



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

FOURTH SECTION

CASE OF MAKSYM v. POLAND

(Application no. 14450/02)

JUDGMENT

STRASBOURG

19 December 2006

FINAL

19/03/2007

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 Maksym 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 K. TRAJA,
Mr S. PAVLOVSKI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 28 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 14450/02) 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 Maciej Maksym (“the applicant”), on 25 April 2000.

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

3. On 9 May 2006 the Court declared the application partly inadmissible and decided to communicate *ex officio* the issue of the possible monitoring of the applicant's correspondence 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 1971 and lives in Gliwice, Poland.

A. The criminal proceedings against the applicant

5. The applicant was the owner of a company in Gdańsk (*Agencja Rozwoju Przedsiębiorczości i Inwestycji w Gdańsku*). On 8 April 1999 he

was arrested on suspicion of fraud. On 10 April 1999 the Gdańsk District Court (*Sąd Rejonowy*) ordered his detention on remand.

6. On 21 May 1999 the applicant began serving a 3 years and 10 months' prison sentence, which resulted from another conviction.

7. On 9 January 2000 the Gdańsk District Court convicted the applicant as charged and sentenced him to 3 years and 6 months' imprisonment.

8. On 18 October 2001 the Gdańsk Regional Court upheld the applicant's conviction.

9. On 9 May 2002 the applicant was again arrested on suspicion of fraud. On 10 May 2002 the Olsztyn District Court ordered his detention on remand. On 16 September 2002 the Olsztyn District Court convicted the applicant as charged and sentenced him to 3 years' imprisonment.

10. Upon the applicant's appeal, the Olsztyn Regional Court amended the first-instance judgment on 30 January 2003. The applicant filed a cassation appeal. On 1 March 2004 the Supreme Court dismissed the applicant's cassation appeal as manifestly ill-founded.

B. The monitoring of the applicant's correspondence

11. At the time of lodging his application with the Court the applicant had been detained on remand in the course of criminal proceedings against him. At the same time, as of 21 May 1999 he was serving a prison sentence imposed in the course of another set of criminal proceedings against him.

12. On 6 June 2000, the Registry of the Court received the applicant's letter dated 12 April 2000. Both the letter and the envelope bear a stamp “*Censored on... judge*” and no signature (*Cenzurowano dn... sędzia.*). The envelope had been opened and then sealed with adhesive tape.

13. On 13 February 2001, the Registry of the Court received another letter from the applicant (dated 29 December 2000). It was delivered in an envelope bearing a stamp “*Censored on ... judge*” and no signature (*Cenzurowano dn... sędzia.*). It also bears a red stamp “Remand Centre in Gdańsk” (*Areszt Śledczy w Gdańsku*).

14. On 25 June 2001, the Registry of the Court received another letter from the applicant, dated 24 July 2000 (sent on 13 June 2001). It was delivered in an envelope bearing a stamp “*Censored on... judge*” and no signature (*Cenzurowano dn... sędzia.*). The envelope had been sealed with adhesive tape. It also bears a handwritten note: “*letter admitted to transport sealed with adhesive tape*” (*list przyjęty do przewozu oklejony taśmą*).

II. RELEVANT DOMESTIC LAW

A. The Code of Execution of Criminal Sentences 1997

15. 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*) which entered into force on 1 September 1998.

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

“Convicted persons ... 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.”

17. 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.”

18. 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.”

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

19. 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:

“The detainee's correspondence, including the 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 organ at whose disposal he remains.”

§ 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 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 (effective exercise of the right to file individual applications) on account of indications that the applicant's correspondence with the Court had been monitored.

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

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 in general terms that the circumstances of his case disclosed a breach of the Convention.

23. The Government, having regard to the particular circumstances of the case and the Court's case-law, refrained from expressing their opinion on the merits of the application. However, they argued that there had been no interference with the applicant's letters of 12 April 2000, 9 December

2000 and 24 July 2000. On no occasion had the applicant's correspondence with the Court been stopped or intercepted, nor had the delivery of his letters been postponed. The Government concluded that the applicant had not been in any way hindered in the exercise of his right of petition.

2. The Court's assessment

(a) Existence of an interference

24. The Court first observes that the applicant's letter of 12 April 2000 bears stamps "*censored on...judge*" and no signature. The stamps appear on the third page of the letter and on the envelope. Similar stamps appear on the envelopes of the applicant's letters of 29 December 2000 and 24 July 2000 (see paragraphs 11 - 13 above).

25. The Court further notes that the applicant's letter of 24 July 2000 was posted with almost one year's delay; in addition, the envelope had been opened and sealed with adhesive tape (see paragraph 13 above).

26. It follows that the opening, reading and delaying of the applicant's letters to the Court amounted to an "interference" with his right to respect for his correspondence under Article 8.

(b) Whether the interference was "in accordance with the law"

27. The Court reiterates 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).

28. The Court observes that the Government did not indicate a concrete legal basis in the domestic law for the impugned interference. It further notes that the impugned interference took place on three occasions between 12 April 2000 and 25 June 2001 when the applicant had been detained on remand or was serving a prison sentence.

29. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained on remand should enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the European Court of Human Rights contained in Article 103 of the same Code, which expressly relates to convicted persons, was also applicable to detained persons (see *Michta v. Poland* no. 13425/02, § 61, 4 May 2006; *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, censorship of the applicant's

letters to the Court was contrary to the domestic law. It follows that the interference in the present case was not “in accordance with the law”.

30. Accordingly, the Court does not consider it necessary to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with. Consequently the Court finds that there has been a violation of Article 8 of the Convention.

(c) Whether the applicant could effectively exercise his right to file an individual application

31. The Court recalls that it is of utmost importance for the effective operation of the system of individual application instituted by Article 34 that 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 or delaying 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, *Matwiejczuk v. Poland*, no. 37641/97, § 104-106, 2 December 2003, *Drozdowski v. Poland*, no. 20841/02, §§ 27-31, 6 December 2005).

32. In the present case the Government claimed that the delivery of the applicant's letters had not been postponed and that no interference with the contents of his letters had been established (see paragraph 23 above). In this respect, the Court notes that the Government have failed to submit any details of the movement of the applicant's correspondence, in particular copies of prison records relating to the applicant's letter dated 24 July 2000 which was eventually posted only on 13 June 2001.

33. In the absence of any explanation from the Government as to the one-year delay in posting the applicant's letter, the Court finds that there has also been a violation of Article 34 of Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

36. The Government submitted that the applicant's claim was excessive. They asked the Court to rule that a finding of a violation of Article 8 constituted in itself sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

37. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Considering the circumstances of the case, and making its assessment on an equitable basis, the Court awards the applicant EUR 500 under this head.

B. Costs and expenses

38. The applicant submitted no claim in respect of costs and expenses.

C. Default interest

39. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there has been a violation of Article 34 of the Convention;
4. *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, plus any tax that may be chargeable on the above amount, to be converted into Polish zlotys at the date of the settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President