



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

FOURTH SECTION

CASE OF JAKÓBSKI v. POLAND

(Application no. 18429/06)

JUDGMENT

STRASBOURG

7 December 2010

FINAL

07/03/2011

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

In the case of Jakóbski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić,

Vincent Anthony de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 16 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 18429/06) 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 Janusz Jakóbski (“the applicant”), on 27 April 2006.

2. The applicant, who had been granted legal aid, was represented by Mr B. Sochański, a lawyer practising in Szczecin. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wolasiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged under Article 9 of the Convention that he had been refused a meat-free diet in prison contrary to the requirements of his faith.

4. On 1 September 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and is currently detained in Nowogród Prison.

6. Since 20 June 2003 the applicant has been serving an eight-year prison sentence imposed by the Poznan Regional Court following his conviction for rape.

7. He was previously held in Goleniów Prison. On several occasions he requested to be served meat-free meals on account of his religious dietary requirements. He submitted that he was a Buddhist and that he adhered strictly to the Mahayana Buddhist dietary rules which required refraining from eating meat.

8. On 19 January 2006 the prison dermatologist recommended that the applicant be placed on a meat-free diet in view of his health problems. For three months he was granted a “no pork” diet (PK diet) that included very little meat and was also applied to six Muslims detained in the Goleniów Prison.

9. On 20 April 2006 a doctor who examined the applicant considered that there were no medical grounds to continue granting the PK diet to the applicant. Consequently, the diet was discontinued. The applicant objected and threatened to go on a hunger strike.

10. On 27 April 2006 the applicant asked the District Prosecutor to institute criminal proceedings against the employees of Goleniów Prison. The applicant claimed that despite having requested on several occasions to be provided with a meat-free diet, he was receiving meals containing meat products. Since he could not eat meat for religious reasons he depended on food parcels from his family. He was forced to accept the meals and then throw them away. The refusal to accept them would have been regarded as a decision to start a hunger strike and would have entailed disciplinary punishment. On 13 June 2006 the Goleniów District Prosecutor discontinued the criminal proceedings in respect of the applicant's allegations.

11. On 3 July 2006 the Buddhist Mission in Poland sent a letter to the prison authorities supporting the applicant's request for a meat-free diet. They submitted that the Mahayana Buddhists had a serious moral problem when they were forced to eat meat. According to the rules, a Mahayana Buddhist should avoid eating meat to cultivate compassion for all living beings. They further asked the authorities simply to eliminate meat products from the applicant's meals.

12. On 17 July 2006 the applicant requested the Director of Goleniów Prison to be served meat-free meals in view of his religious dietary requirements. He noted that the PK diet contained meat products and therefore it did not satisfy his needs. The applicant's request was refused on 16 October 2006. That decision did not contain any reasons.

13. On 21 August 2006 and 31 August 2006 the applicant asked the Goleniów District Prosecutor to institute criminal proceedings against the prison guards. He alleged that there had been an interference with his religious convictions, in particular as the guards had referred to the Buddhist

Mission in Poland as “a sect”. They had also thrown religious publications belonging to the applicant into a toilet. On 19 August 2006, after receiving a family visit, he was ordered to undergo a body search. The applicant took off his clothes except for his underwear, whereupon the prison guard allegedly touched his private parts. He was further ordered to squat and other prison guards ridiculed him.

14. On 29 October 2006 the Goleniów District Prosecutor refused to institute criminal proceedings against the persons concerned. It considered that the applicant's allegations were unfounded. The applicant was entitled to exchange correspondence with the Buddhist Mission in Poland and he could also telephone them. In addition, he was entitled to a diet that roughly corresponded to his religious requirements. However, the prosecutor stressed that as the applicant was kept in a single cell, there were no witnesses to the alleged ill-treatment by the prison officers and it was impossible to establish whether the events described by the applicant had actually taken place.

15. On 13 October 2006 the District Court dismissed the applicant's interlocutory appeal against the decision of 13 June 2006. The court held that the applicant, when refusing to accept meals containing meat, had referred to his alleged vegetarianism. The court considered that there was no information in the prison files showing that the applicant was a vegetarian, and in addition for 3 months he had agreed to the PK diet even though it was not a completely meat-free diet.

