



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

SECOND SECTION

CASE OF PUZINAS (no. 2) v. LITHUANIA

(Application no. 63767/00)

JUDGMENT

STRASBOURG

9 January 2007

FINAL

23/05/2007

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 Puzinas v. Lithuania,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Ms A. MULARONI,

Mrs E. FURA-SANDSTRÖM,

Ms D. JOČIENĖ,

Mr D. POPOVIĆ, *judges*,

and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 5 December 2006,

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

PROCEDURE

1. The case originated in an application (no. 63767/00) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Alvydas Puzinas (“the applicant”), on 18 November 2000.

2. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged, in particular, a violation of Articles 8, 10 and 11 of the Convention, in respect of a disciplinary penalty imposed on him for having by-passed the authorised channels for outgoing prisoners’ correspondence.

4. By a decision of 13 December 2005, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and lives in Panevėžys.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

8. On 12 December 1991 the Supreme Court sentenced the applicant to 13 years’ imprisonment for aggravated murder. He served the sentence in

the Rasų Prison in Vilnius. The applicant was released on licence on an unspecified date in 2002.

9. The applicant is the President of the organisation for prisoners' mutual assistance and support "Freedom" ("*Laisvė*"). On 9 July 1999 the applicant signed a letter, on behalf of this organisation and certain other prisoners, complaining about the conditions of detention at Rasų Prison and about various allegedly unlawful acts of the prison administration. The complaint was addressed to 10 persons, five of whom were State officials and the five others representatives of the private media. According to the applicant, the complaint was not sent through the prison administration, but rather through an inmate who had been released from the prison, in order to avoid censorship.

10. On 20 July 1999 the Prison Department Director punished the applicant by prohibiting him from receiving a parcel during a personal visit, having found that the sending of the complaint of 9 July 1999 through channels other than the prison administration had breached Article 50 § 6 of the Prison Code. It was also established that the Prison Interim Rules (fifth addendum) prohibited a prisoner from using a personal computer, as had been the case with this letter. The Director held that the applicant could only send the complaint to the State authorities, not to other organisations or persons (Article 50 § 1). The Director further stated that Article 50 § 6 of the Prison Code prohibited complaints "on behalf of other prisoners".

11. Upon the applicant's appeal, on 8 December 1999 the Ombudsman established that the provisions of the Prison Code had not properly protected prisoners' rights of association. The Ombudsman did not express her opinion as to the lawfulness of the penalty.

12. The applicant applied to the administrative courts, claiming that the penalty had been unlawful. On 6 March 2000 the Vilnius Regional Administrative Court disallowed the claim for want of jurisdiction.

13. On 30 March 2000 the Supreme Administrative Court upheld the decision on appeal. Upon the applicant's further appeal, on 10 May 2000 the Court of Appeal quashed the lower court decisions. It held *inter alia* that the prison administration was part of the Executive, and that the administrative courts were consequently competent to examine the applicant's action concerning its allegedly unlawful acts.

14. As the applicant subsequently submitted the claim in accordance with the requirements of the Code of Administrative Procedure, his action was examined by the Vilnius Regional Administrative Court on 29 May 2001, in the presence of the applicant, transported to the hearing directly from the prison.

15. The court rejected the action as unsubstantiated, finding that the penalty of 20 July 1999 had been lawful. It held *inter alia*:

"Pursuant to Article 50 § 1 of the Prison Code, convicted persons are guaranteed the right to submit applications, proposals and complaints to the State authorities, public organisations and officials. When needed, the prison administration can attach their observations [thereto]. However, convicted persons are prevented from applying to

these institutions through channels other than the prison administration (Article 50 § 6 of the Prison Code). The applicant admitted that the application [of 9 July 1999] was sent to 10 addressees illegally, through a person who had completed his sentence and had been released from the prison. The prison administration was therefore deprived of the right to submit their comments as to the issues set out in the application.”

16. On 11 July 2001 the Supreme Administrative Court rejected the applicant’s appeal against the judgment, holding *inter alia*:

“The applicant’s claims that the [relevant] provisions of the Prison Code contradict the Constitution are unsubstantiated. The applicant must acknowledge that he has been convicted and sentenced to imprisonment, and that his legal situation is different from that of persons who have not breached the law... .

