CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF OWSIK v. POLAND

(Application no. 10381/04)

JUDGMENT

STRASBOURG

16 October 2007

FINAL

16/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Owsik v. Poland,

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

Sir Nicolas BRATZA, *President,*
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA,
Mrs P. HIRVELÄ, *judges,*
and Mr T.L. EARLY, *Section Registrar,*

Having deliberated in private on 25 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 10381/04) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Stanislaw Owsik ("the applicant"), on 11 March 2004.

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

3. On 19 May 2006 the President of the Fourth Section of the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1958 and lives in Wałcz.

A. The criminal proceedings

5. On 7 March 2003 the applicant was arrested by the police.

6. On 9 March 2003 the Wałcz District Court (*Sąd Rejonowy*) decided to detain the applicant on remand in view of the reasonable suspicion that he

had stolen two “Bosh” cutting tools worth PLN 700 from his neighbours, damaged their door frame and a letter box and uttered threats against his neighbour, Mrs. H.M. The court also referred to the fact that the offences with which the applicant had been charged had been committed within 5 years of his previous conviction. The applicant was also charged with having robbed an individual of PLN 6. However, this charge was subsequently dropped by the prosecutor.

7. On 18 April 2003 the applicant's request to change the preventive measure against him was dismissed.

8. On 19 May 2003 the applicant was indicted before the Wałcz District Court.

9. On 5 June 2003 the Wałcz District Court prolonged the applicant's detention. The court relied on the reasonable suspicion against the applicant, on the fact that he had been previously convicted and on the risk that the applicant might try to influence witnesses given the violent nature of the offences with which he had been charged and the fact that the witnesses were known to the applicant and lived in his neighbourhood. The court also considered that there was a risk that a severe sentence would be imposed on the applicant even though the charge of robbery had been dropped. The Court noted that the applicant was a habitual offender and that there was a risk that he would abscond. The court concluded that only the detention of the applicant would secure the proper conduct of the proceedings and that the conditions for applying police supervision had not been met.

10. A hearing scheduled for 28 August 2003 was cancelled apparently due to the fact that the applicant went on a hunger strike and had to be transferred to a prison hospital.

11. On 5 September 2003 the applicant's detention was further prolonged. The court essentially repeated the reasons given on 5 June 2003 and further found that the applicant's mental and physical health was not incompatible with detention.

12. The applicant appealed against this decision, contending that the court's assessment that he would interfere with the course of the proceedings was unfounded. He pointed out that, for many months after the proceedings against him had been initiated, he had been living next to the main witness, Mrs H.M., seeing her several times a day, and he had not attempted to influence her to withdraw the charges. He further raised complaints about his health and the inadequate medical care in the detention centre.

13. A hearing scheduled for 17 September 2003 was adjourned as some of the witnesses had failed to appear.

14. On 29 September 2003 the Koszalin Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal. The court considered that the applicant's argument that since he had not tried to influence witnesses previously he would not do so in the future could not constitute a ground for release. It further dismissed the applicant's complaints about his state of health as

unfounded. The court finally observed that the trial had not yet started because of the applicant's decision to go on hunger strike.

15. On 2 December 2003 the trial court held the first hearing in the applicant's case.

16. On 16 January 2004 a further request of the applicant to be released from detention on the grounds of, *inter alia*, his poor health was dismissed by the Wałcz District Court.

17. On 2 March 2004 the Wałcz District Court prolonged the applicant's detention relying solely on the reasonable suspicion that the applicant had committed the offences and on the violent nature of the offences, which made it probable that he would use force against witnesses.

18. The applicant appealed against this decision.

19. On 29 March 2004 the Koszalin Regional Court granted the appeal, quashed the impugned decision and ordered the applicant's release. It appears that the applicant was released on 31 March 2004. The court gave the following reasons for its decision:

