



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF FELIŃSKI v. POLAND

(Application no. 31116/03)

JUDGMENT

STRASBOURG

7 July 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of Feliński v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 31116/03) 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 Ryszard Feliński (“the applicant”), on 10 September 2003.

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

3. On 6 December 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was 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 1948 and lives in Jastrzębie.

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

5. On 28 August 2000 the applicant was arrested on suspicion of homicide.

6. On 30 August 2000 the Trzcianka District Court (*Sąd Rejonowy*) remanded him in custody, relying on the reasonable suspicion that he had committed the offence in question. The court considered that the need to secure the proper conduct of the investigation justified holding him in custody. The court also stressed the severity of the anticipated sentence.

7. On 20 November 2000 the Poznań Regional Court (*Sąd Okręgowy*) extended his detention until 30 December 2000. On 27 December 2000 the court ordered that the term should be extended until 30 March 2001. On 26 March 2001 it ordered that the applicant be kept in custody until 30 June 2001. In all its detention decisions the court relied on a strong suspicion that the applicant had committed the offences in question. The court repeatedly stressed that his detention was justified by the need to obtain further evidence.

8. On 11 June 2001 the Trzcianka District Prosecutor (*Prokurator Rejonowy*) indicted the applicant on charges of homicide, committed with an accomplice.

9. On 25 June 2001 the Poznań Regional Court (*Sąd Okręgowy*) extended the applicant's detention. It relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged. It also referred to the need to secure the proper conduct of the proceedings as a justification for holding him in custody. On 30 June 2001 the applicant lodged an appeal. In his appeal he maintained that, given his poor health, detention was putting a severe strain on him. He particularly relied on the atheromatosis which affected his legs.

10. On 24 July 2001 his appeal was dismissed by the Poznań Court of Appeal (*Sąd Apelacyjny*). It found that there was a risk that the applicant might tamper with evidence, having regard to the fact that the co-accused suffered from a mental disability.

11. Between 28 September 2001 and 19 December 2002 the court held 12 hearings.

12. On 28 September 2001 and 25 October 2001 the applicant lodged applications with the Poznań Regional Court to have his detention lifted or replaced by another preventive measure. He referred to his health problems. The court dismissed the applications. It relied on the likelihood of a severe prison sentence being imposed on the applicant and the need to secure the proper conduct of the proceedings. It further observed that the applicant had received adequate medical care in prison.

13. On 20 December 2002 the Poznań Regional Court convicted the applicant as charged and sentenced him to 13 years' imprisonment. The applicant and his co-defendant appealed.

14. On 2 September 2003 the Poznań Court of Appeal dismissed the applicant's appeal. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

15. On 26 May 2004 the Supreme Court quashed the judgment and remitted the case to the Poznań Regional Court. The Supreme Court extended the applicant's detention until 26 August 2004. The court referred to the seriousness of the offence with which he had been charged and to the need to secure the proper conduct of the proceedings.

16. In the meantime, on 7 November 2003, as a result of the atheromatosis, the applicant's right leg was amputated.

17. The applicant's detention was extended by decisions of the Poznań Regional Court of 16 August 2004, 21 February 2005 (upheld by the Poznań Court of Appeal on 23 March 2005) and 23 June 2005.

18. On 16 September 2005 the Poznań Regional Court gave judgment and sentenced him to 13 years' imprisonment. The applicant appealed.

19. On 22 December 2005 the Poznań Court of Appeal quashed the judgment and remitted the case to the Regional Court.

20. In the course of the court proceedings the applicant's pre-trial detention was regularly extended. The courts repeated the grounds given in the previous decisions.

21. On 13 June 2006 the applicant lodged an application with the Poznań Regional Court to have his detention lifted or replaced by another preventive measure. He referred to his health problems and the need for specialist medical treatment. On 7 September 2006 at the request of the applicant, the court ordered a medical examination. The results of the medical examination did not reveal grounds for release. However, in the experts' opinion the applicant's state of health had deteriorated since the examination on 22 December 2004. The experts concluded that it had been the result of the natural progress of the illnesses (atheromatosis and diabetes). Finally, they noticed that the atheromatosis had led to a serious ischemia of his left leg.

22. On 16 October 2006 the Poznań Regional Court acquitted and released the applicant. The Czarńków District Prosecutor appealed. The appeal was dismissed by the Poznań Court of Appeal on 6 March 2007.

23. On 2 April 2007 the Poznań Appeal Prosecutor (*Prokurator Apelacyjny*) lodged a cassation appeal with the Supreme Court.

