



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF JANUS v. POLAND

(Application no. 8713/03)

JUDGMENT

STRASBOURG

21 July 2009

FINAL

21/10/2009

This judgment may be subject to editorial revision.

In the case of Janus 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 30 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 8713/03) 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 Antoni Janus (“the applicant”), on 10 February 2003.

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

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

4. On 25 June 2008 the President of the Fourth Section Court 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).

5. On 6 January 2008 the applicant’s mother, Mrs Stefania Janus, informed the Court’s Registry that the applicant had died on 29 November 2008. She stated that she wished to continue the proceedings before the Court in her late son’s stead.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lived in Czarne, Poland.

1. Criminal proceedings against the applicant and his detention pending trial

7. The applicant was arrested by the police on 12 September 2001 on a charge of murder and by a decision of the Bytów District Court of 14 September 2001 he was detained on remand.

8. Subsequently, the applicant's pre-trial detention was prolonged on several occasions by the Słupsk Regional Court (decisions of 6 December 2001, 2 January 2002, 22 March 2002, 20 December 2002, 18 March 2003 and 16 June 2003).

9. The applicant on several occasions unsuccessfully applied to be released and to have the preventive measure imposed on him changed into a more lenient one.

10. The courts justified their decisions prolonging the applicant's detention on remand and their refusals to release him by the existence of a reasonable suspicion that he had committed the offence concerned and by the severity of the anticipated sentence.

11. On 22 March 2002 the Słupsk Regional Court convicted the applicant and sentenced him to eight years' imprisonment. On 5 September 2002 the Gdańsk Court of Appeal quashed the first-instance judgment and remitted the case to the lower court.

12. On 16 September 2003 the Słupsk Regional Court convicted the applicant and sentenced him to seven years' imprisonment. On 10 February 2004 the Gdańsk Court of Appeal quashed the first-instance judgment and remitted the case to the lower court.

13. On 7 February 2005 the Słupsk Regional Court convicted the applicant and sentenced him to seven years' imprisonment. On 23 June 2005 the Gdańsk Court of Appeal reduced the sentence to six years' imprisonment. A cassation appeal against the second-instance judgment was available.

14. On 23 June 2005 the applicant was released because of his health which had prevented him from serving a term of imprisonment. The applicant submitted that from August 2005 he had been examined several times by psychiatrists and that he had been admitted to a psychiatric hospital for short periods on five occasions. He had been diagnosed with nervous depression.

2. Censorship of the applicant's correspondence

15. On 5 March 2003 the Court received a letter from the applicant dated 9 February 2003. The envelope bore the following stamps: "the Słupsk Regional Court (...)" and "Censored on 18 February" (*Ocenzurowano dnia 18.02*) and an illegible signature.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

16. The relevant domestic law and practice concerning the imposition of detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other “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.

17. The relevant domestic law and practice concerning the censorship of correspondence is stated in the Court’s in the cases of *Matwiejczuk v. Poland*, no. 37641/97, 2 December 2003, and *Drozdowski v. Poland*, no. 20841/02, 6 December 2005.

B. Relevant statistical data

18. In the framework of the procedure before the Committee of Ministers (see paragraphs 20 and 21 below) the Polish Government supplied statistical data concerning the number and the length of pre-trial detentions ordered in the years 2005-2006 by the domestic courts. A more detailed rendition of the relevant statistical data can be found in the Court’s judgment in the case of *Kauczor* (see *Kauczor v. Poland*, no. 45219/06, § 28, 3 February 2009).

III. MEASURES TAKEN BY THE STATE TO REDUCE THE LENGTH OF PRE-TRIAL DETENTION

A. Recent amendments to the relevant legislation

19. A number of amendments to the Code of Criminal Procedure (*Kodeks postępowania karnego*), designed to streamline criminal proceedings, entered into force on 20 June 2007 (Law of 9 May 2007 on amendments to the Code of Criminal Procedure; Journal of Laws of 2007, No. 99, item 664; *Ustawa o zmianie ustawy - Kodeks postępowania karnego oraz niektórych innych ustaw*). Those amendments strengthened the powers of the authorities to discipline the parties. A more detailed rendition of the recent amendments to the legislation can be found in the Court’s judgment given in the case of *Kauczor v. Poland* (see *Kauczor v. Poland*, cited above, §§ 27 and 30-31).

