CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

**CASE OF WASILEWSKI v. POLAND**

*(Application no. 63905/00)*

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 Wasilewski 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. PAVLOVSCHI,
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 the last-mentioned date:

# PROCEDURE

1. The case originated in an application (no. 63905/00) 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 Mr Adam Wasilewski, represented before the Court by Mr Marek Wasilewski, his father and legal guardian.

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

3. The applicant alleged, in particular, that his right to the respect for his correspondence, guaranteed by Article 8 of the Convention, was breached.

4. The application was 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 application was 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.

6. By a decision of 28 September 2004, the Court declared the application partly admissible.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

8. By a further decision of 28 June 2005 the Court declared inadmissible the applicant's complaint about the length of criminal proceedings against him.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

9. On 15 April 1998 the applicant was arrested and charged with attempted extortion of money by threats. On 16 April the Pruszków District Court dismissed the applicant's appeal against the detention order, finding that in the light of the evidence the arrest was justified.

10. On 17 April 1998 the Pruszków District Court decided to detain the applicant on remand. Subsequently, throughout the initial period of his detention, at least until 2 July 1998, the applicant remained in the detention centre *Warszawa-Białołęka*.

11. On an unspecified date after 2 July 1998 the applicant was transferred to the detention centre *Warszawa-Mokotów.*

12. On 26 July 1998 the applicant sent his first letter to the European Commission of Human Rights. A letter of 24 August 1998, sent by the Commission to the applicant, was intercepted, opened and read by the prosecutor conducting the investigations in the applicant's case.

The envelope in which the letter was delivered bears the following stamps: Detention Centre Warszawa-Białołęka, 8 September 1998; Detention Centre Warszawa 10 September 1998, Detention Centre in Olsztyn 12 October 1998, the Barczewo Prison 14 October 1998. It also bears a note: Censored, 15 September 1998 ("*Ocenzurowano"*) signed by an illegible signature.

13. The applicant requested that criminal proceedings be instituted in respect of the interference with his correspondence from the European Commission of Human Rights.

14. On 27 December 2001 the Warszawa-Ochota District Prosecutor discontinued the investigation of the applicant's complaint about the letter of 24 August 1998 having been intercepted, opened and read, finding that no criminal offence had been committed. The applicant appealed.

15. By a decision of 9 May 2002 the Pruszków District Court dismissed his appeal. The court observed that the prosecutor Z.O. who had opened the letter had been authorised by law to open it, to read its contents and to decide whether to forward it to the detained person. The court further considered that Article 103 of the Code of Enforcement of Criminal Sentences, insofar as it prohibited interference with correspondence with international institutions for the protection of human rights, was applicable only to persons convicted by final judicial decisions. Hence, it was not applicable to the situation of the applicant who had at the material time been detained on remand and his situation was therefore governed by other provisions.

## II. RELEVANT DOMESTIC LAW

16. Article 102 (11) of the 1997 Code of Enforcement of Criminal Sentences provides that convicted persons are entitled to unhindered 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 institutions established under international treaties on the protection of human rights, ratified by Poland. Prisoners' correspondence in such cases shall be dispatched without delay, shall not be intercepted and shall not be subject to censorship.

17. Pursuant to Article 214 § 1 of the Code, unless exceptions are provided for by Chapter XV governing detention on remand, the rights of persons detained on remand shall, in principle, be the same as those of persons convicted by a final judgment and serving a prison sentence under the ordinary regime in a closed prison. No restrictions shall be applied to their situation other than those which are necessary to secure the proper conduct of the criminal proceedings, to maintain order in the detention centre and to prevent demoralisation of the detainees.

18. Under Article 217 § 1 of the Code the correspondence of a detainee shall be censored by [the authority at whose disposal he remains], unless this authority decides otherwise.

19. Article 242 § 5 of the Code, contained in its Chapter XXI entitled "Definitions", reads as follows:

> "The prohibition of censorship shall also mean the prohibition of acquainting oneself with the content of the letter."

20. On 1 September 1998 the Rules of Detention on Remand 1998 entered into force. § 36 of the Rules provides that the detainee's correspondence, including the correspondence with the international institutions for the protection of human rights, established on the basis of international agreements ratified by Poland, with the Ombudsman and public and local government institutions, is mailed through the intermediary of the authority at whose disposal he remains.

21. § 37 of these Rules reads as follows:

> "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 prison administration 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 (...) 102 (11) and 103 § 1 of the Code [of Execution of Criminal Sentences] may be only subjected to the control of its content, which shall take place in the presence of a detainee."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The applicant complained that the letter from the European Commission of Human Rights was intercepted, opened and read which amounted to a breach of Article 8 of the Convention which, insofar as relevant, 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."

23. The Government submitted that it had not been confirmed that the impugned letter was indeed intercepted, and if so, whether it was intercepted and opened by the authorities. They referred to the fact that the notice on the envelope which indicated that the letter had been opened and read was not signed. Should the Court accept that this was indeed the case, the Government decline to take a stand as to whether this amounted to an interference with the applicant's right to respect for correspondence within the meaning of Article 8 of the Convention.

24. The applicant reiterated his complaint.

25. The Court 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 *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV judgment, p. 1219, § 105; *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, p. 1192, § 159). The Court considers that it is particularly important to respect the confidentiality of mail from the Convention organs to persons who are detained since it may concern allegations against the prison authorities or prison officials. The opening of letters from the Convention organs undoubtedly gives rise to the possibility that they will be read and may also conceivably, on occasions, create the risk of reprisals by the prison staff against the prisoner concerned (*Campbell*

*v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233, § 62).

26. The Court first observes that in the present case it has not been alleged that the letter concerned was censored in the sense that its part were deleted or made illegible. The Court is also well aware that no allegations of undue pressure have been made in the present case. However, it notes that the domestic authorities examined the applicant's complaint about the letter of 24 August 1998 having been interfered with. The Pruszków District Court, in its decision of 9 May 2002, accepted that this indeed had been the case and that the letter had been controlled by the prosecutor who had been competent to deal with the applicant's case. It considered that he had no criminal case to answer, but did not entertain doubts that the letter had indeed been subject to interception. The Government have not adduced arguments which would make the Court see grounds on which to challenge these findings of the domestic authorities. Accordingly, there has been an interference with the applicant's right to respect for his correspondence.

27. It must therefore be examined whether the interference 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.

28. As to whether the interference was "in accordance with the law", the Court notes that the Government did not argue that this interference had any legal basis. The Court further notes that the Pruszków District Court, in its decision of 9 May 2002, held that the opening and reading of the letter to the applicant did not amount to a criminal offence. However, the court's task in these proceedings was restricted to the examination whether the facts of the case gave rise to a criminal liability.

29. The Court observes that under § 37 (4) of the 1998 Detention Rules applicable at the material time the correspondence with the international human rights institutions could be only subjected to the control of its content, carried out in the presence of a detainee.

30. In the present case the Court notes that the letter from the European Commission of Human Rights was intercepted and opened. The control of the content of the correspondence with international institutions for the protection of human rights was not carried out in the applicant's presence, as required by law.

31. Consequently, 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. 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.

32. There has therefore been a breach of Article 8 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage he had suffered as a result of a breach of his rights guaranteed by the Convention.

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

36. 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

37. The applicant claimed 5,000 (EUR) in reimbursement for costs and expenses borne by his legal guardian in connection with the domestic proceedings and the proceedings before the Court. The Government contested the claim.

38. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings.

# FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 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 in accordance with 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 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 6 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President