16. On 14 November 2006 in reply to the applicant's further complaints, the Szczecin Regional Prisons Inspector informed the applicant that the only special diet available in Goleniów Prison was the “PK” diet. That diet, with the exception of pork, consisted of various meat products, namely beef and poultry, as well as fish. A meat-free diet was not available in that prison.

17. On 20 November 2006 the Szczecin Prisons Inspector, in reply to yet another complaint from the applicant, again confirmed that the only special diet which took into account religious beliefs was the PK diet. In addition, he explained:

“A convict has a right to change religion while serving a prison sentence and to profit from freedom of religion if he/she feels like that. However, this does not mean that the prison authorities are obliged to provide an individual with special food in order to meet the specific requirements of his faith. The question of food related to religion or cultural background should not lead convicts to manipulate the prison authorities in order to secure personal advantages.”

18. On 14 December 2006 the Goleniów District Court dismissed the applicant's interlocutory appeal against the decision of 29 September 2006.

19. On 25 June 2007 the Buddhist Mission in Poland again sent a letter to the Director of Goleniów Prison asking him to provide the applicant with a meat-free diet.

20. In a complaint lodged with the Szczecin Regional Court on 3 September 2007 the applicant argued that the diet he had been granted in Goleniów Prison did not take into account his religious beliefs.

21. On 3 December 2007 the Regional Court dismissed the applicant's complaint. The court held that the applicant had been granted a special diet since 18 July 2006. It further noted that given the technical conditions in the prison kitchen, the transporting of meals and understaffing in the kitchen, it was not possible to provide each prisoner individually with food in conformity with his or her religious dietary requirements. The court also confirmed that meals without pork were prepared.

22. In March 2009 the applicant was transferred to Nowogród Prison. On 2 May 2009 he applied to be served meat-free meals in view of his religious dietary requirements. The applicant's request was refused on 13 May 2009.

23. On 12 August 2009 in reply to the applicant's complaint, the Ombudsman informed him that the prison authorities had not been obliged to prepare special meals taking into consideration different dietary requirements. In addition, since the applicant was the only Buddhist in this prison, it would have put too much strain on the prison authorities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Code of Execution of Criminal Sentences

24. The situation of prisoners and persons detained on remand is governed by the Code of Execution of Criminal Sentences of 6 June 1997.

Under Article 109 of that Code, prisoners should receive meals taking into consideration their employment, age and where possible religious and cultural beliefs. On the basis of that Article the Minister of Justice issued the Ordinance of 22 September 2003 on the rules to be followed by the relevant authorities when determining daily meals and different diets to be allowed to persons detained in prisons (*Rozporządzenie Ministra Sprawiedliwości w sprawie określenia wartości dziennej normy wyżywienia oraz rodzaju diet wydawanych osobom osadzonym w zakładach karnych I aresztach śledczych*). The ordinance refers to two types of special diet – a “light diet” (*dieta lekkostrawna*) and a “diet for diabetics” (*dieta cukrzycowa*).

B. Civil-law remedies

25. Article 23 of the Civil Code contains a non-exhaustive list of so-called “personal rights” (*prawa osobiste*). This provision states:

“The personal rights of an individual, such as, in particular, health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements, shall be protected by the civil law regardless of the protection laid down in other legal provisions.”

Article 24, paragraph 1, of the Civil Code provides:

“A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of infringement [the person concerned] may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement ... In compliance with the principles of this Code [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest.”

Article 445 § 1 of the Civil Code, applicable in the event that a person suffers a bodily injury or a health disorder as a result of an unlawful act or omission of a State agent, reads as follows:

“...The court may award to the injured person an adequate sum in pecuniary compensation for the damage suffered.”

Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. That provision, in its relevant part, reads:

“The court may grant an adequate sum as pecuniary compensation for non-material damage (*krzywda*) suffered to anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of whether he or she seeks any other relief that may be necessary for removing the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest.”

C. European Prison Rules

26. A Recommendation of the Committee of Ministers to member states on the European Prison Rules (Rec(2006)2) (“the European Prison Rules”), adopted on 11 January 2006, sets out the following standards in respect of diet in prison that may be relevant in the context of the present case.

