



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

FIRST SECTION

CASE OF RADAJ v. POLAND

(Applications nos. 29537/95 and 35453/97)

JUDGMENT

STRASBOURG

28 November 2002

FINAL

28/02/2003

*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 Radaj v. Poland,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr G. BONELLO,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mrs E. STEINER,

Mr L. GARLICKI, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 7 November 2002,

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

PROCEDURE

1. The case originated in two applications (nos. 29537/95 and 35453/97) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Zbigniew Radaj, ("the applicant"), on 16 February 1994 and 4 October 1996 respectively.

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

3. The applicant alleged, in particular, that his correspondence with the Convention organs was, while he was detained on remand, twice intercepted, opened and read by the prison authorities and by the court before which the criminal proceedings against him were pending.

4. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applications were allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. On 14 October 1999 the Court decided to join the applications.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

7. By a decision of 21 March 2002 the Court declared the applications partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Polish national, who was born in 1953 and lives in Warsaw.

9. Two letters from the Secretariat of the European Commission of Human Rights, posted on 20 March 1996 and on 14 May 1996, were intercepted, opened and read by the administration of the Warszawa-Służewiec prison, where the applicant was detained on remand. They were subsequently forwarded to the Warsaw District Court, before which criminal proceedings against the applicant were pending at that time, and were read by the court.

10. On 29 April 1996 the applicant requested the President of the Warsaw District Court to explain what was the legal basis on which his correspondence with the European Commission of Human Rights had been opened and read.

11. He reiterated his complaint on 31 July 1996 in a letter to the President of the Regional Court. In reply, on 15 October 1996 the President of the Regional Court informed him that Article 8 of the Convention did not prohibit censorship of correspondence of persons detained on remand. It was also permitted under Section 33 § 2 of the Rules of Detention on Remand. The correspondence sent to the European Commission of Human Rights fell within the scope of this provision. It was further stated that the text of the Convention did not contain provisions relating to the inviolability of the correspondence to and from the European Commission of Human Rights.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The situation of persons detained on remand was at the relevant time governed by the Code of Execution of Criminal Sentences of 1969. Under Article 89, all correspondence of a detainee was to be opened, read and, if need be, subject to censorship, unless a prosecutor and a court decided otherwise. No provision of the Code provided for any remedy to contest the manner or scope of the censorship of a detainee's correspondence.

13. The rights of persons detained on remand as regards their correspondence were further set out in Section 33 of the Rules on Detention on Remand. They provided that the correspondence of persons detained on remand was subject to screening by prison authorities and by authority conducting the criminal proceedings, i.e. either a public prosecutor or a court, depending on the stage reached in the proceedings.

14. On 6 July 1997 a new Code of Enforcement of Criminal Sentences was enacted by parliament. Article 102 of this Code, which entered into force on 1 January 1998, provides that the convicted persons are entitled to uncensored correspondence with the State authorities and with the Ombudsman. Article 103 of the Code further provides that convicted persons and their lawyers may lodge complaints with the international agencies established under international treaties on protection of human rights, ratified by Poland. Prisoners' correspondence in such cases shall be dispatched with no delay and is not subject to censorship.

15. Pursuant to Article 512 of the new Code, the rights of persons detained on remand shall, in principle, be the same as those of persons convicted by a final judgment.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 § 1 OF THE CONVENTION

16. The applicant complained that, while he was detained on remand, his correspondence with the organs of the European Convention of Human Rights had been intercepted, opened and read by the domestic authorities. He invoked Article 8 of the Convention, which 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.”

17. The Government submitted that the control over correspondence of detained persons was not in itself incompatible with the Convention. Polish law, namely the provisions of Rules of Detention on Remand, in particular their Section 33, as applicable at the material time, provided that correspondence of persons detained on remand was subject to control by either the prosecuting authorities or by a court. Therefore the interference complained of was “in accordance with the law”.

