



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

FOURTH SECTION

CASE OF DROZDOWSKI v. POLAND

(Application no. 20841/02)

JUDGMENT

STRASBOURG

6 December 2005

FINAL

06/03/2006

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 Drozdowski 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. BORREGO BORREGO, *judges*,

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

Having deliberated in private on 15 November 2005,

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

PROCEDURE

1. The case originated in an application (no. 20841/02) 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 Jacek Drozdowski ("the applicant"), on 26 May 2000.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołasiwicz, 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 1965 and lives in Brzeg, Poland.

A. The criminal proceedings against the applicant

5. On 26 January 2000 the applicant was remanded in custody on a charge of robbery. On 31 July 2000 he was convicted as charged and sentenced to a prison term.

6. The applicant appealed against his conviction but his appeal was dismissed on 20 December 2000 by the Warsaw Court of Appeal (*Sąd Apelacyjny*).

7. On 13 March 2002 the Supreme Court (*Sąd Najwyższy*) dismissed the applicant's cassation appeal.

B. The monitoring of the applicant's correspondence

8. The first page of the applicant's first letter to the Court of 26 May 2000, which was delivered to the Court on 19 July 2000, bears a stamp: "Censored on – [a hand-written date]: 14.07.2000, judge: [an illegible signature]" (*Ocenzurowano dnia – 14.07.2000, sędzia [podpis nieczytelny]*). The same stamp and signature are marked on the third page of the letter. Moreover, two words have been obscured with a felt-tip pen on the last page of the letter. The left side of the envelope in which the letter was delivered was opened and subsequently sealed with Sellotape.

II. RELEVANT DOMESTIC LAW

A. The Code of Execution of Criminal Sentences 1997

9. 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.

10. The relevant part of Article 103 § 1 of the Code provides as follows:

"Convicts (...) have a right to lodge complaints with institutions established by international treaties ratified by the Republic of Poland concerning the protection of human rights. Correspondence in those cases (...) shall be sent to the addressee without delay and shall not be censored."

11. Article 214 § 1 reads as follows:

"Unless exceptions are provided for in the present Chapter, a detainee shall enjoy at least the same rights as are secured to 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."

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

“(…) detainee’s correspondence shall be censored by [the authority at whose disposal he remains], unless the authority decides otherwise.”

13. Article 242 § 5 reads as follows:

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

B. The Rules of Detention on Remand 1998

14. On 1 September 1998 the Rules of Detention on Remand (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu wykonywania tymczasowego aresztowania*) entered into force.

§ 36 of the Rules provides:

“A detainee’s correspondence, including correspondence with the international institutions for the protection of human rights, which act on the basis of international agreements ratified by the Republic of Poland, with the Ombudsman and public and local government institutions, is mailed through the intermediary of the authority at whose disposal he remains.”

§ 37 provides:

“1. If the authority at whose disposal [a detainee] remains ceases to censor correspondence, it shall be subject to the supervision or censorship by the prison administration, except for cases referred to in Article 73 of the Code of Criminal Procedure and Articles 102 (11) and 103 of the Code [of Execution of Criminal Sentences].

2. The correspondence of a detainee shall be supervised by the administration of the detention centre when necessary in the interest of protecting social interest, the security of a detention centre or requirements of personal re-education.

3. The supervision referred to in paragraph 2 shall be executed by controlling the content of the correspondence and acquainting oneself with its wording.

4. The correspondence referred to in Articles 8 § 3, 102 (11) and 103 § 1 of the Code [of Execution of Criminal Sentences] may be only subjected to the control of its content [*kontrola zawartości*], which shall take place in the presence of a detainee.”

15. § 38 provides:

“2. Censorship shall mean deleting a part of text or making it illegible, whereas seizing correspondence shall mean not transmitting it to a detainee and placing it in his file.”

THE LAW

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

16. The applicant complained under Article 6 § 1 of the Convention about unfairness of the proceedings in that he had been convicted despite being innocent.

17. The Court reiterates that according to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

18. The Court observes that the applicant does not allege any particular failure to respect his right to a fair hearing. Assessing the proceedings complained of as a whole, the Court finds no indication that they were unfairly conducted.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

19. 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 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.”