Rule 22 reads:

- “1. Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.
2. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.
3. Food shall be prepared and served hygienically.
4. There shall be three meals a day with reasonable intervals between them.
5. Clean drinking water shall be available to prisoners at all times.
6. The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds. “

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

27. The applicant complained that the prison authorities, by refusing to provide him with a meat-free diet in accordance with his religious precepts, had infringed his right to manifest his religion through observance of the rules of the Buddhist religion, as protected by Article 9 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

28. The Government contested that argument.

A. Admissibility

29. The Government argued that the applicant could have, but had not, made use of the remedies of a compensatory nature governed by the provisions of Articles 23 and 24 of the Civil Code, in conjunction with Article 445 or Article 448 of the Civil Code, in order to bring an action for compensation for incarceration in conditions that were not in conformity

with his religious beliefs. In their opinion, a person deprived of his or her liberty and who suffered a violation of his or her personal rights as a result of the authorities' failure to provide food in conformity with religious beliefs was entitled to bring a civil action against the State Treasury. The Government did not refer to any examples of judicial practice in this connection.

30. The applicant replied that this remedy could not be considered adequate and effective and in his case lacked prospects of success. In particular, the applicant referred to the fact that the prison authorities had informed him that it was not possible to prepare vegetarian meals in prison because it would have put too much strain on the authorities.

31. The Court reiterates that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention 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, *Orchowski v. Poland*, no. 17885/04, § 105, ECHR 2009-... (extracts); *Norbert Sikorski v. Poland*, no. 17599/05, § 108, 22 October 2009).

32. The Court firstly observes that under Article 448 of the Civil Code no claim for damages may arise unless the infringement alleged resulted from an unlawful act or omission. The refusal to provide the applicant with the special diet was at all times lawful having regard to the terms of Article 109 of the Code of Execution of Criminal Sentences (see paragraph 24 above). Consequently, in the circumstances of the present case, an action under Article 445 or Article 448 of the Civil Code could not have offered the applicant reasonable prospects of securing a diet in accordance with his religious requirements. The Court would further add that the applicant was not seeking compensation but the provision of meals which took account of his religious convictions. The Government have not established that the provisions of the Civil Code relied on would have afforded the relief sought. In addition, the Court observes that the Government have not alluded to any decisions of the domestic courts indicating that individuals detained in inadequate conditions have succeeded in obtaining an improvement of the *status quo* (see also *Orchowski* cited above § 108, 109; *Latak v. Poland* (dec.), no.52070/08, § 79, 12 October 2010) It follows that the Government's objection must be rejected.

33. 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. *The applicant's submissions*

34. The applicant submitted that under Article 9 of the Convention the State was obliged to respect and support the individual's freedom to practice his or her religion. Any limitations could be set only in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. In the applicant's opinion observing vegetarianism could not be described as a threat to public safety, health, morals or the rights and freedoms of others.

35. The applicant further stressed that Buddhism was a path of life in which the individual was supposed to recognise himself and develop self-awareness. A Buddhist was supposed to improve his spiritual life. He referred to the Third Secondary Precept of Shakyamuni Buddha (in the holy book of Brahmajala Sutra) according to which:

“A disciple of the Buddha must not deliberately eat meat. He should not eat the flesh of any sentient being. The meat-eater forfeits the seed of Great Compassion ... Those who do so are guilty of countless offences.”

36. Lastly, the applicant maintained that Buddha was a teacher who gave suggestions and directions but never orders. He noted that if a Buddhist did not follow those directions he stopped on his path of self-development and resisted Buddha's teaching.

2. *The Government's submissions.*

37. The Government observed that in principle they did not contest that religious precepts relating to a diet might be considered an essential aspect of the practice of one's religion and as such covered by the right to manifest one's religion within the meaning of Article 9 of the Convention.