As appears from the case file, the applicant was punished [on 20 July 1999] not for corresponding with representatives of the media, but for a breach of the requirement under Article 50 of the Prison Code to conduct [such correspondence] through the prison administration. The same can be said regarding the applicant’s claims that, by way of the impugned penalty, he was punished for making criticisms, holding opinions or imparting information.”

II. THE RELEVANT DOMESTIC LAW AND PRACTICE

17. Article 49 § 1 of the Prison Code, as then in force, stipulated that convicted prisoners were not restricted in the amount of their outgoing letters. The third paragraph of Article 49 required the prison administration to send a prisoner’s letter to the addressee within three days of receipt or its presentation by the prisoner.

18. Article 50 § 1 of the Prison Code applicable at the material time provided that convicted prisoners could send “proposals, applications and complaints to the State authorities, public organisations and officials.” The provision also entitled the prison administration to attach its own explanations in relation to such matters.

19. Until 25 June 1999, Article 50 § 2 of the Prison Code provided that convicted prisoners’ correspondence with the prosecutor could not be subject to censorship (*cenzūra*). Following a legislative amendment effective since 25 June 1999, convicted prisoners’ correspondence with the State authorities and the European Court of Human Rights could not be censored.

20. According to the then Article 50 §§ 5 and 6 of the Prison Code, convicted prisoners were not allowed to send “collective complaints and applications” or complain “on behalf of other convicts”.

21. Under Article 50 § 6 as then in force, convicted prisoners were not allowed to send proposals, applications and complaints addressed to the State authorities through channels other than the prison administration.

22. Rule 7.3.2 of the Prison Interim Rules, applicable at the material time, read as follows:

“Proposals, applications and complaints [by a convicted person] raising questions within the competence of the prison administration shall not be sent to the addressee, but shall be examined on the spot. Having examined [such a] proposal, application, or complaint, a prison official shall write a report and ... include it in the convicted person’s prison file. Should there be disagreement, the proposal, application or complaint shall be sent to the addressee together with the report. If there is a repeated proposal, application or complaint with the same content, the prison administration will note its previous reply in the report ... If the authority, organisation or official addressed by the convicted person is not competent to decide the questions raised, the prison administration shall advise [the prisoner] to re-address the proposal, application or complaint. Should [the prisoner] refuse to do so, the proposal, application or complaint shall be sent to the addressee.”

23. The Prison Interim Rules (fifth addendum) applicable at the material time prohibited a detainee from using a computer.

24. The new Prison Code applicable since 18 July 2001 does not allow any screening of convicted prisoners’ correspondence with the State authorities and the European Court of Human rights. Under Article 41 of this Code, all other correspondence may be censored (*cenzūruojama*) on the basis of a decision by a competent authority (a prosecutor, prison director or court) taken on a case-by-case basis.

25. In its ruling of 24 March 2003, the Constitutional Court held that the domestic statutes were in breach of the Constitution insofar as they allowed unjustified censorship of prisoners’ correspondence. The Constitutional Court also held that specific grounds should have been indicated for any particular instance of censorship.

26. Certain other domestic provisions concerning the censorship of convicted prisoners’ correspondence have been summarised in the judgments of *Valašinas v. Lithuania* (no. 44558/98, 24.7.2001 §§ 94-97, ECHR 2001-VIII) and *Puzinas (no. 1) v. Lithuania* (no. 44800/98, 14.3.2002, §§ 15-17).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant alleged a violation of Article 8 of the Convention, which provides, in so far as relevant, as follows:

“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 ... for the prevention of disorder or crime ...”

28. The Government submitted that the statutory requirement for convicted prisoners to send all their communications through the prison administration, and the resultant punishment of the applicant for having breached this rule, had not prevented the applicant from exercising his freedom of correspondence. In any event, the requirements under the then Article 50 § 6 of the Prison Code and Rule 7.3.2 of the Prison Interim Rules had been compatible with the general interest, in order to prevent abuse by prisoners, a more efficient handling of their complaints, and the provision of legal assistance to prisoners by the prison administration. The Government further stated that the domestic law applicable at the material time had not prevented the applicant from addressing private organisations, such as the media. All in all, the domestic law applicable at the material time had properly protected the applicant's right to respect for his correspondence.

29. The applicant claimed that the penalty of 20 July 1999 confirmed that the domestic law applicable at the material time had prevented him, as a prisoner, from sending complaints and applications, on his own behalf and in the name of other prisoners, to the State authorities, media and non-public organisations. He stated that he had not been protected by the domestic law from an arbitrary interference by the prison administration with the exercise of his right to correspondence. The impugned domestic provisions had allowed indiscriminate censorship of convicted prisoners' correspondence. As a result, he had been afraid that his complaint about the detention conditions would have been censored if it had been sent through the prison administration.

