



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

FOURTH SECTION

CASE OF PISK-PISKOWSKI v. POLAND

(Application no. 92/03)

JUDGMENT

STRASBOURG

14 June 2005

FINAL

14/09/2005

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 PISK-PISKOWSKI v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr R. MARUSTE,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. BORRERO BORRERO, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 19 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 92/03) 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 Andrzej Pisk-Piskowski ("the applicant"), on 13 November 2002.

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

3. On 24 March 2004 the President of the Fourth Section decided to communicate the complaint concerning the monitoring of the applicant's correspondence 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 1967 and lives in Opole, Poland.

A. The criminal proceedings

5. In 1998 the prosecution service filed with the Opole District Court (*Sąd Rejonowy*) a bill of indictment in which it charged the applicant with

making unlawful threats. In the course of the court proceedings the applicant was represented by a court-appointed lawyer. On 6 November 2001 the trial court held a hearing at which the applicant and his court-appointed lawyer were present. During the hearing, the court scheduled the next hearing for 4 December 2001 about which the applicant was informed.

6. On 4 December 2001 a hearing took place before the trial court. The applicant did not attend the hearing but his counsel was present. The applicant failed to give any reasons for his absence and the trial court finished the proceedings and decided in the presence of the counsel that the judgment would be delivered on 11 December 2001.

7. On 11 December 2001 the Opole District Court delivered a judgment in which it convicted the applicant as charged and sentenced him to a prison term of one year and six months. Neither the applicant nor his counsel was present at the delivery of the judgment.

8. The applicant did not appeal against the judgment of 11 December 2001 and did not apply for a copy of the reasons of that judgment.

9. Subsequently, the applicant lodged an application for leave to apply for a reasoned judgment out of time. In his application, he argued that his absence at the hearing held on 4 December 2001 was justified because he had been recently released from the detention and on 5 December 2001 he had been assaulted. The applicant also complained that he had not been informed about the date of the delivery of the judgment. On 9 April 2002 the Opole District Court examined the application and dismissed it. The court, in a reasoned decision, established that the applicant had known about the hearing scheduled for 4 December 2001. He failed to attend it without providing any justification for his absence. Therefore, the trial court was entitled to terminate the proceedings in his absence on the basis of Article 376 § 2 of the Code of Criminal Procedure. The court further examined the reasons for the absence submitted by the applicant. It established that in fact he had been released on 22 November 2001 - two weeks prior to the hearing. Moreover, while it was true that the applicant had been assaulted, nevertheless, that had happened the day following the hearing and the injuries sustained by the applicant, according to a hospital certificate, were not serious and the applicant was not admitted to hospital. With regard to the complaint that he was not informed about the date of the delivery of the judgment, the court found that the applicant had not been diligent since he had not contacted his lawyer. The applicant was aware of the scheduled hearing and knew the address and the name of his court-appointed lawyer.

The applicant appealed against this decision. On 16 May 2003 the Opole Regional Court (Sąd Okręgowy) examined the reasons given by the District Court and upheld the decision.

10. On 14 January 2002 the applicant started serving the prison sentence ordered by the judgment of 11 December 2001.

B. The monitoring of the applicant's correspondence

11. On 6 December 2002 the Court received the applicant's first letter dated 13 November 2002. The letter was sent while the applicant was serving a prison sentence in the Wrocław Detention Centre. The envelope in which the letter was delivered bears the following stamps: "District Court in Legnica, censored on 22.11.02" (*Sąd Rejonowy w Legnicy, cenzurowano dnia 22.11.02*) and "252, 14 NOV 2002, register number 2738/01" (*252, 14 LIS 2002, numer ewid. 2738/01*).

II. RELEVANT DOMESTIC LAW

12. Article 376 of the Code of the Criminal Procedure (*Kodeks Postępowania Karnego*) relates to the absence of the accused at a hearing. It reads, in so far as relevant, as follows:

"§ 1. If the accused, who has already given explanations, leaves the courtroom without the permission of the presiding judge, the court may complete the hearing in his absence, and the judgment thus rendered shall not be regarded as issued by default; the court shall order the accused to be brought to the courtroom by force, if it finds his presence indispensable.

§ 2. This provision shall apply accordingly when the accused, who has already given his explanations, and having been notified of the date of the adjourned or interrupted hearing, has not come to that hearing or justified his non-appearance."

13. 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*) of 1 September 1998.

Article 103 of that Code, which is contained in Chapter IV entitled "Rights and duties of convicted persons", provides as follows:

"Convicted persons, their counsel, representatives and the relevant non-governmental organisations have a right to lodge complaints with institutions set up by international treaties ratified by the Republic of Poland concerning the protection of human rights. In those cases, correspondence of persons deprived of their liberty shall be sent to the addressee without delay and shall not be censored."

14. Provisions relating to the execution of detention on remand (Articles 207-223) are contained in Chapter XV entitled "Detention on remand".

Article 217 § 1 reads, in so far as relevant:

"... a detainee's correspondence shall be censored by [the authority at whose disposal he remains], unless the authority decides otherwise."

Pursuant to Article 214 § 1,

“Unless exceptions are provided for in the present Chapter, a detainee shall enjoy at least the same statutory rights as a convicted person serving a sentence of imprisonment under the ordinary regime in a closed prison. No restrictions shall be applied to him except such as are necessary to secure the proper conduct of criminal proceedings, to maintain order and security in a remand centre and to prevent demoralisation of detainees.”