B. Other measures

20. According to the information supplied by the Polish Government to the Committee of Ministers (see paragraph 23 below), in addition the Polish trial courts and prosecution authorities have undertaken a series of practical measures in order to organise criminal proceedings in a more efficient manner, i.e. by scheduling time-limits for hearings well in advance, holding hearings on Saturdays or severing charges against co-accused to separate proceedings under Article 34 § 3 of the Code of Criminal Procedure if the joint examination proves difficult and time-consuming.

21. On 17 May 2007 the Cabinet (*Rada Ministrów*) adopted the “Plan of Actions of the Government for the execution of judgments of the European Court of Human Rights in respect of Poland” (*Program Działań Rządu w sprawie wykonywania wyroków Europejskiego Trybunału Praw Człowieka*). By virtue of that document the Minister of Justice was obliged to disseminate among judges and prosecutors on a regular basis information on the standards concerning the length of pre-trial detention stemming from the Convention and the case-law of the Court in Polish cases and to include this topic in the programmes of workshops and seminars for judges.

IV. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. The Committee of Ministers

22. On 6 June 2007 the Committee of Ministers adopted an Interim Resolution concerning the judgments of the European Court of Human Rights in 44 cases against Poland relating to the excessive length of detention on remand (“the 2007 Resolution”). It concluded that the number of the Court’s judgments finding Poland in violation of Article 5 § 3 of the Convention on account of the length of pre-trial detention revealed a structural problem. A more detailed rendition of the 2007 Resolution can be found in the Court’s judgment given in the case of *Kauczor v. Poland* (see *Kauczor*, cited above, § 34)

B. The Council of Europe’s Commissioner for Human Rights

23. On 20 June 2007 the Council of Europe’s Commissioner for Human Rights released the Memorandum to the Polish Government concerning, among other issues, the use of the pre-trial detention in Poland. The Commissioner referred to the fact that the Court had repeatedly found violations of Article 5 § 3 in respect of Poland and stressed that examples of cases brought to the Court where pre-trial detention had lasted between 4 to 6 years were not uncommon. The Commissioner urged the Polish

authorities to review the application and functioning of pre-trial detention in Polish law. A more detailed rendition of the relevant parts of the memorandum can be found in the above-mentioned *Kauczor* judgment (see *Kauczor v. Poland*, cited above, § 35).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

24. The Court notes at the outset that the applicant died after the introduction of his application. Subsequently, his mother, Mrs Stefania Janus, informed the Court that she wished to pursue the application introduced by her son. She explained that her son had lived with her in her apartment until his death. She had taken care of him since he had suffered from nervous depression after his stay in detention facilities. She also supported him financially as he had lost his job, home and wife after his arrest. She submitted that her son had needed continual care until his death. Therefore, she had suffered frustration and distress caused, in particular, by her son's almost three-year-long detention on remand and its consequences.

25. The Government submitted that the applicant's mother cannot be considered a person entitled to pursue the proceedings before the Court on the applicant's behalf and invited the Court to strike the application out of its list of cases.

26. The Court recalls that when an applicant dies during the proceedings, the next-of-kin of the applicant has a legitimate interest to justify the continuation of the examination of the case (see, for example, *Lukanov v. Bulgaria*, 20 March 1997, *Reports of Judgments and Decisions* 1997-II, § 35; *Fojcik v. Poland*, no. 57670/00, § 46, 21 September 2004; *X v. France*, 31 March 1992, Series A no. 234-C, p. 89, § 26 and *Kozimor v. Poland*, no. 10816/02, §§ 25-29, 12 April 2007).

27. The Court thus accepts that the applicant's mother has a legitimate moral interest to pursue the application on his son's behalf and to obtain a ruling whether, in particular, the length of his detention and alleged censorship of his correspondence had infringed his Convention rights, complaints which he relied on before the Court.

