



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

FIRST SECTION

CASE OF P.K. v. POLAND

(Application no. 37774/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

6 November 2003

This judgment is final but it may be subject to editorial revision.

In the case of P.K. v. Poland,

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

Mr P. LORENZEN, *President*,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mr L. GARLICKI, *judges*,

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

Having deliberated in private on 16 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 37774/97) 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 P.K. (“the applicant”), on 15 March 1996.

2. The Polish Government (“the Government”) were represented by their Agent, Mr K. Drzewicki, of the Ministry of Foreign Affairs. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant complained under Article 3 of the Convention that the conditions of his detention in Radom Remand Centre had been inhuman and degrading. He also alleged a breach of Article 5 § 3 in that his pre-trial detention had exceeded a “reasonable time” and a breach of Article 8 in that that the authorities had opened and controlled his letter to the Commission.

4. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 13 March 2003, having obtained the parties' observations, the Court declared the application admissible.

5. On 8 July 2003 the applicant and the Government submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1972 and lives in Szydłowiec, Poland.

1. Facts relating to the applicant's pre-trial detention

7. On 17 January 1995 the applicant was arrested by the police on suspicion of robbery. On 18 January 1995 the Przysucha District Prosecutor (*Prokurator Rejonowy*) charged him with robbery and detained him on remand on the ground that there was a reasonable suspicion that he had committed the offence in question.

8. On 13 March 1995 the applicant was indicted before the Radom Regional Court (*Sąd Wojewódzki*).

9. The trial began on 17 August 1995. On 11 July 1996 the Radom Regional Court convicted the applicant as charged and sentenced him to 4 years' imprisonment. On 16 April 1997, on the applicant's appeal, the Warsaw Court of Appeal amended that judgment in part and reduced the sentence to 3 years' and 6 months' imprisonment.

2. Facts relating to the conditions of the applicant's detention

10. On an unknown date the applicant was detained in Radom Remand Centre (*Areszt Śledczy*). On 18 September 1995 he was placed in a cell of 12.49 square metres together with 5 other prisoners, all of whom were heavy smokers. There was no running water, no sewage system, no toilet and insufficient natural lighting. The glow-lamps were switched on from morning to night. The cell lacked adequate ventilation. The detainees were given two buckets of drinking water and one extra bucket, which was used as a toilet by all of them.

11. The applicant many times complained about the conditions of his detention, in particular the size of his cell and the fact that he was detained together with heavy smokers. He also complained that he was deprived of any opportunity to exercise in the open air since detainees were only allowed a daily walk in a well in the prison building.

12. On 12 March and 28 May 1996, in letters to the applicant, the Governor of Radom Remand Centre acknowledged that the prison conditions were difficult since Radom Remand Centre was one of the oldest prisons in Poland. He added that the prison was constantly overcrowded by 20%.

13. On 17 July 1998 the applicant was released from prison.

3. The applicant's correspondence with the Commission

14. On 15 March 1996 the applicant's wrote his first letter to the Commission. The letter was opened by the authorities. In the top left hand corner of the letter there was a stamp, which read: "censored" ("*ocenzurowano*"). The stamp was followed by an illegible signature.

15. Following the communication of the application, the Government enquired into the circumstances surrounding the censoring of the applicant's letter. They found that an employee of the Radom Regional Court had

stamped the applicant's letter "censored". They maintained that that had happened by mistake since the employee was an inexperienced clerk who had been unfamiliar with the rules governing the censorship of correspondence.

THE LAW

16. On 8 July 2003 the Court received the following declaration from the Government:

"I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Poland offer to pay 25,000 (twenty-five thousand) Polish zlotys to Mr P[...] K[...]. This sum is to cover any pecuniary and non-pecuniary damage as well as costs, and it will payable within three months from the date of delivery of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention. ... For the Government [signed:] K. Drzewicki"

17. On the same day the Court received the following declaration signed by the applicant:

"I note that the Government of Poland are prepared to pay me the sum of 25,000 (twenty-five thousand) Polish zlotys covering pecuniary and non-pecuniary damage and costs with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

I accept the proposal and waive any further claims against Poland in respect of the facts of this application. I declare that this constitutes a final settlement of the case.

The declaration is made in the context of a friendly settlement which the Government and I have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment. ... [Signed: P.K.]"

18. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

19. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 6 November 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Peer LORENZEN
President