Article 34 of the Convention reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

A. Admissibility

20. 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*

21. The applicant submitted in general terms that the circumstances of his case disclosed a breach of the Convention.

22. The Government refrained from expressing their opinion on the merits of the complaint under Article 8. The Government further stated that “should the Court establish that there has been a violation of Article 8 of the Convention, the Court should consider it not being necessary to examine the same facts ... under Article 34 of the Convention”.

2. *The Court’s assessment*

23. The Court notes that the applicant’s first letter to the Court of 26 May 2000 bears stamps: “Censored on – [a hand-written date]: 14.07.2000, judge: [an illegible signature]”. The stamps are marked on the first and third page of the letter. Moreover, two words have been obscured with a felt-tip pen on the last page of the letter. It further appears that his letter was posted with almost two months’ delay.

It follows that the opening, reading and delaying of the applicant’s letter to the Court amounted to an “interference” with his right to respect for his correspondence under Article 8.

24. 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 *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 *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, §§ 86-88).

26. The Court observes that the Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court notes that the domestic law did not provide a specific statutory prohibition of censorship of the correspondence with the Court with respect to persons, such as the applicant in the instant case, who were detained on remand. The prohibition laid down in Article 103 § 1 of the Code of Execution of Criminal Sentences was limited to the correspondence of convicted persons (see *G.K. v. Poland*, no. 38816/97, § 110, 20 January 2004). What is more, the domestic law, as it stood at the material time, expressly authorised that a detainee’s correspondence with the Court could be subjected to a control of its content provided that it was carried out in the presence of the detainee (see paragraphs 10 and 14 above).

However, it is not necessary to decide this issue and the Court will proceed on the assumption that the interference was in accordance with the law. The issue thus arises whether the censorship by the authorities of the applicant’s letter to the Court was necessary in a democratic society within the meaning of the second paragraph of Article 8.

27. The Court recalls that it is of utmost importance for the effective operation of the system of individual application instituted by Article 34 that the applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or contacts designed to dissuade or discourage applicants from using a Convention remedy (see *Aydın v. Turkey*, judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, §§ 115-117) The interception of letters by prison authorities can also hinder applicants in bringing their cases to the Court (see *Klyakhin v. Russia*, no. 46082/99, § 119, 30 November 2004).

28. According to the Court’s case-law, while the opening of a letter from a lawyer – if the prison authorities have reasonable cause to believe that it contains an illicit enclosure and when suitable guarantees are provided – may be permitted, no compelling reasons have been found to exist for the opening of letters to the Convention organs (see *Campbell v. the United Kingdom*, cited above, §§ 48 and 62; and *Peers v. Greece*, no. 28524/95, § 84, ECHR 2001-III).

29. The Court reiterates that it is important to respect the confidentiality of its correspondence since it may concern allegations against prison authorities or prison officials. The opening of letters both to and from the Convention organs 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 v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233, p. 22, § 62).

30. Taking into account the above considerations, the Court finds no compelling reasons why the applicant's correspondence with the Court should have been monitored (see among many other authorities *Valašinas v. Lithuania*, no. 44558/98, § 129, ECHR 2001-VIII). It follows that, the interference complained of in the present case was not necessary in a democratic society within the meaning of Article 8 § 2.

31. In consequence the Court finds that there has been a violation of Article 8 of the Convention. In the light of the above considerations and in particular taking into account the fact that the applicant's letter was posted with a two-month delay and a few words were obscured, the Court finds that there has also been a violation of Article 34 of Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

34. The Government submitted that the applicant's claim was excessive and irrelevant to the complaint about the monitoring of his correspondence as is related to allegedly unfair criminal proceedings.

35. The Court considers that in the particular circumstances of the case, the finding of a violation would not constitute a sufficient just satisfaction for non-pecuniary damage sustained by the applicant. The Court awards the applicant EUR 500 under this head.

B. Costs and expenses

36. 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 UNANIMOUSLY

1. *Declares* the complaint concerning monitoring of the applicant's correspondence with the Court admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Articles 8 and 34 of the Convention;
3. *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 500 (five hundred euros) in respect of non-pecuniary damage, to be converted into Polish zlotys, 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.
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President