could be performed "under escort" in January 2005.

19. In a letter of 12 April 2005 a different hospital, which had been asked to perform the operation "under escort", refused to do so.

20. In the applicant's medical records covering the period from July until October 2005 it was repeatedly stated that the operation should be performed immediately.

21. On 1 April 2005 at the surgical ward of the Medical Academy in Gdańsk a foreign body (a metal bar) was removed from the applicant's right eye socket. It was the result of a self-inflicted injury of an unspecified date.

22. On 17 January 2006 the applicant was transported to a hospital to see a doctor. There, the applicant was diagnosed with an inflammation of his right eye socket. The specialist recommended waiting for an operation until the inflammation had healed.

23. In a letter of 15 March 2006 the applicant informed the Court that the operation had not yet been performed. He stressed that his state of health had seriously deteriorated and that he was suffering from an inflammation of his right eye socket.

24. During an examination of 14 August 2006 at the Łódź Detention Centre, the specialist found that the applicant's right eye was infected with a virus and that his condition required urgent surgery.

25. In December 2006 the applicant was transported to the Plastic Surgery Ward of the Clinical Hospital of the Polish Ministry of Defence, as the operation to be performed was of a highly complicated character. A specialist examining the applicant found that a complex, multi-stage plastic operation on the applicant's right eye socket had to be performed. It was stressed, however, that such procedures were not covered by the Polish National Health Fund. In a letter of 2 January 2007 the applicant was informed that the operation could be performed, provided that he covered its costs.

26. On 9 January 2007, after the applicant had again been examined at the Łódź Detention Centre, it was found that his right eye socket had to be urgently operated on.

27. Medical certificates of 16 January 2007 issued by the Łódź Detention Centre stated that there was no inflammation of the applicant's right eye socket and that his condition could be treated at the centre's hospital ward. It appears that the surgery was not performed.

28. After another refusal to have the operation performed, the applicant contacted the Oncology Centre at the Maria Skłodowska-Curie Institute, headed by Prof. E.T., requesting help. In reply to the applicant's letter Prof. E.T., after examining his medical records, stated that his condition required immediate surgery and scheduled the date of the consultation for 15 February 2007. The consultation did not take place, since it appears that the management of the Łódź Detention Centre did not grant the necessary leave.

29. On 9 February and 30 March 2007 the Bytom Remand Centre hospital informed the applicant that its ophthalmology ward did not perform plastic surgery on eye sockets.

2. Remedies used by the applicant

30. The applicant used various means in order to draw the attention of the authorities to his health problems.

31. On numerous occasions he requested to be released from detention on remand on account of his eye problems.

32. His requests were repeatedly refused (decision of the Wołomin District Prosecutor of 4 March 2002 and decisions of the Wołomin District Court of 30 July 2002 and 12 November 2002). His appeal against the decision of 4 March 2002 was dismissed (the Warsaw Regional Prosecutor's decision of 5 April 2002).

33. The applicant also tried to challenge his detention by lodging an appeal against an order of 20 November 2002 prolonging his detention on remand. In a decision of 13 December 2002 the Warsaw Regional Court dismissed his appeal against the detention order of 20 November 2002.

34. The applicant also lodged requests for a suspension in serving his prison sentence for the period of his treatment in hospital and aftercare. His requests were refused by the Łódź Regional Court in decisions of 2 December 2002, 29 November 2004 and 27 February 2006.

35. The courts repeatedly stated in their reasons for their decisions that the requested operation could be performed "under escort", without leave being necessary, and that the delay in performing the operation would not result in any deterioration of the applicant's health. In its refusal of 27 February 2006 the court also relied on the fact that the inflammation of the applicant's right eye socket was a medical contra-indication against the immediate performance of the operation. It considered that the operation should be delayed until the inflammation had healed.

36. The applicant also lodged numerous complaints with the authorities in charge of detention centres, as well as with supervisory institutions, about his lack of proper medical care. All his complaints were found to be unsubstantiated. The authorities repeatedly stated that the applicant had been seen by doctors on numerous occasions, that he had been given all medicines prescribed for him and that there were no medical arguments against the operation being carried out "under escort" (letters of the Warsaw-Białołęka Detention Centre of 10 January 2003 and the Warsaw Regional Inspectorate of 27 January 2003). It was also emphasised that the applicant had not proved that he had used the suspensions of his prison sentence which he had previously been granted in compliance with their purpose (undergoing medical treatment).

37. The applicant contested the finding that he had not undergone any medical treatment during the periods when he had been granted suspensions of his prison sentence. He instituted criminal proceedings against the health-care institution of the detention centre on a charge of making a false statement. In the course of these proceedings it was established that the

applicant had undergone some medical treatment during the contested periods (he had had his eye removed).

