



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

FOURTH SECTION

CASE OF JARKIEWICZ v. POLAND

(Application no. 23623/07)

JUDGMENT

STRASBOURG

6 July 2010

FINAL

06/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jarkiewicz 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 15 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 23623/07) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Adam Jarkiewicz (“the applicant”), on 30 April 2007.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz 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. He also complained of the censorship of his correspondence with a domestic court.

4. On 12 January 2009 the President of the Fourth Section of the 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Adam Jarkiewicz, is a Polish national who was born in 1971 and lives Warszawa.

A. The applicant's pre-trial detention and criminal proceedings against him

6. On 24 April 2005 the applicant was arrested by the police on suspicion of drug trafficking.

7. On 26 April 2005 the Warsaw District Court (*Sąd Rejonowy*) remanded him in custody. The applicant did not appeal against that decision.

8. The inquiry against the applicant was initially conducted by the Warsaw District Prosecutor (*Prokurator Rejonowy*). It appears that a few months after the applicant's arrest the Lublin Regional Prosecutor (*Prokurator Okręgowy*) opened another inquiry against the applicant, who was suspected of further drug-related offences. As a consequence, the Lublin Regional Prosecutor took over the Warsaw case.

9. The applicant's pre-trial detention was extended by the Warsaw District Court on 14 July 2005 (decision upheld on 13 September 2005), by the Lublin District Court on 19 October 2005 (upheld on 1 December 2005) and 6 January 2006 (upheld on 2 February 2006), and by the Lublin Court of Appeal (*Sąd Apelacyjny*) on 12 April 2006 (upheld on 5 July 2006).

10. The courts justified the applicant's pre-trial detention by the strong evidence against him, the severity of the offences with which he had been charged, the heavy penalty which might be imposed if convicted and the risk of inducing witnesses to give false testimony, which was particularly high in light of the fact that one of the witnesses was the applicant's close friend.

11. During the pre-trial proceedings the applicant made several requests to be granted access to the investigation files. On 1 February 2006 the Lublin Regional Prosecutor rejected the applicant's request for security reasons (*dla dobra śledztwa*).

12. On 6 April 2006 the Lublin Appellate Prosecutor (*Prokurator Prokuratury Apelacyjnej*) dismissed an interlocutory appeal against that decision. It was noted that at the preliminary phase of a criminal inquiry the case files were, in principle, confidential and were to be presented to the suspected person only at the end of that phase of the proceedings. In light of the fact that the authorities were still engaged in their investigation, releasing confidential information to the applicant could impede the proceedings.

13. The applicant's subsequent request was likewise dismissed by the Lublin Regional Prosecutor on 6 May 2006.

14. On 28 June 2006 the inquiry was closed and the bill of indictment against the applicant was lodged with the Zamość District Court. The applicant was indicted on several charges related to drugs trafficking.

15. Pending trial the applicant's detention was extended by the decisions of the Zamość District Court of 6 July 2006, of the Lublin District Court of

12 September 2006 and 24 January 2007, and of the Lublin Court of Appeal of 18 April 2007.

It appears that the applicant appealed against all of the above-mentioned decisions with the exception of the decision of 24 January 2007.

16. The authorities relied on the original grounds for the applicant's pre-trial detention and noted that the proceedings were complex. At the relevant time twenty-three people were suspected of being accomplices to the applicant's alleged crimes, seven of whom were in pre-trial detention.

17. The interlocutory appeals lodged by the applicant's lawyer against the decisions to uphold the detention measure and his requests for release were examined on the merits and dismissed.

18. Meanwhile, on 25 August 2006 the Zamość District Court decided to relinquish its jurisdiction over the applicant's case to the Lublin District Court.

19. The first hearing before the trial court was scheduled for 19 December 2006. It was adjourned until 24 January 2007 because the applicant had not had enough time to read the case file.

20. The next hearing was scheduled for 9 February 2007. It was adjourned until 21 March 2007 (due to the absence of witnesses) and then again until 30 March 2007 (due to the illness of the applicant's lawyer).

21. In the following months six hearings took place and seven were adjourned for different reasons. The periods of the court's inactivity between hearings amounted to 49 days, 82 days or 35 days, respectively. The hearings were adjourned due to the illness of the applicant's lawyer (once), difficulties in organising the applicant's escort from the remand centre to the court (twice), failure to summon one of the applicant's co-accused (once) and for other unspecified reasons.

22. In the initial phase of the proceedings the applicant was represented by a lawyer of his choice. On 19 March 2007 the lawyer in question withdrew from the case and the applicant asked the trial court to appoint a legal-aid lawyer to represent him.