38. They noted, referring to the Great Polish Encyclopaedia (*Wielka Encyklopedia PWN*, vol. 4, Warsaw 2001, p. 544), that Buddhism generally did not prohibit eating meat and vegetarianism was not required nor did it constitute an element of the Buddhist religion. They further submitted, relying on Wikipedia (http://en.wikipedia.org/wiki/Buddhist_cuisine), that even the strict Mahayana school to which the applicant declared his adherence only encouraged vegetarianism and did not prescribe it. For these reasons only some Mahayana Buddhists were vegetarians.

39. They submitted that in the particular circumstances of the present case, vegetarianism could not be considered an essential aspect of the practice of the applicant's religion - in particular since the applicant had agreed to the PK diet and had asked for it to be continued.

40. The Government further observed that in any event the requirements laid down in the second paragraph of Article 9 of the Convention were met.

In particular, under Article 109 § 1 of the Code of Execution of Criminal Sentences it was not obligatory to grant a special diet in accordance with a prisoner's religious beliefs. However, they agreed that in a situation where it was possible for a custodial institution to provide for a special diet it should have granted such a diet to the prisoner.

41. The Government concluded that to accept that there was an obligation on the State authorities to provide each detainee with special food in accordance with his or her beliefs would be too rigorous and would entail too many difficulties of a technical and financial nature. In their opinion, the diet that the applicant had been granted roughly corresponded to his religious requirements. Since there were nearly 1,200 detainees in Goleniów Prison, the preparation of special meals for only one person would have placed an excessive burden on the prison authorities.

3. *The Court's assessment*

(a) **Applicability of Article 9 of the Convention**

42. The Court must first consider whether the applicant can rely on Article 9 of the Convention.

43. The applicant submitted that the refusal to provide him with a meat-free diet in prison in accordance with his religious precepts infringed his right to manifest his religion through observance of the rules of the Buddhist religion. The Government argued that in the present case, vegetarianism could not be considered an essential aspect of the practice of the applicant's religion, since the strict Mahayana school to which the applicant claimed to adhere only encouraged vegetarianism but did not prescribe it.

44. The Court notes that Article 9 of the Convention lists the various forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see, *mutatis mutandis*, *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 73, ECHR 2000-VII). It does not protect every act motivated or inspired by a religion or belief (see, *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 78, ECHR 2005-XI). The freedom of thought, conscience and religion denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see *Leela Förderkreis e.V. and Others v. Germany*, no. 58911/00, § 80, 6 November 2008). In addition, the State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see *Leyla Sahin*, cited above, § 107).

45. The Court also notes that Buddhism is one of the world's major religions officially recognised in numerous countries. In addition, it has already held that observing dietary rules can be considered a direct expression of beliefs in practice in the sense of Article 9 (see *Cha'are*

Shalom Ve Tsedek, cited above, §§ 73 and 74). In the present case the applicant requested to be provided with a meat-free diet because as a practising Buddhist he wished to avoid eating meat. Without deciding whether such decisions are taken in every case to fulfil a religious duty (see *Leyla Şahin*, cited above, § 78), as there may be situations where they are taken for reasons other than religious ones, in the present case the Court considers that the applicant's decision to adhere to a vegetarian diet can be regarded as motivated or inspired by a religion and was not unreasonable. Consequently, the refusal of the prison authorities to provide him with a vegetarian diet falls within the scope of Article 9 of the Convention.

(b) The question of interference

46. The Court observes that the applicant submitted that the refusal to provide him with meat-free meals amounted to an interference with his rights guaranteed by Article 9 of the Convention. However, the Court is of the view that the circumstances of the applicant's case and in particular the nature of his complaint are more appropriately examined from the standpoint of the respondent State's positive obligations.

47. In this respect the Court reiterates that whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 9 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 9, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance (see, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 98, ECHR 2003-VIII).

(c) Compliance with Article 9 of the Convention

48. The Court firstly notes that at least since 2006, first in Goleniów Prison and subsequently in Nowogród Prison, the applicant has repeatedly requested a meat-free diet. The authorities refused his requests in particular on the ground that preparation of meat-free meals for one person would have been too expensive (extra costs of hygiene requirements) and would have placed an excessive burden on the prison's kitchen staff (see paragraphs 7, 20, and 21 above).