B. Facts relating to the complaint under Article 8 of the Convention

38. The applicant submitted an envelope sent to him from the Court, bearing the logo of the Council of Europe. It bears stamps marked “censored” and “a judge” and a stamp of the Warsaw-Białoleka Detention Centre with the date 9 April 2003 and an illegible signature. It also bears a stamp of the Council of Europe with the date 25 March 2003. It appears from the case file that the applicant was not present when the correspondence was censored. Furthermore, the applicant claimed that his correspondence had been stopped and that he had received it with a delay of about one month.

II. RELEVANT DOMESTIC LAW

A. Access to medical assistance for convicted and remand prisoners

39. Rules on access to medical assistance for convicted prisoners are set out in the Code of Execution of Criminal Sentences of 6 June 1997 (*Kodeks karny wykonawczy* – “the 1997 Code”), which entered into force on 1 September 1998.

40. The relevant part of Article 115 § 1 of the Code provides as follows:

“A convicted person shall have access to free health care ...”

Article 115 was substantially amended in 2003 and on subsequent occasions, the amendments extensively covering the range of medical assistance available to convicted persons and rules for its application. The provision referred to above remained unchanged in substance.

41. As regards access to medical assistance for persons detained on remand, Article 214 § 1 of the Code provides as follows:

“Unless exceptions are provided for in the present Chapter, a person detained on remand 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 remand prisoners.”

B. Censorship of correspondence

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained that he had not received adequate medical care while in detention. He further complained that the date for his operation had repeatedly been postponed and that it had been the authorities' responsibility to have it rescheduled. He alleged that the delay in performing his operation had resulted in the deterioration of his health and in other forms of suffering. He relied on Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

44. The Government contested these arguments.

A. Admissibility

45. 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. Parties' submissions

(a) The Government

46. At the outset, the Government submitted that none of the medical opinions had referred to the urgent nature of the surgery to be performed on the applicant. They stressed that according to the medical data at their disposal, the operation in question was a matter of aesthetics, rather than health or life.

47. Further, the Government claimed that the applicant had never complained that he had been denied access to medical care. On the contrary, as the Government submitted, the applicant had been provided with the necessary medical assistance, including assistance from external specialists in ophthalmology. Moreover, his health condition had been carefully monitored by the doctor and the nursing staff present at the detention centre throughout the entire period of his detention. In the Government's view, it could not be said that the applicant had been subjected to distress or hardship exceeding the unavoidable level of suffering inherent in any detention.

48. The Government also stressed that the applicant had systematically caused his condition to deteriorate; among other things, he had suffered from an inflammation of his right eye socket as a result of a self-inflicted injury. Further, he had repeatedly refused to give his consent to undergo treatment offered in the detention centre's hospital ward.

49. Lastly, the Government alleged that Article 3 of the Convention could not be interpreted as laying down a general obligation to release a detainee on health grounds or to have him transferred to a civilian hospital for surgery.

50. The Government concluded that the complaint was ill-founded on the merits. They submitted that the applicant's treatment had not exceeded the minimum threshold of severity beyond which there was a violation of Article 3 of the Convention.

(b) The applicant

51. The applicant pointed first to the State's special responsibilities towards persons deprived of their liberty, in particular as regards their right to have access to medical care. In this connection he stressed that a person was usually free to choose a specialist to treat his condition and a method of recommended treatment. Furthermore, a person could always refuse to undergo an operation, even if it was life-saving. As concerns those who were detained, however, their choices in this respect were very limited. They could not opt for a particular specialist to treat them, nor did their lack of consent relieve the custodial authorities of the duty to provide the necessary medical assistance, by force if required. This followed from the State's duty to protect those under its jurisdiction, in particular those in a vulnerable position in custody. Having regard to that duty, the applicant stressed that compulsory medical treatment did not violate Article 3 of the Convention, provided that it was necessary from a medical point of view and carried out in conformity with standards accepted by medical science. Even an obstructive attitude on the part of the person concerned did not constitute an obstacle to providing necessary and urgent treatment.

52. Further, the applicant claimed that Article 3 of the Convention imposed an obligation on the State to protect the physical well-being and

lives of detainees. The scope of this obligation depended, he argued, on the factual circumstances of each case. If a detainee's condition deteriorated, and his health was at risk and the State failed to provide adequate treatment, such an omission breached Article 3 of the Convention. In this connection the applicant stressed that for many years he had been denied treatment on his eyes at different hospitals outside the detention centre. Bearing in mind that the prison's hospital ward did not have the facilities to perform complicated surgery on the applicant's right eye socket, the relevant authorities should have considered alternative ways of ensuring the medical treatment, such as granting him temporary release for a period necessary for treatment outside the detention centre and aftercare. In any event he should have been afforded the possibility of undergoing the operation "under escort", in particular since some specialists had agreed to such special conditions being put in place.