On 30 March 2007 the Lublin District Court refused to appoint a lawyer under the legal-aid scheme. The decision was justified by the view that the applicant had failed to prove that he was indigent.

As a result, the applicant acted without a legal representation.

23. At the hearing held on 24 October 2007 the applicant once again asked the trial court to appoint a legal-aid lawyer. This time, he submitted a certificate of indigence from the tax office. The trial court granted the applicant's request and appointed a lawyer to represent him before the court.

24. The legal-aid lawyer assisted the applicant at the subsequent hearings. The applicant also acted through his lawyer in lodging interlocutory appeals against the decisions to extend his pre-trial detention.

25. Meanwhile, on 30 September 2007 the preventive measure imposed in connection with the proceedings subject of this application was lifted. The applicant is currently at liberty.

26. The relevant criminal proceedings are currently pending before the domestic court.

27. In parallel to his pre-trial detention which is the subject of the instant application, namely from 4 to 29 July 2005, the applicant was serving a prison sentence, resulting from an unpaid fine, which had been imposed on him in another criminal case (judgment of the Kołobrzeg District Court of 25 July 2001).

B. Monitoring of the applicant's correspondence

28. The applicant submitted that his correspondence had been withheld by the authorities for two or three months and that the letters he had sent to his lawyer or to the domestic courts had been opened and copied before being forwarded to him.

29. The envelope containing the registered letter sent to the applicant by the Lublin District Court on 3 April 2006 bears a stamp: "Censored" (*Cenzurowano*). An illegible signature and the date, 18 April 2006, together with a note: "Lublin Regional Prosecutor VII Department" (*PO Lublin VII O*) are handwritten on top of the stamp.

30. The envelope containing the letter of 19 March 2007 sent to the Lublin Remand Centre's address by the applicant's lawyer bears a stamp: "Lublin Remand Centre ... received on ... No. ..." (*Areszt Śledczy w Lublinie Wpł. 2007-03-22 L.dz....dział...*). The blank spaces are filled in with a printed date, 22 March 2007, and a handwritten number: 14346. In addition, a stamp: "it is not subject to censorship" (*nie podlega cenzurze*) is visible on the front side of the envelope.

31. The envelope containing the letter, which had been sent to the applicant by the Supreme Court at the applicant's address in the Lublin Remand Centre on 14 March 2006, bears a similar stamp: "Lublin Remand Centre ... received on ... No. ..." (*Areszt Śledczy w Lublinie Wpł. ...L.dz....dział...*). The blank space is filled in with a printed date, 17 March 2006, and a handwritten number, 12386. The other notes visible on the envelope indicate that the letter was forwarded to Warsaw Remand Centre on 28 March 2006. A stamp: Lublin Regional Prosecutor Organised Crime Division VI (*Prokuratura Okręgowa VI Wydział d/s Przeszeczności Zorganizowanej w Lublinie*) is visible on the back of the envelope. The stamp is covered by an illegible signature and a handwritten date, 11 April 2006.

32. Two letters sent to the applicant by the INFOR publishing company to Lublin Remand Centre on unspecified dates and received by the applicant on 14 August 2007 and 10 October 2007 respectively, bear a stamp: “Censored” (*Ocenzurowano*) or “Censored, on ... signature...” (*Ocenzurowano, dnia ... podpis*). The blank spaces of each stamp are filled in with an illegible signature and the dates, 8 August 2007 and 4 September 2007 respectively. Each of the letters contained an issue of a legal newspaper “Gazeta Prawna” which had been ordered by the applicant.

33. By letter of 7 May 2007 the Head of the Criminal Department of the Lublin Regional Court (*Przewodniczący Wydziału*) informed the applicant that there were no grounds for granting his request not to censor the packages in which the applicant received newspapers from the publisher because of the risk that the envelopes might conceal illegal correspondence.

By letter of 13 June 2007 the same authority informed the applicant that Article 217 (a) § 2 of the Code of Execution of Criminal Sentences allowed certain authorities to withhold, censor or monitor the correspondence of a detained person. It was stressed that the newspapers which the applicant received in the remand centre had to be inspected so as to ensure that they did not conceal any illegal information related to the criminal proceedings against the applicant. The authorities, however, did not censor any newspaper articles.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Preventive measures, including pre-trial detention

34. The relevant domestic law and practice concerning the imposition of pre-trial detention (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other, so-called “preventive measures” (*środki zapobiegawcze*) are summarised in several judgments concerning similar cases (see, among others, *Golek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006; *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006).

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

35. 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 including the 2007 Resolution of the Committee of Ministers, 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).