28. Accordingly, the applicant's mother has standing to continue the proceedings before the Court in the applicant's stead, and the Government's preliminary objection should be dismissed.

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

29. 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.”

30. The Government contested that argument.

1. Period to be taken into consideration

31. The applicant's detention started on 12 September 2001, when he was arrested on suspicion of murder. On 22 March 2002 the Słupsk Regional Court convicted him of murder 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).

On 5 September 2002 the Gdańsk Court of Appeal quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 16 September 2003 when the applicant was again convicted. On 10 February 2004 the Gdańsk Court of Appeal again quashed the applicant's conviction. Following that date his detention was again covered by Article 5 § 3. It continued until 7 February 2005 when the applicant was again convicted.

32. Accordingly, the period to be taken into consideration amounts to two years, six months and seventeen days.

2. The Court's assessment

(a) General principles

33. 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

34. In their detention decisions the authorities relied principally on two grounds, namely on the reasonable suspicion against the applicant and the severity of the penalty to which he was liable.

35. The Court accepts that the reasonable suspicion against the applicant of having committed a serious offence could initially warrant his detention.

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

37. 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*, no. 13425/02, §§ 49, 4 May 2006).

38. Having regard to the fact that the criminal proceedings against the applicant lasted almost four years and that the case was heard three times by the first-instance court, it is questionable whether those grounds could be considered “relevant” and “sufficient” throughout the entire period and whether the authorities showed the necessary diligence in dealing with the case (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV).

39. 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.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

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

This Article, in its relevant part, reads:

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

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

A. Admissibility

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

41. 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.

42. 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.

43. The Government also relied on the Gorzów Wielkopolski Regional Court's judgment of 2 April 2009 in which a prisoner had been awarded 4,420 Polish zlotys in damages from the State Treasury for a breach of the confidentiality of his correspondence with his lawyer by the prosecutors of the Regional Prosecutor's Office in Gorzów Wielkopolski.

44. The Court notes that the alleged interference with the applicant's correspondence occurred in 2002, whereas the Government relied on the Warsaw Regional Court's judgment of 27 November 2006 and on the Gorzów Wielkopolski Regional Court's judgment of 2 April 2009. Any relevance that the latter judgments might possibly have in respect of the present case is therefore reduced by the fact that they were given after the relevant time and the latter one after the applicant's death (see, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX).

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

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

47. The Court recalls that any “interference by a public authority” with the right to respect for correspondence will contravene Article 8 of the Convention unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is “necessary in a democratic society” in order to achieve them (see, among many other authorities, *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34 and *Niedbala v. Poland* no. 27915/95, § 78).

48. As to the expression “in accordance with the law”, the Court has established three fundamental principles. The first one is that the interference in question must have some basis in domestic law. The second principle is that “the law must be adequately accessible”, a person must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to his case. The third principle is that “a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable a person to regulate his conduct; he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail” (see *Silver*, cited above, §§ 86-88).

49. It is important to respect the confidentiality of correspondence with the Court since it may concern allegations against prison authorities or prison officials. The opening of letters both to and from the Convention organs undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Campbell*, cited above, p. 22, § 62). No compelling reasons have been found to exist for monitoring or delaying an applicant's correspondence with the Court (see *Campbell*, cited above, §§ 48 and 62; and *Peers v. Greece*, no. 28524/95, § 84, ECHR 2001-III and *Drozdowski v. Poland*, no. 20841/02, §§ 27-31, 6 December 2005).

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

(a) Existence of an interference

50. On 5 March 2003 the Court received a letter from the applicant dated 9 February 2003. The envelope bore the following stamps: “the Słupsk Regional Court (...)” and “Censored on 18 February” (*Ocenzurowano dnia 18.02*) and an illegible signature. (see paragraph 15 above).

51. The Court has held on many occasions that as long as the Polish authorities continue the practice of marking detainees' letters with the

ocenzone stamp, the Court has no alternative but to presume that those letters have been opened and their contents read, even if there is no separate stamp on the letter as such (see *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003 and *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005, *Micha v. Poland*, no. 13425/02, § 58, 4 May 2006).