30. The Court observes that on 20 July 1999 the applicant was punished with a minor disciplinary reprimand – the deprivation of the right to receive a parcel during the next personal visit he was to receive. The reason for that punishment, as confirmed by the Supreme Administrative Court, was the fact that the applicant had sent a written complaint about prison conditions, dated 9 July 1999, through an unauthorised channel and not the statutorily required channel of the prison administration, in breach of Article 50 § 6 of the Prison Code as then in force (paragraphs 16 and 18 above). The Court finds that this punishment constituted an interference with the applicant's right to respect for his correspondence, within the meaning of Article 8 § 1 of the Convention. Whilst it did not directly affect the posting or arrival of the impugned letter itself, it was intended to influence the manner in which the applicant sent future correspondence of that nature.

31. Such an interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in the second paragraph of that provision and is "necessary in a democratic society" in order to achieve them (cf., *inter alia*, *Calogero Diana v. Italy*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, §§ 32-33; *Petra v. Romania*, judgment of 3 September 1998, *Reports* 1998-VII, §§ 37-40).

32. The Court is satisfied that the domestic law at issue in the present case was drafted with sufficient clarity and precision, and was furthermore

accessible and appealable to courts (see, by contrast, the *Calogero Diana* and *Petra* judgments cited above, *ibid.*). The interference was thus compatible with the “lawfulness” requirement in the second paragraph of Article 8. It is further observed that the interference pursued the legitimate aim of the prevention of disorder and crime.

33. As to the necessity of the interference, the Court considers that the ordinary and reasonable requirements of imprisonment may justify a system of internal inquiry into prisoners’ complaints about their treatment and conditions of detention (cf. *Silver and Others v. the United Kingdom*, Commission Report of 1 October 1980, § 301). With that aim in mind, some measure of control over prisoners’ correspondence, such as sporadic screening (other than letters involving domestic or Convention judicial business), may be called for and may not of itself be incompatible with the Convention (*Silver and Others v. the United Kingdom*, Series A no. 61, judgment of 25 March 1983, § 98; *a contrario*, *Jankauskas v. Lithuania*, no. 59304/00, judgment of 24 February 2005, §§ 21-22). Such considerations do not imply, however, that correspondence may either be stopped for raising complaints about prison matters or delayed until such complaints have first been examined by the prison administration.

34. The Court has on a number of occasions criticised the relevant Lithuanian legislation, and particularly the rather vague definition of the word “censorship” used therein, which has resulted in a number of cases of abuse by the authorities in their extensive screening or withholding of detainees’ correspondence (the aforementioned *Jankauskas* judgment, §§ 19-23; the aforementioned *Puzinas (no. 1)* judgment, §§ 20-22; *Čiapas v. Lithuania*, no. 4902/02, judgment of 14 November 2006, §§ 24-26, not final). However, the present case is distinctly not of that breed. The Court notes, first, that the applicant’s complaints received an adequate judicial review by the Supreme Administrative Court (paragraphs 16 and 30 above). Secondly, the applicant has failed to present any argument calling into question the proportionality of the measure imposed. Thirdly, the applicant has not shown that his possible fear of censorship was a valid excuse for circumventing an apparently legitimate prison rule regarding the channels of complaint. Fourthly, the penalty imposed on the applicant was of a minor nature. In the specific circumstances of the present case, the Court considers that the authorities did not overstep their margin of appreciation in the present case, and that the interference was proportionate and necessary in a democratic society.

35. There has thus been no breach of Article 8.

II. ALLEGED VIOLATION OF ARTICLES 10 and 11 OF THE CONVENTION

36. The applicant also complained about the same facts under Articles 10 (freedom of expression) and 11 (freedom of association) of the

Convention. However, in the light of the considerations and conclusion above (paragraphs 30-35) in relation to the applicant's complaints under Article 8 of the Convention, the Court considers that it is not necessary to examine them separately under Article 10 or 11.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 8 of the Convention;
2. *Holds* that it is not necessary to examine the matter separately under Articles 10 and 11 of the Convention.

Done in English, and notified in writing on 9 January 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH
Deputy Registrar

J.-P. COSTA
President