C. Provisions pertaining to monitoring of detainees' correspondence

36. The legal provisions concerning the 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 2 December 2003 in *Matwiejczuk v. Poland*, no. 37641/97.

THE LAW

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

37. 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.”

38. The Government contested that argument.

A. Admissibility

39. The Government submitted that the applicant had not exhausted all the remedies provided for by Polish law in that he had failed to appeal against the decision of 26 April 2005, ordering his pre-trial detention and of 24 January 2007, extending the preventive measure in question. They also submitted that the applicant should have lodged a constitutional complaint with the Constitutional Court.

40. The applicant did not comment.

41. The Court observes that the applicant did not challenge the decision, ordering his pre-trial detention (see paragraph 7 above). However, he lodged interlocutory appeals against all but one of the decisions, extending the preventive measure in question (see paragraphs 9, 15 and 17 above).

The Court has already considered that an applicant is not required to appeal against each and every decision extending his detention (see, by contrast, *Bronk v. Poland* (dec.), no. 30848/03, 11 September 2007).

42. Moreover, according to the established case-law, having exhausted the available remedy, the applicant was not required to embark on another

attempt to obtain redress by bringing a constitutional complaint (see for example, *Cichla v. Poland* no. 18036/03, § 26, 10 October 2006).

43. It follows that this complaint cannot be rejected for non-exhaustion of domestic remedies. The Court further notes that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and 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 24 April 2005, when he was arrested on suspicion of drug trafficking. On 30 September 2007 the preventive measure in question was lifted.

The relevant criminal proceedings against the applicant are currently pending before the domestic court.

45. In parallel to his pre-trial detention which is the subject of the instant application, namely from 4 to 29 July 2005, the applicant was serving a prison sentence resulting from an unpaid fine, which had been imposed on him in another criminal case (judgment of the Kołobrzeg District Court of 25 July 2001). That term, as being covered by Article 5 § 1 (a), must therefore be subtracted from the period of the applicant's pre-trial detention for the purposes of Article 5 § 3.

46. Accordingly, the period to be taken into consideration amounts to two years, four months and twelve days.

2. The parties' submissions

(a) The applicant

47. The applicant submitted that the length of his pre-trial detention had been excessive and that the measure had not been sufficiently justified by the authorities.

(b) The Government

48. The Government considered that the measure in question had satisfied the requirements of Article 5 § 3. Throughout its entire period it had been justified by "relevant" and "sufficient" grounds, in particular the existence of a reasonable suspicion that he had committed the offences he had been charged with. Moreover, the Government considered that the applicant's protracted detention pending trial was justified by the gravity of the charges which the applicant was facing and the severity of the anticipated penalty, as well as the fact that the case involved numerous

co-accused and witnesses. As a consequence, there was a risk that the applicant, if released, would attempt to induce them to give false testimony.

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 four grounds, namely (1) the serious nature of the offences with which he had been charged, (2) the severity of the penalty to which he was liable; (3) the complexity of the case; and (4) the risk that the applicant might attempt to induce his alleged accomplices and witnesses to give false testimony. As regards the latter, the authorities relied on the facts that out of twenty-three of the applicant's co-accused only seven were in custody and that one of the witnesses was the applicant's close friend (see paragraphs 10 and 16 above).

51. The Court accepts that the reasonable suspicion against the applicant of having committed serious offences 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 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, the complexity of the case and the risk that the applicant would attempt to induce witnesses to give false testimony – were “relevant” and “sufficient” (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 *Michta v. Poland*, no. 13425/02, §§ 49, 4 May 2006).

54. As regards the complexity of the case, the Court's attention has been drawn to the nature of the charges, the number of accused (twenty-four, including the applicant) and the voluminous documentation. The authorities, however, referred to the complexity of the case in a very general manner. There is no indication that the nature of the case required the applicant's continuous detention for such a long period.

55. Moreover, the Court does not agree with the domestic courts' argument that the applicant was particularly inclined to attempt to induce his co-defendants or witnesses to give false testimony. Even assuming that such a risk was real at the beginning of the proceedings, it certainly lost its importance with the passage of time, when most of the evidence should have been secured by the investigative authorities and the trial court.

56. Having regard to the foregoing, even taking into account the fact that the domestic courts were faced with the particularly difficult task of trying a case involving numerous defendants, the Court concludes that the grounds given by the domestic authorities could not justify the overall period of the applicant's detention (see *Żywicki v. Poland*, no. 27992/06, 20 January 2009; contrast *Miernicki v. Poland*, no. 10847/02, 27 October 2009). In these circumstances it is not necessary to examine whether the proceedings were conducted with special diligence.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE CENSORSHIP OF THE APPLICANT'S CORRESPONDENCE

A. Letter of 3 April 2006 sent to the applicant by the Lublin District Court

58. The applicant complained under Article 8 of the Convention that during his detention a registered letter sent to him on 3 April 2006 by the Lublin District Court had been censored by the authorities. The relevant part of this provision reads as follows:

“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.”