It follows that censoring of the applicant's letter with the Court amounted to an "interference" with the applicant's right to respect for his correspondence under Article 8.

(b) Whether the interference was "in accordance with the law"

52. The Court notes that the interference took place while the applicant was in detention.

53. As regards the interference with the right to respect for the applicant's correspondence with the Court, it further observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the European Court of Human Rights contained in Article 103 of the 1997 Code, which expressly relates to convicted persons, was also applicable to detained persons (see *Micha v. Poland*, cited above, § 61, *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, censorship of the letter from the Registry of the Court to the applicant was contrary to the domestic law.

54. It follows that the interference with the applicant's correspondence with the Court was not "in accordance with the law". 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.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant complained under Article 5 § 1 of the Convention that his detention had been unlawful.

56. The Court considers that the applicant's complaint falls to be examined under Article 5 § 1 (c) of the Convention.

57. The Court notes that the applicant's detention was based on Article 258 § 1 of the 1997 Code of Criminal Procedure. Furthermore, the Court observes on the basis of the material in the case file that the applicant was detained on reasonable suspicion of having committed a criminal offence. The Court accordingly finds that the decision to place the applicant in custody had a legal basis and was issued by the appropriate judicial authority. There is nothing to suggest that the legal basis for his detention was not clearly defined or lacked the necessary foreseeability required under

the Convention. The Court is therefore satisfied that the applicant's detention complied with the requirements of Article 5 § 1 (c). Moreover, the Court does not see any appearance of arbitrariness on the part of the relevant judicial authorities when deciding on the applicant's detention.

58. The Court therefore concludes that the applicant's detention was "lawful" within the meaning of Article 5 § 1 of the Convention.

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

60. The applicant also complained about the outcome and unfairness of the criminal proceedings. He alleged a violation of Article 6 § 1 of the Convention.

61. However, the Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

62. In the present case the applicant did not allege any particular failure on the part of the relevant courts to respect his right to a fair hearing. Indeed, his complaints are limited to challenging the result of the proceedings leading to his allegedly wrongful conviction. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

64. 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."

65. Recently in the case of *Kauczor v. Poland* (cited above, paragraph 18 *et seq.*, with further references, the Court referred to the above mentioned 2007 Resolution of the Committee of Ministers taken together with the number of judgments recently delivered and concluded:

“60. The Court thus concludes, as the Committee of Ministers did, that for many years, at least as recently as in 2007, numerous cases have demonstrated that the excessive length of pre-trial detention in Poland reveals a structural problem consisting of “a practice that is incompatible with the Convention” (see *mutatis mutandis Broniowski v. Poland* [GC], no. 31443/96, §§ 190-191, ECHR 2004-V; *Scordino v. Italy (no. 1)* [GC], no. 36813).

66. As in other numerous similar detention cases, the authorities did not justify the applicant’s continued detention by relevant and sufficient reasons (see paragraphs 35-39 above). Consequently, the Court sees no reason to diverge from its findings made in *Kauczor* as to the existence of the structural problem and the need for the Polish State to adopt measures to remedy the situation (see *Kauczor*, cited above, §§ 60-62).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant’s mother claimed PLN 20,000 in respect of non-pecuniary damage.

69. The Government did not express their opinion on the matter.

70. The Court considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case and making its assessment on an equitable basis, the Court awards the applicant’s mother, Mrs Stefania Janus, EUR 2,000 under this head.

71. The Court considers that in the particular circumstances of the case, the finding of a violation of Article 8 of the Convention would constitute sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

B. Costs and expenses

72. The applicant’s mother did not make any claim for the costs and expenses incurred before the domestic courts or before the Court.

C. Default interest

73. 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 complaints concerning the length of the applicant's pre-trial detention and the censorship of his 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's mother, Mrs Stefania Janus, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand 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 mother's claim for just satisfaction.

Done in English, and notified in writing on 21 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President