



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

FOURTH SECTION

CASE OF NOWICKI v. POLAND

(Application no. 6390/03)

JUDGMENT

STRASBOURG

27 February 2007

FINAL

27/05/2007

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 Nowicki 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 6 February 2007,

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

PROCEDURE

1. The case originated in an application (no. 6390/03) 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 Andrzej Bogusław Nowicki ("the applicant"), on 28 December 2002.

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

3. On 19 May 2006 the President of the Fourth Section decided to give notice of the application 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 1952 and lives in Goleniów.

A. The first set of criminal proceedings against the applicant

5. The applicant was charged with attempted burglary. On 22 November 2000 the Myślibórz District Court convicted him as charged and sentenced him to 20 months' imprisonment, taking into account that he was a habitual

offender. The applicant appealed. On 6 April 2001 the Gorzów Wielkopolski Regional Court quashed the first-instance judgment and remitted the case.

6. On 20 March 2002 the Myślibórz District Court again convicted the applicant of attempted burglary and sentenced him to 18 months' imprisonment. The applicant appealed. On 8 July 2002 the Szczecin Regional Court upheld the District Court's judgment, finding that the correctness of the conviction was borne out by the evidence before the trial court.

7. On 26 September 2002 the applicant's legal-aid counsel refused to file a cassation appeal in his case for lack of appropriate grounds. Throughout the proceedings, except for the retrial, the applicant was represented by a counsel.

B. The second set of criminal proceedings against the applicant

8. In October 2003 the applicant was arrested and charged with aiding and abetting the sale of stolen goods. He was remanded in custody from 7 October 2003 to 5 February 2004. On 19 March 2004 the Szczecin District Court convicted the applicant as charged and sentenced him to 18 months' imprisonment. It took into account that the applicant was a habitual offender. The applicant appealed against the trial court's judgment.

9. On 13 August 2004 the Szczecin Regional Court upheld the first-instance judgment. The applicant was represented by a counsel. It appears that he did not lodge a cassation appeal against the Regional Court's judgment.

C. The alleged censorship of the applicant's correspondence with the Court

10. The envelope in which the applicant's letter dated 4 December 2003 was sent to the Court from the Szczecin Detention Centre bears two stamps that read: "censored" (*ocenzurowano*) and "Szczecin Detention Centre" (*Areszt Śledczy, Szczecin*). It appears that the envelope was cut open and subsequently resealed with adhesive tape.

II. RELEVANT DOMESTIC LAW

11. The relevant domestic law concerning the censorship of correspondence is set out in the Court's judgment in the case of *Michta v. Poland*, no. 13425/02, §§ 33-39, 4 May 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

12. The Court raised of its own motion a complaint under Article 8 of the Convention. This provision, in its relevant part, 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.”

13. The Government, having regard to the particular circumstances of the case and the Court’s case law, refrained from expressing their opinion on the admissibility and merits of the complaint.

A. Admissibility

14. 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. Existence of an interference

15. The Court notes that the envelope in which the applicant’s letter of 4 December 2003 was sent to the Court from the Szczecin Detention Centre bears two stamps that read: “censored” (*ocenzurowano*) and “Szczecin Detention Centre” (*Areszt Śledczy, Szczecin*). It appears that the envelope had been cut open and subsequently resealed with adhesive tape.

16. The Court considers that, even if there is no separate stamp on the letter as such, there is a reasonable likelihood that the envelope had been opened by the domestic authorities. The Court has held on many occasions that as long as the Polish authorities continue the practice of marking detainees’ letters with the “censored” stamp, the Court has no alternative but to presume that those letters have been opened and their contents read (see *Matwiejczuk v. Poland*, no. 37641/97, § 99, 2 December 2003 and *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005, *Micha v. Poland*,

no. 13425/02, § 58, 4 May 2006). It follows that there was an “interference” with the applicant’s right to respect for his correspondence under Article 8.

2. Whether the interference was “in accordance with the law”

17. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court notes that the interference took place in December 2003 when the applicant had been detained on remand pending trial.

18. 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 letter 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”.

19. Having regard to that finding, 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. In respect of the first set of criminal proceedings, the applicant complained that he had been wrongly convicted and that the courts had relied exclusively on false evidence given by a police officer. In respect of the second set of criminal proceedings, the applicant alleged that he had been unjustifiably held in pre-trial detention and complained about his conditions of detention. In a letter dated 25 July 2005, he further alleged that in the second set of proceedings he had been convicted although there had been no evidence against him. The applicant did not invoke any provision of the Convention.

21. The Court, having examined those complaints under Articles 5 § 1 and 6 § 1 of the Convention, and regardless of other possible grounds of inadmissibility, finds nothing in the case file which might disclose any appearance of a violation of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant claimed 15,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, referring to his allegedly wrongful conviction in the first set of criminal proceedings and the conditions of his imprisonment. In respect of the second set of criminal proceedings, the applicant requested that the term of imprisonment imposed on him in those proceedings be deemed as served on account of his first conviction. He further claimed EUR 6,000.

24. The Government observed that the applicant’s claims were limited to his allegedly wrongful conviction and that he did make any claims in respect of the complaint under Article 8 of the Convention.

25. The Court notes that it has found a violation of Article 8 and that the applicant did not submit any claims in this respect. The applicant’s claims were related to the complaints which the Court declared inadmissible. In these circumstances, the Court rejects the applicant’s claims under Article 41.

B. Costs and expenses

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the monitoring of the applicant’s correspondence admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Dismisses* the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 27 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President