53. Lastly, the applicant alleged that the level of ill-treatment he had suffered as a result of the lack of adequate medical treatment for his eye condition had by far exceeded the minimum threshold required to fall within the scope of Article 3 of the Convention. In particular, he stressed that he had already lost sight in his right eye as a result of a fight with an inmate and that a very long time had elapsed after that incident without the necessary operation being carried out. Further, he stressed that several specialists' opinions had referred to the urgent nature of the surgery to be performed, whereas the relevant authorities had failed to respond accordingly, giving different invalid reasons for not having the surgery carried out.

2. General principles

54. The Court reiterates that according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, Series A no. 215, p. 36, § 107; *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III).

55. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. As regards prisoners or detainees, the Court has repeatedly noted that measures depriving a person of his liberty may often involve such an element. However, under Article 3 of the Convention the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution

of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, §§ 91-94).

3. *The Court's assessment*

56. In the present case, the Court notes firstly that it is undisputed between the parties that the applicant has been suffering for a number of years from different eye problems, in particular that relating to his right eye socket, following a fight with a fellow inmate in 1996, in consequence of which his right eye was removed.

57. What the parties disagree on, and what appears to lie at the core of the case at hand, concerns the adequacy of the treatment afforded to the applicant. The Government claimed that the applicant had been provided with the necessary care, whereas the applicant on the contrary contested the Government's findings (see paragraphs 46-53 above).

58. In these circumstances, the Court finds it necessary to establish whether the applicant was in fact denied adequate medical assistance in the present case and, as a consequence, was caused suffering. If this question is to be answered in the affirmative, it must be ascertained whether it amounted to ill-treatment of a level exceeding the threshold required to fall within the scope of Article 3 of the Convention.

59. As to the applicant's problems with his right eye socket, the Court notes that the medical documentation submitted by both the Government and the applicant shows that as early as in 1998 an expert in ophthalmology found it necessary to perform an operation on the applicant's right eye socket (see paragraph 7 above). The same conclusion was reached on subsequent dates by several other specialists (see, *inter alia*, paragraphs 8, 9 and 17 above), who further stressed the urgent nature of the treatment (see, *inter alia*, paragraphs 15, 16, 20 and 26 above). In addition, it is to be observed that the applicant on several occasions complained of pain and suffering as a consequence of the surgery not being performed (see, *inter alia*, paragraphs 23, 30 et seq. above).

Accordingly the Court is satisfied that the applicant must have suffered considerable pain in connection with his eye problem.

60. As to the Government's arguments that the applicant had contributed substantially to the deterioration of his eyes by injuring himself and refusing hospitalisation (see paragraph 48 above), it is to be observed that the applicant only once refused his consent to an operation (see paragraph 11 above) and on only single occasion was the applicant treated to remove a metal object he had placed in his right eye socket (see paragraph 21 above).

61. The Court is accordingly not able to accept that the deterioration in the applicant's medical condition can be attributed solely to the applicant's own actions. In this connection the Court accepts that, as the applicant

argued (see paragraph 51 above), since both convicted and remand prisoners are in a very vulnerable position in terms of their access to medical assistance, it is the authorities' special duty to provide them with adequate and necessary treatment, in particular when it has been established that such treatment is urgent, regardless of the circumstances.

62. An important factor to be taken into consideration in establishing the level of ill-treatment which took place is the time the applicant spent in detention without surgery being performed, in particular on his right eye socket. In this connection the Court notes that the relevant custodial authorities had undoubtedly been aware of the need to have the applicant's right eye socket operated on since 1998, when the first medical report to that effect was drafted. The Court notes, however, that, despite its urgent nature, the authorities failed to follow this recommendation, giving different reasons, until 18 February 2004, when the partial reconstruction of the applicant's right eye socket was eventually carried out at the Norbert Balicki Academic Clinical Hospital in Łódź (see paragraph 17 above).

Hence, the Court observes that the applicant was denied necessary and urgent treatment for at least six years.

63. The Court further notes that the Government failed to provide valid reasons for the lack of necessary steps taken to ensure that the operation on the applicant's right eye socket was carried out without delay. In this connection the Court accepts that having surgery performed in an external hospital on a detainee may present a security risk and might therefore involve a certain degree of associated operational problems, which may cause some delay (see *Pilčić v. Croatia*, no. 33138/06, § 41, 17 January 2008). However, as appears from the medical records submitted, at least two hospitals agreed to have the operation performed "under escort" with special security measures put in place (see paragraphs 13 and 14 above). Despite their consent, the surgery was not carried out.