> "We can agree with the first-instance court that the main ground for maintaining preventive measures with respect to [the applicant], that is the high probability that the accused had committed the offences with which he had been charged, is still relevant. However, in the opinion of the Regional Court, at the present stage of the proceedings the particular grounds justifying imposition of the most severe preventive measure are no longer relevant. In this case there is no real and justified risk that [the applicant] would attempt to illegally disrupt the proper course of the trial. As it appears from the case file the court had practically finished the taking of evidence and had heard all witnesses called. What remains to be established is the state of health of [the witness, Mrs H.M.]. In those circumstances it is difficult to argue that there is a continuing risk that the applicant would try to influence the witnesses to make false testimonies.
>
> On the other hand, what should be underlined is that the accused Stanisław Owsik has been in pre-trial detention since 7 March 2003, which is over one year. The act of indictment was lodged with the court on 19 May 2003. In spite of the fact that the accused is still in detention, the trial only started on 2 December 2003, that is after half-a-year. It would be a truism to reiterate that detention on remand should not be transformed into the serving of a sentence of imprisonment. Such a situation cannot be accepted because of the guarantees of the accused's rights and the nature of detention on remand, which is a lawful but controversial trespassing on the constitutional rights of an individual.
>
> In the light of the above, the appeal court finds that the appeal should be allowed ...
>
> Incidentally, the Regional Court would observe *ex officio* that the first-instance courts instead of upholding detention on remand in cases where it is not absolutely necessary, should more often make use of the regulations contained in Article 376 of the Code [listing other preventive measures]."

20. On 18 May 2004 the Wałcz District Court gave a judgment. The court convicted the applicant of the theft of one "Bosh" tool worth PLN 269, destruction of property resulting in damage of PLN 259 and uttering treats. He was sentenced to one year and six months' imprisonment.

21. The applicant lodged an appeal and on 28 September 2004 the Koszalin Regional Court dismissed it. The applicant did not lodge a cassation appeal and the Regional Court's judgment became final.

B. The monitoring of the applicant's correspondence

22. The first page of the applicant's first letter addressed to the Court on 9 March 2004 bears the following stamp: Censored, Wałcz District Court (*Ocenzurowano, Sąd Rejonowy w Wałczu*), a handwritten date: 11.03.2004 and an illegible signature. One side of the envelope in which the letter was delivered to the Court had been opened and subsequently sealed with adhesive tape.

II. RELEVANT DOMESTIC LAW

23. 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 *Gołek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006 and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

24. Rules relating to means of controlling correspondence of persons involved in criminal proceedings are set out in the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*) ("the 1997 Code") which entered into force on 1 September 1998. Article 103 § 1 of the 1997 Code provides that convicted persons are entitled to uncensored correspondence with the Court. For a more detailed rendition of the relevant domestic law provisions, see the Court's judgments in *Michta v. Poland*, no. 13425/02, § 33, 4 May 2006 and *Kwiek v. Poland*, no. 51895/99, § 23, 30 May 2006.

THE LAW

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

25. 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."

26. The Government contested that argument.

A. Admissibility

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

28. The applicant's detention started on 7 March 2003, when the applicant was arrested, and ended on 31 March 2004 when he was released. Thus, his detention on remand lasted 1 year and 25 days.

2. The parties' submissions

29. The applicant submitted that he had been kept in detention pending trial for an unjustified period of time.

30. The Government considered that the applicant's pre-trial detention satisfied the requirements of Article 5 § 3. It was justified by "relevant" and "sufficient" grounds. These grounds were, in particular, the strong suspicion that the applicant had committed the offences and the genuine risk that he might obstruct the proceedings. Moreover, the Government considered that the case had been complex which was shown by the fact that numerous witnesses had to be heard.

The Government argued that the domestic authorities had shown due diligence, as required in cases against detained persons, and that some delays had been caused by obstacles that could not be attributable to the domestic authorities.

3. The Court's assessment

(a) General principles

31. 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 judgements (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

32. In their detention decisions, the authorities, in addition to the reasonable suspicion against the applicant, relied principally on three 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 need to secure the proper conduct of the proceedings, in particular, the risk that the applicant might try to influence the witnesses. They relied on the fact that the main witness had been the applicant's neighbour.

33. The applicant was convicted of having stolen one "Bosh" tool worth approximately EUR 60, of having uttered threats against his neighbour and of having destroyed her letter box and a door frame causing damage of approximately EUR 60. Those offences, although punishable by law and committed following the applicant's relapse into crime, can hardly be considered violent crimes or as giving rise to particular difficulties for the investigation authorities and the courts to determine the facts, mount a case against the perpetrator and reach a conclusion (see *Malik v. Poland*, no. 57477/00, § 49, 4 April 2006).

34. The Court reiterates that Article 5 § 3 of the Convention cannot be seen as authorising pre-trial detention unconditionally provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004 and *Sarban v. Moldova*, no. 3456/05, § 97, 4 October 2005).

35. The Court accepts that the reasonable suspicion against the applicant of having committed the offences could initially have warranted his detention. However, with the passage of time, this ground became less relevant and could not justify the entire period of the applicant's detention. Moreover, the likelihood that a severe sentence would be imposed on the applicant, a doubtful argument in the instant case given the minor character of the charges, cannot by itself serve to justify long periods of detention on remand (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001).