15. Article 242 § 5, which is contained in Chapter XXI entitled “Definitions”, provides:

“The prohibition of censorship shall also mean the prohibition of acquainting oneself with the contents of a letter.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 1, 2, 3 and 5 OF THE CONVENTION

16. The applicant submitted that he was a victim of a “behavioural engineering manipulation” in breach of Articles 1, 2, 3 and 5 of the Convention.

17. However, the Court finds that the applicant’s assertions about the violations of the above provisions of the Convention are wholly unsubstantiated.

It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

18. The applicant asserted that the criminal proceedings against him were not fair, contrary to Article 6 § 1 of the Convention, in particular, because he had been convicted despite his absence from the hearing held on 4 December 2001.

However, pursuant to Article 35 § 1 of the Convention:

“1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law...”

19. The Court notes that the applicant, who was represented by a court-appointed lawyer, was present at the hearing held on 6 November 2001. The Court also observes that the applicant, despite being informed about the hearing scheduled for 4 December 2001, chose not to appear at it and failed to justify his absence. The applicant further failed to lodge an

appeal against the judgment given on 11 December 2001 in accordance with the procedural requirements. Therefore, he has not exhausted the remedies available under Polish law.

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

III. ALLEGED VIOLATION OF ARTICLES 8 AND 34 OF THE CONVENTION

20. The Court considered it appropriate to raise *ex officio* the issue of Poland's compliance with Article 8 (right to respect for correspondence) and Article 34 of the Convention (effective exercise of the right to file individual applications) on account of the monitoring of the applicant's correspondence,

Article 8 of the Convention provides, as relevant:

“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.”

A. Admissibility

21. 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 submissions before the Court

22. The applicant submitted that the circumstances of his case disclosed a breach of Article 8 of the Convention.

23. The Government refrained from expressing their opinion on the merits of the complaint under Article 8. The Government further submitted that the applicant was in no way hindered in the exercise of his right of petition to the Court, therefore, the facts of the case disclosed no breach of Article 34 of the Convention.

2. *The Court's assessment*

(a) General principles

24. 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).

25. 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”; 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 the *Silver and Others v. the United Kingdom* judgment cited above, §§ 86-88).

(b) Application of the above principles to the present case

(i) *Existence of an interference*

26. The Court notes that the envelope in which the applicant’s first letter of 13 November 2002 was delivered bears a stamp: “District Court in Legnica, censored on 22.11.02” (*ocenzurowano*) (see paragraph 11 above). It considers that, even if there is no separate stamp on the letter as such, there is a reasonable likelihood that the envelope was opened by the domestic authorities. In coming to such conclusions the Court takes into account that in the Polish language the word *ocenzurowano* means that a competent authority, after having controlled the content of the particular communication, decides to allow its delivery or expedition. Consequently, as long as the authorities continue the practice of marking the detainees’ letters with the *ocenzurowano* 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).

27. The Government failed to address this issue. It follows that the monitoring of the applicant’s letter to the Court amounted to “interference by a public authority” with his right to respect for his correspondence under Article 8.

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

28. The Court notes that the Government did not indicate a concrete legal basis for the impugned interference. The Court observes that the applicant in the present case served a sentence of imprisonment following his final conviction (see paragraph 10 above). In respect of convicted persons the domestic law provided a specific statutory prohibition on censorship of their correspondence with “institutions set up by international treaties ratified by the Republic of Poland concerning the protection of human rights.” This prohibition was laid down in Article 103 § 1 of the 1997 Code (see paragraphs 13 above). That provision was expressed in plain terms and it did not leave a decision as to whether to censor the applicant’s letter to the authorities’ discretion but expressly forbade them from doing so (see *G.K. v. Poland*, no. 38816/97, § 110, 20 January 2004).

Since the authorities acted against that clear legal prohibition, the interference with the applicant’s correspondence with the Court was not “in accordance with the law”, as required by Article 8 of the Convention.

29. Accordingly, there has been a breach of Article 8 in that respect. For that reason, the Court does not consider it necessary to examine the complaint that the facts of the case also give rise to an interference with the exercise of his right of individual petition pursuant to Article 34 of the Convention (see, *Matwiejczuk v. Poland*, cited above, § 103; and *mutatis mutandis*, *Foxley v. the United Kingdom*, no. 33274/96, § 47, 20 June 2000).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

32. The Government submitted that the applicant’s claim was excessive and was irrelevant to the complaint about the monitoring of his correspondence.

33. The Court considers that in the particular circumstances of the case, the finding of a violation constitutes in itself a sufficient just satisfaction for any non-pecuniary damage, which could have been sustained by the applicant.

B. Costs and expenses

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning monitoring of the applicant's correspondence with the Court admissible;
2. *Declares* by six votes to one the complaint about violation of Article 6 § 1 of the Convention inadmissible;
3. *Declares* unanimously the remainder of the application inadmissible;
4. *Holds* unanimously that there has been a violation of Article 8 of the Convention;
5. *Holds* unanimously that there is no need to examine the complaint under Article 34 of the Convention;
6. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage;
7. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President