1. Admissibility

59. The Government submitted that the applicant had not exhausted all available domestic remedies in that he had failed to bring an action under Article 24 §§ 1 and 2 in conjunction with Articles 417, 448 and 23 of the Civil Code. These provisions would have allowed him to assert that by censoring his correspondence the authorities had breached his personal rights protected by the Civil Code and claim non-pecuniary damages.

60. In this connection, the Government relied on the Śrem District Court's judgment of 21 December 2005 in which a prisoner had been awarded 3,000 Polish zlotys (PLN) in damages from the State Treasury for a breach of secrecy of his correspondence with the European Court of Human Rights. The judgment was partly amended on 19 May 2006 by the Poznań Regional Court, which reduced the amount of damages granted to the claimant.

61. Further, the Government provided an example of the judgment delivered by the Warsaw Regional Court on 27 November 2006 in which a prisoner had been awarded PLN 5,000 in damages from the State Treasury for a breach of secrecy of his correspondence with the Central Board of the Prison Service and the Central Electoral Office. The Regional Court held that secrecy of correspondence was one of the personal rights protected under Article 23 of the Civil Code and that in the case of its breach a claimant may be entitled to an award of non-pecuniary damages. The judgment was upheld by the Warsaw Court of Appeal on 28 June 2007.

62. The applicant failed to submit observations in this respect.

63. The Court observes that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The rule of exhaustion of domestic remedies contained in that provision requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 65).

In addition, for the purposes of reviewing whether the rule of exhaustion has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant (see *Akdivar*, cited above, § 69).

64. The alleged censorship in the present case concerned a letter sent to the applicant on 3 April 2006, therefore before the delivery of the Poznań Regional Court's judgment of 19 May 2006 and the Warsaw Court of

Appeal's judgment of 28 June 2007. Hence, any relevance that those judgments might possibly have in respect of the present case is reduced by the fact that they were given after the relevant time (see, among other authorities, *Lewak v. Poland*, no. 21890/03, § 25, 6 September 2007; *Kołodziński v. Poland*, no. 44521/04, § 29, 8 January 2008; and *Misiak v. Poland*, no. 43837/06, § 18, 3 June 2008).

65. Moreover, the Court notes that the two examples of domestic case-law provided by the Government do not constitute evidence of sufficiently established judicial practice to show that a claim for damages under Article 24 §§ 1 and 2 in conjunction with Articles 417, 448 and 23 of the Civil Code was an effective remedy available in theory and practice at the material time.

66. In the circumstances of the case, it cannot therefore be said that any attempt by the applicant to seek redress by lodging such an action would have provided reasonable prospects of a successful outcome (see *Pasternak v. Poland*, no. 42785/06, § 29-32, 16 July 2009).

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

68. 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.

2. Merits

(a) Whether there was interference

69. It is noted that an envelope in which a letter from the Lublin District Court, dated 3 April 2006, was sent to the applicant bears a stamp indicating that the letter had been censored (see paragraph 28 above).

70. The Court firstly observes that the Government refrained from taking a position on the question whether there has been an interference with the applicant's right to respect for his correspondence. 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, *Michta v. Poland*, no. 13425/02, § 58, 4 May 2006).

71. It follows that in respect of the applicant's letter of 3 April 2006 there was "interference" with his right to respect for his correspondence under Article 8.

(b) Whether the interference was “in accordance with the law”

72. The Court reiterates 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).

73. The Court notes that the interference with the applicant's right to respect for his correspondence took place when the applicant was detained in a remand centre.

74. As regards the censorship of the letter from the Lublin District Court addressed to the applicant, the Court notes that it has previously held that the censorship of an applicant's correspondence with a State authority, the Constitutional Court, was contrary to the statutory prohibition laid down in Article 102 (11) of the 1997 Code read in conjunction with Article 214 of the 1997 Code (see *Kwiek v. Poland*, no. 51895/99, § 41, 30 May 2006). The Court sees no reason to distinguish the instant case from the *Kwiek* case, and in the absence of any comment by the Government, it concludes that the interference with the applicant's correspondence with the Lublin District Court, being a State authority too, was contrary to the domestic law.

75. 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.

76. Consequently, the Court finds that there has been a violation of Article 8 of the Convention on account of the censorship of the letter sent to the applicant on 3 April 2006 by the Lublin District Court.