64. The foregoing considerations are sufficient to enable the Court to conclude that by leaving the applicant to suffer considerable pain for a prolonged period of time as a result of the failure to provide him with necessary and urgent treatment on his right eye socket from 1998 until 18 February 2004, the custodial authorities acted in breach of their obligations to provide effective medical treatment and that the applicant was subjected to inhuman and degrading treatment in violation of Article 3 of the Convention.

65. The Court accordingly finds that there has been a violation of Article 3 of the Convention.

66. As regards the subsequent doctors' recommendation on supplementary plastic surgery to be performed after 2004 (see paragraphs 17-29 above), the Court notes that it was found to be purely of an aesthetic character (see paragraphs 18 and 25 above). The Court further notes that such treatment is not reimbursed under the national social security scheme

(see paragraph 25), regardless of the person's status. It follows that no issue arises in this respect under Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

67. The applicant complained that his correspondence with the Court had been stopped for a month and censored while he was detained on remand. He relied on Article 8 of the Convention, which, in so far as relevant, read as follows:

Article 8

“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

The Government's plea of non-exhaustion of domestic remedies

68. The Government submitted that the applicant had not exhausted all available domestic remedies. They alleged that he had failed to bring an action under Articles 24 and 23 in conjunction with Article 448 of the Civil Code. These provisions would have allowed the applicant 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.

69. 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 in damages from the State Treasury for a breach of the confidentiality of his correspondence with the Central Board of the Prison Service and the Central Electoral Office. The Regional Court had held that the confidentiality of one's correspondence was one of the personal rights protected under Article 23 of the Civil Code and that in the event of its breach a claimant could be entitled to an award for non-pecuniary damage.

70. The applicant argued that the civil action provided for in Article 24 in conjunction with Article 448 of the Civil Code did not constitute an effective domestic remedy in respect of the censorship of correspondence. He therefore requested that the Government's plea of non-exhaustion be dismissed.

71. The Court notes that the alleged interference with the applicant's correspondence occurred in 2003, 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).

72. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

73. 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 interference

74. The Court notes that the envelope sent to the applicant by the Court bears stamps marked "censored" and "a judge", and also a stamp of the Warsaw-Białoleka Detention Centre with the date 9 April 2003 and an illegible signature. It also bears a stamp of the Council of Europe with the date 25 March 2003. It appears that the envelope was opened and subsequently resealed.

75. Accordingly, the Court considers that, despite no separate stamp being visible on the letter, it can be assumed that the envelope was opened and its content read through. 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, it 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; *Micha*, cited above, § 58; and *Lewak*, cited above, § 29).

76. It follows that in respect of the applicant's letter there was an "interference" with his right to respect for his correspondence as provided by Article 8 of the Convention.

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

77. The Court notes that the Government failed to show that there was a legal basis in domestic law for the impugned interference. The Court notes that it occurred once, while the applicant was detained on remand.

78. The Court notes that the prohibition of censorship of convicted persons' correspondence with it is set forth in Article 103 of the Code of

Execution of Criminal Sentences. The Court further notes that, by Article 214 of the same Code, persons detained on remand should enjoy the same rights as those convicted in a final judgment. Accordingly, this prohibition is also applicable to those detained on remand (see *Micha*, cited above, § 61).

79. Hence, the censorship of the Court's letter to the applicant was contrary to domestic law. It follows that the interference in the present case was not "in accordance with the law".

80. Having regard to that finding, the Court does not consider it necessary to ascertain whether the other requirements of paragraph 2 of Article 8 of the Convention 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

81. 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

82. The applicant claimed 30,000 euros (EUR) in respect of the non-pecuniary damage resulting from the alleged violations of Articles 3 and 8 of the Convention.

83. The Government found the applicant's claim to be exorbitant.

84. As to the applicant's claim in relation to Article 3 of the Convention, the Court notes that it has found the applicant's rights guaranteed under that Article to have been violated. In particular, it has found that the applicant was not provided with adequate medical assistance while he was detained for a period of six years, although such assistance had been found to be urgent and necessary. The Court has further found that this must have undoubtedly caused him both physical and mental suffering. In consequence, ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 3,000 (three thousand euros) under this head, plus any tax that may be chargeable.

85. As to the applicant's claim in relation to Article 8 of the Convention, the Court finds that the applicant has suffered non-pecuniary damage and, ruling on an equitable basis, as required by Article 41, awards him EUR 500 (five hundred euros) under this head, plus any tax that may be chargeable.

B. Costs and expenses

86. The applicant did not submit a claim for any costs and expenses incurred. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

87. 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 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 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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 20 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President