24. On 22 January 2008 the cassation appeal was dismissed.

25. During the entire proceedings, the applicant lodged numerous requests for his case to be examined speedily. However, he failed to lodge a complaint under section 5 of the Law on 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*) ("the 2004 Act").

26. On 25 February 2008 the applicant filed a request for compensation for manifestly unjustified detention on remand under Article 552 of the Code of Criminal Procedure with the Poznań Regional Court. The proceedings are pending.

B. Censorship of the applicant's correspondence

27. On 11 August 2004 the Court received a letter from the applicant dated 29 July 2004. The letter was sent while the applicant was detained in the Wrocław Prison (*Zakład Karny*). The envelope bears the following stamps: "Censored, Poznań, on 03.08.2004, Criminal Department III" (*Ocenzurowano, Poznań, dnia 03.08.2004, Wydział III Karny*) and an illegible signature. It appears that the envelope had been cut open and subsequently resealed with adhesive tape.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including detention on remand

28. The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its prolongation, release from detention and rules governing other, so-called "preventive measures" (*środki zapobiegawcze*) are stated 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. Remedies against unreasonable length of the proceedings

29. The relevant domestic law and practice concerning remedies for the excessive length of judicial and enforcement proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V, and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII and in its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

C. Censorship of correspondence

30. The legal provisions concerning monitoring of detainees' correspondence applicable at the material time and questions of practice are set out in paragraphs 65-66 of the judgment delivered by the Court on 4 May 2006 in *Michta v. Poland*, no. 13425/02.

D. Compensation for unjustified detention

31. Chapter 58 of the Code of Criminal Procedure, entitled "Compensation for unjustified conviction, detention on remand or arrest",

stipulates that the State is liable for wrongful convictions or for unjustifiably depriving an individual of his liberty in the course of criminal proceedings against him.

32. Article 552 provides, in so far as relevant:

“1. An accused who, as a result of the reopening of the criminal proceedings against him or of lodging a cassation appeal, has been acquitted or resentenced under a more lenient substantive provision, shall be entitled to compensation from the State Treasury for the pecuniary and non-pecuniary damage which he has suffered in consequence of having served the whole or a part of the sentence imposed on him.

...

4. Entitlement to compensation for pecuniary and non-pecuniary damage shall also arise in the event of manifestly unjustified arrest or detention on remand.”

33. Proceedings relating to an application under Article 552 are subsequent to and independent of the original criminal proceedings in which the detention has been ordered. The claimant can retrospectively seek a ruling as to whether his detention has been justified. He cannot, however, test the lawfulness of his continuing detention on remand or obtain release.

E. Relevant statistical data, measures taken by the State to reduce the length of pre-trial detention and relevant Council of Europe documents

34. The relevant statistical data, recent amendments to the Code of Criminal Procedure designed to streamline criminal proceedings and references to relevant Council of Europe materials can be found in the Court's judgment in the case of *Kauczor* (see *Kauczor v. Poland*, no. 45219/06, §§ 27-28 and 30-35, 3 February 2009).

THE LAW

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

35. 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.”

36. The Government contested that argument.

A. Admissibility

37. The Government submitted in the first place that the applicant had not exhausted the remedies provided for by Polish law as regards his complaint under Article 5 § 3 of the Convention, in that he had failed to appeal against certain decisions prolonging his detention. Moreover, they stated that the applicant has instituted proceedings for compensation for unjustified detention under Article 552 of the Code of Criminal Procedure and that the proceedings are pending.

38. The Court reiterates that it is well established in its case-law that an applicant must make normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Yaşa v. Turkey* judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, § 71).

39. In the present case the applicant lodged appeals against some of the decisions prolonging his detention, including the decisions taken in the final stage of the proceedings, when the length of the detention had reached its most critical point. He also lodged many requests for the detention measure to be lifted or for a more lenient preventive measure to be imposed. The applicant's aim in using the remedies was to obtain a review of his detention pending trial and to obtain his release. In the circumstances of the case these remedies constituted adequate and effective remedies within the meaning of Article 35 of the Convention.

40. The Court further notes that the arguments raised by the Government are similar to those already examined and rejected in a previous case against Poland (see *Grzeszczuk v. Poland*, no. 23029/93, Commission decision of 10 September 1997) and that the Government have not submitted any new circumstances which would lead the Court to depart from that finding.

41. As regards the action for damages against the State, the Court reiterates that that action is not a remedy which has to be exhausted because the right to have the lawfulness of detention examined by a court and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 are two separate rights (see *Zdebski, Zdebska and Zdebska v. Poland* (dec.), no. 27748/95, 6 April 2000).