18. The Government further argued that there were no reasons to doubt that the control of the applicant's correspondence was carried out to ensure that it did not contain material which would be harmful to prison security or the safety of others or otherwise of a criminal nature. As to the letters from the organs of the European Convention of Human Rights, the control

exercised by the court had had a purely technical character and had pursued a legitimate aim within the meaning of Article 8 § 2 of the Convention.

19. The applicant submitted that his correspondence with the Convention organs should not have been intercepted, opened and read by the domestic authorities.

20. The Court first finds that the practice of opening and reading prisoners' letters amounts to an interference with the applicant's right to respect for correspondence within the meaning of Article 8 of the Convention. The Court also recalls that it is of the utmost importance for the effective operation of the system of individual petition guaranteed under Article 34 of the Convention that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see the *Akdivar and Others and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV judgment, p. 1219, § 105; the *Kurt v. Turkey* judgment of 25 May 1998, *Reports* 1998-III, p. 1192, § 159). The Court is well aware that no allegations of undue pressure have been made in the present case. However, it considers that it is of prime importance for the effective exercise of the right of individual petition under the Convention that the correspondence of prisoners with the Court is not subject to any form of control, which might potentially hinder them in bringing their cases to the Court.

21. It must be examined whether the interference complained of satisfied the conditions set out in § 2 of Article 8. In particular, the measure at issue must be "in accordance with the law" which requires in particular that the contested measure should have a basis in domestic law. In this respect the Court notes that Section 33 of the Rules on Detention on Remand, as applicable at the material time, provided that the correspondence of persons detained on remand was subject to automatic screening by the detention centre. It was also to be read by the authority conducting the criminal proceedings (see § 13 above). Accordingly, there was legal basis for the interference complained of.

22. However, the expression "in accordance with the law" does not only necessitate compliance with domestic law, but also relates to the quality of that law. Domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (the, among other authorities, *Domenichini v. Italy* judgment of 15 November 1996, *Reports* 1996-V, p. 1800, § 33; *Petra v. Romania*, 23 September 1998, *Reports* 1998-VII, p. 2853, § 36; cf. *Di Giovine v. Italy*, no. 39920/98, 26.7.2001, § 24).

23. The Court observes that the applicable provisions of Polish law, as it stood at the material time, allowed for automatic opening and reading of

prisoners' correspondence by prison authorities and by authorities conducting criminal proceedings. Thus, the applicable provisions did not draw any distinction between the different categories of persons with whom the prisoners could correspond. Neither were the authorities obliged to give a reasoned decision specifying the grounds on which it had been effected. Moreover, the relevant provisions had not laid down any principles governing the exercise of this control of correspondence. In particular, they failed to specify the manner and the time-frame within which it should be effected. Further, no provisions of law provided for a remedy enabling a detained person to contest the manner or scope of the application of that measure.

24. In the light thereof, the Court found in a similar case, concerning the correspondence of a detained person with the Polish Ombudsman, that Polish law as it stood at the material time, did not indicate with reasonable clarity the scope and manner of exercise of discretion conferred on the public authorities in respect of control of prisoners' correspondence (*Niedbala v. Poland*, no. 27915/95, 4 July 2000). The Court sees no grounds on which to find otherwise in the present case. Accordingly, the interference with the applicant's correspondence did not satisfy the requirements of being "in accordance with the law".

25. In the light of the foregoing, the Court does not consider it necessary in the instant case to examine whether the other requirements of paragraph 2 of Article 8 were satisfied.

26. There has accordingly been a violation of Article 8 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicant requested PLN 250,000 of financial compensation.

29. The Government submitted that the applicant's claims were grossly excessive and that the damage sustained by the applicant, if any, should be assessed in the light of the relevant case-law of the Court in its cases against Poland, and with regard to the national economic circumstances.

30. The Court considers that the applicant sustained some non-pecuniary damage on account of the interference with his correspondence with the Convention organs, and awards him a sum of EUR 500.

B. Costs and expenses

31. The applicant did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

32. 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. *Holds* that there has been a violation of Article 8 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 500 (five hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President