



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

FOURTH SECTION

CASE OF TOMCZYK PROKOPYSZYN v. POLAND

(Application no. 64283/01)

JUDGMENT

STRASBOURG

28 March 2006

FINAL

28/06/2006

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 Tomczyk Prokopyszyn v. Poland,

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

Sir Nicolas BRATZA, *President*,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Ms F. ELEN-PASSOS, *Deputy Section Registrar*,

Having deliberated in private on 7 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 64283/01) 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 Zbigniew Tomczyk Prokopyszyn ("the applicant"), on 1 May 2000.

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

3. On 8 July 2005 the Court decided to communicate the complaint concerning monitoring of the applicant's correspondence with the Court to the Government. Under the provisions of Article 29 § 3 of the Convention, it 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 1964 and lives in Strzelce Krajeńskie, Poland.

1. Criminal proceedings against the applicant

5. On 3 March 2000 the applicant was brought before the Radomsko District Court (*Sąd Rejonowy*). He was charged with having committed

burglary. The court ordered that the applicant be remanded in custody until 1 June 2000.

6. The applicant was placed in the Piotrków Trybunalski Detention Centre (*Areszt Śledczy*). His detention was subsequently prolonged several times until the end of the proceedings against him.

7. On 15 November 2000 the Radomsko District Court convicted the applicant of handling stolen goods and sentenced him to 15 months' imprisonment.

8. On 2 February 2001 the Piotrków Trybunalski Regional Court (*Sąd Okręgowy*) upheld the first-instance judgment.

9. On 28 May 2001 the applicant's officially-appointed lawyer, who represented him in the proceedings before both instances, refused to lodge a cassation appeal on his behalf.

2. The monitoring of the applicant's correspondence with the Court

10. The applicant sent numerous letters to the Court, most of which appear to have been opened and read by the domestic authorities.

11. The applicant's first letter of 1 May 2000 bears the stamp "Radomsko District Prosecutor (*Prokuratura Rejonowa w Radomsku*)", the date 8 May 2000 (stamped), and an illegible signature.

12. His letter of 27 August 2001 bears the same stamp, a signature "*prok. R. Gawęcka* (Prosecutor R. Gawęcka)", and the date 28 August 2001, which is both stamped and hand-written.

13. The applicant's letter of 10 September 2001 is marked with the same stamp and the date 12 September 2001 (stamped and hand-written) and bears an illegible signature.

14. The envelopes of the applicant's letters of 14 and 22 October, 18 November 2001, 2 April, 3 and 22 July, 13 October, 4 December 2002 bear the stamp "Censored" (*ocenzurowano*) and the official stamp of the Radomsko District Court. Each of them is marked with a date-stamp and an illegible signature. All envelopes bear traces of opening after being sealed: they were cut open and resealed with adhesive tape.

15. On 3 January 2003 the applicant sent a letter to the Court. He complained that his correspondence with the Court's Registry had been censored. He enclosed the envelope of the letter sent to him by the Registry on 22 November 2002. The envelope was marked with the stamp "Censored", the date 5 December 2002 and an illegible signature. The envelope of the applicant's letter to the Court also bears the stamp "censored", the date 10 January 2003 and an illegible signature. They have been covered up with white corrector fluid.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Code of Execution of Criminal Sentences of 1997

16. Rules relating to means of controlling correspondence of persons involved in criminal proceedings are set out in the Code of Execution of Criminal Sentences of 6 June 1997 (*Kodeks karny wykonawczy*) which entered into force on 1 September 1998.

17. °Article 103 of that Code, contained in Chapter IV entitled “Imprisonment”, provided 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.”

18. Provisions relating to the execution of detention on remand are contained in Chapter XV entitled “Detention on remand”.

19. Article 214 § 1 provides,

“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.”

20. Article 242, as applicable at the material time, provided in § 5:

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

B. The Rules of Detention on Remand 1998

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

22. Paragraph 36 of the Rules provided:

“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.”

23. Paragraph 37 read:

“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.”

24. Paragraph 38 provided in its relevant part:

“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 8 § 1 OF THE CONVENTION

25. The applicant complained that his correspondence with the European Court of Human Rights was 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.”

A. Admissibility

26. 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

27. The Government refrained from expressing their opinion on the merits of the complaint under Article 8 § 1.

28. The applicant reiterated his complaint

29. The Court notes that several of the applicant's letters to the Court bear stamps "Censored". The envelopes of several letters sent by the applicant to the Court were also marked with such stamp and bear traces of being opened and resealed. The envelope of the letter of 22 November 2002 sent to the applicant by the Registry of the Court likewise bears the stamp "Censored".

30. It follows that the opening and reading of the applicant's letters to and from the Court amounted to an "interference" with his right to respect for his correspondence under Article 8 § 1 of the Convention.

31. 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, *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34 and *Niedbala v. Poland* no. 27915/95, § 78).

32. The Court notes that § 37 (4) of the Rules of Detention on Remand of 1998 required that the inspection of detainee's correspondence take place in his presence (see paragraph 23 above). In the present case the evidence indicates that the opening of the applicant's letters did not take place in his presence. It follows that the opening of the letters was not "in accordance with the law".

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained about conditions of his detention in Piotrków Trybunalski Remand Centre. He relied on Article 3 of the Convention.

35. The Court notes that the applicant formulated his arguments in vague terms, without giving any concrete, convincing factual basis for his grievance. Moreover, he has not produced any documentary material in support of this complaint and he has not informed the Court whether he put the substance of his Convention claim before the domestic authorities. His complaint is therefore unsubstantiated.

36. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible in accordance with Article 35 § 4 of the Convention.

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

37. The applicant alleged a breach of Article 6 § 1 in that he did not have a “fair trial”. He alleged that the courts committed errors of fact and law when dealing with his case.

38. The Court recalls that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the States Parties to 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 *García Ruiz v. Spain* [GC], no 30544/96, ECHR 1999-I, § 28). The Court observes that the applicant does not allege any particular failure to respect of his right to a fair hearing or any specific shortcomings on the part of the relevant courts. In the light of the material in its possession, the Court finds no indication that the impugned proceedings were unfairly conducted.

39. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible in accordance with Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 150,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

42. The Government maintained that those claims were excessive.

43. Having regard to the circumstances of the case, in particular to the extent of violation found, the Court awards the applicant 1,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

45. 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. *Declares* the complaint concerning monitoring of the applicant's correspondence with the European Court of Human Rights admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 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 1,000 (one thousand 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise ELEN-PASSOS
Deputy Registrar

Nicolas BRATZA
President