49 . The Court further notes that for some time the applicant was granted a PK diet, a diet that contained no pork and included very little meat. However, the applicant argued that this diet had not corresponded entirely to his religious requirements (see paragraph 12 above).

50. The Court observes that according to the second paragraph of Article 9 of the Convention restrictions are permitted, *inter alia*, for the protection of public health or morals or for the protection of the rights and freedoms of others. Whilst the Court is prepared to accept that a decision to make special arrangements for one prisoner within the system can have financial implications for the custodial institution and thus indirectly on the quality of treatment of other inmates, it must consider whether the State can be said to have struck a fair balance between the interests of the institution, other prisoners and the particular interests of the applicant.

51. In order to justify the food regulations in prison, the Government referred to Article 109 of the Code of Execution of Criminal Sentences and the Ordinances of the Minister of Justice according to which it was not obligatory to serve a special diet in accordance with one's religious beliefs under Polish law. They also noted that providing each detainee with special food in accordance with his or her beliefs would have entailed too many difficulties of a technical and financial nature (see, paragraph 40 above).

52. According to the applicant's religion he was supposed to have a simple meat-free diet. He merely asked to be granted a vegetarian diet, excluding meat products (see paragraph 12 above). The Court notes that his meals did not have to be prepared, cooked and served in a prescribed manner, nor did he require any special products (see, *mutatis mutandis*, *D and E.S. v. United Kingdom*, no. 13669/88, Commission decision of 7 March 1990, Decisions and Reports (DR) 65, p. 245; *X v. United Kingdom*, no. 5947/72, Commission decision of 5 March 1976, Decisions and Reports (DR) 5, p. 8). Unlike in the latter case, he was not offered any alternative diet, nor was the Buddhist Mission consulted on the issue of the appropriate diet. The Court is not persuaded that the provision of a vegetarian diet to the applicant would have entailed any disruption to the management of the prison or to any decline in the standards of meals served to other prisoners.

53. In this respect the Court points out that the recommendation of the Committee of Ministers to the member States, namely Recommendation (Rec 92006)2) on the European Prison Rules (see paragraph 26 above) recommend that prisoners should be provided with food that takes into account their religion (see paragraphs 26 above). In recent judgments the Court has drawn the authorities' attention to the importance of this recommendation, notwithstanding its non-binding nature (see *Śławomir Musiał v. Poland*, no. 28300/06, § 96, ECHR 2009-... (extracts)).

54. Having regard to all the foregoing factors, and despite the margin of appreciation left to the respondent State, the Court finds that the authorities failed to strike a fair balance between the interests of the prison authorities and those of the applicant, namely the right to manifest his religion through observance of the rules of the Buddhist religion.

55. The Court concludes that there has been a breach of Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 9 OF THE CONVENTION

56. The applicant complained under Article 14 in conjunction with Article 9 that he was discriminated against since other religious groups in prison were allowed a special diet.

Article 14 of the Convention provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

57. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

58. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and its Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its Protocols has been relied on both on its own and in conjunction with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Dudgeon*, cited above, § 67).

59. In the circumstances of the present case the Court considers that the inequality of treatment, of which the applicant claimed to be a victim, has been sufficiently taken into account in the above assessment that led to the finding of a violation of a substantive Convention provision. It follows that there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 134, ECHR 2001-XII, and *Sidiropoulos and Others v. Greece*, 10 July 1998, § 52, *Reports of Judgments and Decisions* 1998-IV).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

62. The Government objected to the amount of compensation requested and maintained that it was groundless and unsubstantiated.

63. The Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

64. The applicant also claimed EUR 1,037 (EUR 850 in legal aid plus EUR 187 VAT) for the costs and expenses incurred before the Court.

65. The Government did not express an opinion on this point.

66. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant was paid EUR 850 in legal aid by the Council of Europe. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,037 for the proceedings before it, less the amount received by way of legal aid from the Council of Europe. The Court thus awards EUR 187 for costs and expenses.

C. Default interest

67. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 9 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 14 in conjunction with Article 9 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, and EUR 187 (one hundred and eighty-seven euros) in respect of costs and expenses, to be converted into Polish zlotys 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 amounts 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 7 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President