B. The remaining letters

77. The applicant made a similar complaint under Article 8 of the Convention with regard to the following four letters: (1) the letter sent by the applicant to his lawyer on 19 March 2007; (2) the letter sent to the applicant by the Supreme Court on 14 March 2006; and (3-4) the letters sent to the applicant by the INFOR publishing company on 14 August and 10 October 2007.

78. Even assuming that the applicant complied with the requirement of the exhaustion of domestic remedies in so far as the alleged censorship of the four above-mentioned letters is concerned, the Court, nevertheless, considers this part of the application manifestly ill-founded.

79. The Court notes that the Government refrained from taking a position on the question whether there has been an interference with the applicant's right to respect for his correspondence.

80. As regards the letter of 19 March 2007, which was sent by the applicant to his lawyer and the letter of 14 March 2006, which was sent to the applicant by the Supreme Court, the Court observes that the envelopes in question do not bear any stamps "censored" or any signs that they had been opened before being delivered to their addressees. The stamps, which indicate a date, a reference number, the name of the remand centre and, in the case of the letter of 19 March 2007, a stamp "it is not subject to censorship", indicate, in the Court's opinion, merely the fact that the letter in question was delivered to their addresses via the remand centre. The procedure of registering detainees' in-coming and out-going mail by a remand centre is a necessary element of the penitentiary administration and is not, as such, contrary to Article 8 of the Convention.

81. As regards the two letters, which were sent to the applicant by the INFOR publishing company, the Court notes that those letters bear stamps "censored" and the authorities admitted to have inspected their contents (see paragraphs 31 and 32 above).

According to Article 217 (a) paragraphs 1 and 2 of the Code of Execution of Criminal Sentences, however, detainee's correspondence can be censored by the authority at whose disposal he remains or by the governor of the remand centre in which the detainee is held. Thus, censorship of the letters in question was in accordance with domestic law.

82. It remains to be ascertained whether the interference was necessary in a democratic society in line with the requirements of Article 8 § 2 of the Convention.

83. The Court notes that by letters of 7 May and 13 June 2007 the Head of the Criminal Department of the Lublin Regional Court instructed the applicant of the legal basis for the monitoring of his packages containing newspapers. The applicant was also informed that the letters had to be inspected so as to ensure that they did not conceal any illegal information related to the criminal proceedings against the applicant (see paragraph 32 above).

The Court, in the circumstance of the case, cannot but conclude that the security reasons justified the monitoring of the letters sent to the applicant by the INFOR publishing company and that, therefore, the requirements of Article 8 § 2 were complied with.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. In addition, the applicant submitted the following complaints: (1) a general complaint under Article 3 about the degrading treatment which he had allegedly suffered in detention; (2) complaint under Article 5 § 4 that his interlocutory appeals against decisions to extend the detention measure and his applications for release had been examined with a delay; (3) complaints under Article 6 §§ 1 and 3(c) about the alleged unfairness and shortcomings of the trial court, including the alleged lack of equality of arms in that the applicant had not been granted access to the investigation file and the refusal to appoint a legal-aid lawyer (4) complaint under Article 6 § 1 concerning the length of the criminal proceedings against the applicant; (5) complaint under Article 8 about the alleged limitations of his contact with his family; and (6) complaint under Article 10 concerning the alleged limitations on access to the daily press.

86. The Court notes that the complaints under points 3 and 4 above are inadmissible due to the non-exhaustion of domestic remedies, since the impugned criminal proceedings against the applicant are currently pending and because the applicant failed to lodge with a domestic court a relevant complaint under the 2004 Act.

87. Moreover, as regards the remaining complaints (points 1, 2, 5 and 6), having examined all the material in its possession, the Court finds nothing in the case file which might disclose any appearance of a violation of the rights guaranteed by the Convention.

88. It follows that this part of the application is inadmissible and must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

89. 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.”

90. Recently in the case of *Kauczor v. Poland* (cited above, paragraph 58 *et seq.*, with further references, the Court referred to the 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.

91. As in other numerous similar detention cases, the authorities did not justify the applicant's continued detention by relevant and sufficient reasons (see paragraphs 51-55 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).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

94. The Government submitted that the amount claimed by the applicant was exorbitant and unjustified in the light of the Court's case-law.

95. The Court considers that the applicant has suffered non-pecuniary damage by reason of the length of his detention and the censorship of one letter, 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 EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

96. The applicant did not seek reimbursement of the costs and expenses incurred in relation to his application.

C. Default interest

97. 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 under Article 5 § 3 of the Convention concerning the length of the applicant's pre-trial detention and the complaint under Article 8 of the Convention concerning the censorship of the letter of 3 April 2006 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 2,500 (two thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President