36. The Court considers that the authorities did not rely on any specific circumstance capable of showing that the applicant's release would, and if so why and how, obstruct the process of obtaining evidence. Moreover, the District Court in its decision of 29 September 2003 treated as irrelevant the applicant's argument that he had not made any attempt to influence witnesses after they had initiated criminal proceedings against him. The Court cannot agree with the domestic authorities' assessment that the fact that the applicant had been the main witness' neighbour was alone sufficient to establish a risk that he would attempt to influence witnesses or otherwise obstruct the proceedings.

37. Finally, the Court would emphasise that under Article 5 § 3 the authorities, when deciding whether a person is to be released or detained, are obliged to consider alternative means of guaranteeing his appearance at the trial (see *Jablonski v. Poland*, no. 33492/96, § 83, 21 December 2000). The Court observes that the applicant was released following the Regional Court's decision of 29 March 2004 which had criticised the trial court for having failed to consider the possibility of ensuring his presence at trial by means of other "preventive measures" expressly foreseen by Polish law (see paragraph 19 above). Indeed, apart from one brief statement in the decision of 5 June 2003 prolonging the applicant's detention, it does not transpire from the case file that the domestic courts gave any careful consideration to measures other than detention to secure the applicant's appearance at his trial.

38. In the circumstances, the Court concludes that the grounds given by the domestic authorities were not "relevant" and "sufficient" to justify the applicant's being kept in detention for 1 year and 25 days.

39. Although the above finding would normally absolve the Court from assessing whether the proceedings were conducted with special diligence, in the present case the Court cannot but note that even though the applicant was indicted in 19 May 2003, it took the trial court over 6 months to hold the first hearing (see paragraphs 8 and 15 above). The Government failed to provide an explanation for the trial court's inactivity during this period. Moreover, on 29 March 2003 the Regional Court criticised the inactivity of the District Court (see paragraph 19 above). That delay was significant and it cannot be said that the authorities displayed "special diligence" in the conduct of the criminal proceedings against the applicant.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

40. The applicant also complained under Article 6 § 1 of the Convention that the length of the proceedings in his case had exceeded a "reasonable time" within the meaning of this provision.

41. However, 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..."

42. The Court notes that on 17 September 2004 the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time entered into force (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act"). The Court observes that the present application was lodged with the Court when the relevant proceedings were pending before the domestic court.

Pursuant to section 18 of the 2004 Act, it was open to persons such as the applicant in the present case whose case was pending before the Court to lodge, within six months from 17 September 2004, a complaint about the unreasonable length of the proceedings with the relevant domestic court, provided that their application to the Court had been lodged in the course of the impugned proceedings and that it had not yet been declared admissible.

However, the applicant has chosen not to avail himself of this remedy.

43. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, it considered that it was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that had already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

44. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. 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."

46. The Government refrained from expressing their opinion on the admissibility and merits of the complaint under Article 8.

A. Admissibility

47. 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

48. 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 *Niedbała v. Poland* no. 27915/95, § 78).

49. 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", namely 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).

50. 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 Court 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

51. The Court observes that the first page of the applicant's first letter addressed to the Court of 9 March 2004 bears the stamp "Censored, Wałcz District Court", a handwritten date of 11 March 2004 and an illegible signature. One side of the envelope in which the letter was delivered to the

Court was opened and subsequently sealed with tape (see paragraph 22 above).

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

53. In those circumstances the Court considers that the opening and censoring of the applicant's letter to the Court amounted to an "interference" with the applicant's right to respect for his correspondence under Article 8 (see, among many authorities, *Michta v. Poland*, cited above, § 58).

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

54. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court notes that the interference took place in March 2004 when the applicant had been detained on remand prior to the first-instance judgment.

55. The Court further observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained on remand should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the European Court of Human Rights contained in Article 103 of the 1997 Code, which expressly relates to convicted persons, was also applicable to detained persons (see *Michta v. Poland*, cited above, § 61, *Kwiek v. Poland*, cited above, § 44).

56. Thus, censorship of the applicant's letter to the Registry of the Court was contrary to the domestic 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.

57. Consequently, the Court finds that there has been a violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. The applicant did not submit any claim for just satisfaction or for reimbursement of costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the unreasonable length of the applicant's pre-trial detention and censorship of his correspondence with the Court 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.

Done in English, and notified in writing on 16 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President