42. The Court further recalls that a request for compensation for manifestly unjustified detention on remand under Article 552 of the Code of Criminal Procedure of 1997 enables a detainee to seek, retrospectively, a ruling as to whether his detention in already terminated criminal proceedings was justified, and to obtain compensation when it was not. The proceedings relating to such a request are essentially designed to secure financial reparation for damage arising from the execution of unjustified detention on remand (*Włoch v. Poland*, no. 27785/95, judgment of 19 October 2000, § 91).

Finally, the Court observes that the applicant does not complain that he has not obtained compensation for his detention in contravention of Article 5 § 5 of the Convention.

43. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court 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

44. The applicant's detention started on 28 August 2000, when he was arrested on suspicion of homicide. On 20 December 2002 the Poznań Regional 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) and, consequently, that period of his detention falls outside the scope of Article 5 § 3 (cf. *Kudła*, cited above, § 104).

45. On 26 May 2004 the Supreme Court quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 16 September 2005 when the applicant was again convicted. Consequently, that period of his detention falls outside the scope of Article 5 § 3.

46. On 22 December 2005 the Poznań Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 16 October 2006 when the applicant was acquitted and released.

Accordingly, the period to be taken into consideration amounts to four years, five months and nine days.

2. The parties' submissions

(a) The applicant

47. The applicant submitted that his detention had been inordinately lengthy and that the authorities had failed to exercise all due diligence when dealing with his case.

(b) The Government

48. The Government refrained from expressing their view on the merits of the complaint under Article 5§ 3 of the Convention.

3. *The Court's assessment*

(a) General principles

49. 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, were stated 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

50. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three grounds, namely (1) the severity of the penalty to which he was liable; (2) the need to secure the proper conduct of the proceedings and (3) the risk that the applicant might tamper with evidence. As regards the latter, they relied on the fact that the applicant's co-defendant suffered from a mental disability (see paragraph 10 above).

51. The Court accepts that the reasonable suspicion against the applicant of having committed a serious offence could initially warrant his detention. Also, the need to secure the proper conduct of the proceedings, in particular the process of obtaining evidence from witnesses constituted valid grounds for the applicant's initial detention.

52. However, with the passage of time, those grounds became less and less relevant. The Court must then establish whether the other grounds adduced by the courts – namely, the severity of the anticipated sentence and the risk that the applicant would tamper with evidence – were “sufficient” and “relevant” (see, *Kudła* cited above, § 111).

53. 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 *Micha v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

54. Secondly, the judicial authorities considered that there had been a risk that the applicant might interfere with the course of the proceedings by exerting pressure on his co-defendant. The Court observes that it might have been legitimate for the authorities to consider that factor as capable of justifying the applicant's detention at the initial stages of the proceedings. However, the Court considers that that ground gradually lost its force and

relevance as the proceedings progressed and it cannot accept it as a justification for holding the applicant in custody for the entire period.

55. 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

56. The Court raised of its own motion an issue under Article 8 of the Convention on account of the fact that the applicant's correspondence with the Court had been censored. This provision, in its relevant part, reads:

“1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

1. The Government's preliminary objection on exhaustion of domestic remedies

57. The Government submitted that the applicant had not exhausted available domestic remedies. He had failed to bring an action either under Article 24 § 1, in conjunction with Article 448 of the Civil Code or under Article 24 § 2, in conjunction with Article 417 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 to make a claim in respect of non-pecuniary damage.

58. 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 held that the confidentiality of correspondence was a personal right protected under Article 23 of the Civil Code, whose breach could entitle the claimant to an award in respect of non-pecuniary damage.

59. The applicant did not comment.

2. *The Court's assessment*

60. 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.

61. For this reason, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

3. *Conclusion as to admissibility*

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*

62. The Court notes that the applicant's letter dated 29 July 2004 bears the stamps marked "Censored, Poznań, on 03.08.2004, Criminal Department III" (*Ocenzurowano, Poznań, dnia 03.08.2004, Wydział III Karny*) and an illegible signature (see paragraph 27 above).

63. 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 v. Poland*, cited above, § 58). It follows that in respect of the applicant's letter there was an "interference" with his right to respect for his correspondence under Article 8.

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

64. The Government did not indicate a specific legal basis in domestic law for the interference. The Court notes that the interference took place on one occasion when the applicant was in detention.

65. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, detained persons should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the European Court of Human Rights contained in Article 103 of the same Code, which expressly relates to

convicted persons, was also applicable to detained persons (see *Michta v. Poland*, cited above, § 61, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, the censorship of the applicant's letter to the Court's Registry was contrary to domestic law. It follows that the interference in the present case was not "in accordance with the law".

66. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Medical care in remand centre

67. The applicant alleged that the conditions of his detention and the lack of specialist health care, which had resulted in the amputation of his right leg, had been in breach of Article 3 of the Convention.

68. Article 3 of the Convention reads:

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

69. The Court recalls that this provision cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment. Nevertheless, under this provision 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 by, among other things, providing him with the requisite medical assistance (*Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-X).

70. Turning to the facts of the present case, the Court observes that the applicant was examined several times by external medical experts. In their opinions they concluded that his detention was compatible with his health. The Court notes that in their opinion of 2006 they admitted that the applicant's health had deteriorated. However, they concluded that it had been the result of the natural progress of the illnesses (see paragraph 21 above).

71. The applicant's condition was, throughout his detention, monitored by the prison health service and he received appropriate medical treatment. There is no indication of any negligence on the part of the medical services,

nor has the applicant adduced any evidence to show that the authorities were negligent in administering medical treatment to him. Consequently, it cannot be said that the applicant was denied adequate medical care and attention in detention such as to raise an arguable issue of ill-treatment within the meaning of Article 3 of the Convention.

72. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Length of criminal proceedings

73. The applicant further complained that the length of the proceedings in his case had exceeded a “reasonable time” within the meaning of Article 6 § 1 of the Convention.

74. 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...”

75. The Court observes that the applicant failed to avail himself of any of the following remedies provided for by Polish law. When the proceedings were pending he could have made a complaint under section 5 of the 2004 Act. After the termination of the trial, he could have brought a civil action under Article 417 of the Civil Code read together with section 16 of the above-mentioned Act (as to the effectiveness of the latter remedy, see *Krasuski v. Poland*, cited above, § 72).

76. It follows that the complaint under Article 6 § 1 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

77. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

A. The parties’ submissions

1. The applicant

78. The applicant did not submit any observations concerning this provision.

2. *The Government*

79. The Government stressed that Polish law was compatible with the standards of Article 5 § 3 of the Convention.

80. Maintaining that the number of cases in which the domestic courts had ordered detention on remand lasting from twelve months to two years or longer was decreasing, the Government made reference to the statistical data for 2006-2007 which they submitted to the Court. They further stressed that the awareness of courts of the standards concerning the length of the detention on remand was growing.

81. They also suggested that the fact that the Court had already given many judgments finding a violation of Article 5 § 3 of the Convention should not lead to the automatic application of Article 46, as had occurred in the case of *Scordino v. Italy*. The Polish authorities had taken many general and individual measures based on the conclusions stemming from the Court's judgments finding that the length of the detention on remand had been excessive. In particular, on 17 May 2007 the Cabinet adopted the "Plan of Actions of the Government for the execution of judgments of the European Court of Human Rights in respect of Poland" (see paragraph 34 above).

82. The Government concluded that, bearing in mind the efforts of the Polish authorities and the legislative reforms which were and had been undertaken by them to solve the problem of the length of detention on remand, Poland could not be said to have failed to comply with its obligations under Article 46 of the Convention to obey the Court's judgments.

B. The Court's assessment

83. Recently, in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, § 58 et seq. with further references) the Court held that the 2007 Resolution taken together with the number of judgments already delivered and of the pending cases raising an issue of excessive detention incompatible with Article 5 § 3 demonstrated that the violation of the applicant's right under Article 5 § 3 of the Convention had originated in a widespread problem arising out of the malfunctioning of the Polish criminal justice system which had affected, and may still affect in the future, an as yet unidentified, but potentially considerable number of persons charged in criminal proceedings.

84. In the present case, as in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 50-55 above). Consequently, the Court sees no reason to diverge from its findings made in *Kauczor* as to the

existence of a structural problem and the need for the Polish State to adopt measures to remedy the situation (see *Kauczor*, cited above, §§ 60-62).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

87. The Government maintained that the applicant’s claim was excessive. They asked the Court to rule that a finding of a violation of Article 5 § 3 constituted in itself sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

88. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,000 in respect of non-pecuniary damage for the breach of Article 5 § 3 and 8 of the Convention.

B. Costs and expenses

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

C. Default interest

90. 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 complaint concerning the length of the applicant's pre-trial detention and the monitoring of 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;
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 4,000 (four thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President