



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

FOURTH SECTION

CASE OF WARSIŃSKI v. POLAND

(Application no. 38007/02)

JUDGMENT

STRASBOURG

4 December 2007

FINAL

04/03/2008

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 Warsiński 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 Mrs F. ARACI, *Deputy Section Registrar*,

Having deliberated in private on 13 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 38007/02) 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 Artur Warsiński ("the applicant"), on 3 October 2002.

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

3. On 29 November 2006 the President of the Fourth Section of the Court decided to communicate to the Government the complaint concerning the issue of the possible monitoring of the applicant's correspondence. 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****A. The criminal proceedings against the applicant**

4. The applicant, Mr Artur Warsiński, is a Polish national who was born in 1976 and lives in Bytów.

5. The applicant was charged with drug trafficking and detained on remand from 6 April 2002 to 21 May 2004. He was detained in the Słupsk Detention Centre.

6. On 28 May 2003 the Słupsk Regional Court found the applicant guilty of drug trafficking and sentenced him to three years' imprisonment. The applicant appealed.

7. On 30 December 2003 the Gdańsk Court of Appeal amended the judgment and sentenced the applicant to two years and four months' imprisonment. The judgment is final.

B. The monitoring of the applicant's correspondence

8. On 3 October 2002 the applicant sent a letter to the European Court of Human Rights. It was received by the Court on 21 October 2002. It bears a stamp "censored on" (*cenzurowano dnia ...*), a handwritten date "2 October" and an illegible signature. The envelope also bears a stamp of the Słupsk Regional Court.

9. On 4 December 2002 the applicant sent another letter to the European Court of Human Rights. It was received by the Court on 17 December 2002. It bears a stamp "censored on", a handwritten date "4 December" and an illegible signature. The envelope also bears a stamp of the Słupsk Regional Court.

10. It also appears that both envelopes had been cut open and resealed with adhesive tape.

11. The applicant submitted a photocopy of an envelope sent to him on 24 October 2002 by the Court. It bears a stamp "censored on", a handwritten date "31 October 2002" and an illegible signature. The envelope also bears a stamp of the Słupsk Regional Court. The applicant claimed that he had received the letter in an opened envelope.

12. The applicant also produced a photocopy of an envelope sent to him on 22 November 2002 by "Amnesty International". It bears a stamp "censored", a handwritten date "28 November 2002" and an illegible signature. The envelope also bears a stamp of the Słupsk Detention Centre, with a date of receipt (25 November 2002) and a stamp of the Słupsk Regional Court.

13. Lastly, the applicant submitted a photocopy of an envelope sent to him on 28 November 2002 by "Transparency International - Polska". It bears a stamp "censored", a handwritten date "3 December" and an illegible signature. The envelope also bears a stamp of the Słupsk Detention Centre, with a date of receipt (2 December 2002) and a stamp of the Słupsk Regional Court.

14. On 12 June 2003 the applicant sent a letter to the Słupsk Regional Court in which he complained about censorship of his correspondence.

15. On 30 June 2003 he received a letter from the President of the Słupsk Regional Court informing him that, according to the information obtained from the Criminal Department of the Słupsk Regional Court, the

applicant's correspondence had not been censored. He further stated that the applicant's correspondence had been stamped "censored" by mistake.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law concerning the censorship of prisoners' correspondence is set out in the Court's judgments in the cases of *Micha v. Poland*, no. 13425/02, §§ 33-39, 4 May 2006 and *Kwiek v. Poland*, no. 51895/99, § 21-24, 30 May 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

17. The applicant complained under Articles 8 and 34 of the Convention about censorship of his correspondence. The Court raised of its own motion a complaint under those Articles in respect of the letters sent by the applicant to the Court. 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 (exhaustion of domestic remedies)

18. The Government submitted that the applicant had not exhausted all available domestic remedies because he had failed to bring an action under Article 23 and/or Article 24 § 2 in conjunction with Article 448 of the Civil Code. These provisions would have allowed him to assert that by censoring his correspondence the authorities had breached his personal rights protected by the Civil Code and claim non-pecuniary damages.

19. In this connection, the Government relied on the Warsaw Regional Court's judgment of 27 November 2006 in which a prisoner had been

awarded PLN 5,000 in damages from the State Treasury for a breach of secrecy of his correspondence with the Central Board of the Prison Service and the Central Electoral Office. The Regional Court held that secrecy of one's correspondence was one of the personal rights protected under Article 23 of the Civil Code and that in the case of its breach a claimant may be entitled to an award of non-pecuniary damages.

20. The applicant did not comment.

21. The Court notes that the complaint under Article 8 of the Convention concerning the alleged censorship of the applicant's correspondence - insofar as it concerned the two letters sent to the Court - was raised *ex officio*. In respect of the two letters at issue the applicant could not have been aware that they had been censored by the authorities. In those circumstances, the applicant cannot be required to bring any domestic proceedings in order to obtain redress for the alleged breach of his right to respect for his correspondence.

22. Insofar as other letters are concerned, received by the applicant from the Court and other institutions, it is to be noted that the alleged interference with the applicant's correspondence occurred in 2002, whereas the Government relied on the Warsaw Regional Court's judgment of 27 November 2006. Any relevance that the latter judgment might possibly have in respect of the present case is therefore reduced by the fact that it was given long after the relevant time (see, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX).

23. In any event the Court observes that the applicant complained to the Słupsk Regional Court about censorship of his correspondence, but the court informed him, without instituting relevant proceedings, that the applicant's correspondence had been stamped as "censored" by mistake (see paragraphs 14 and 15 above).

24. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

25. 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

26. The applicant submitted in general terms that the circumstances of his case disclosed a breach of the Convention.

27. 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.

28. 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).

1. Existence of an interference

29. The Court first notes that all the envelopes containing the applicant's correspondence with the Court, as well as those in which letters from the non-governmental organisations “Amnesty International” and “Transparency International” were sent to the applicant, were marked “censored on...” (*cenzurowano dnia ...*). Moreover, it appears that the two envelopes containing the applicant's letters to the Court had been cut open and subsequently resealed with adhesive tape.

30. The Court considers that marking the applicant's letters as “censored” indicates that 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, *Michtha 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” and whether it was justified

a. The applicant's correspondence with the Court's Registry

31. The Court notes that the impugned interference took place in 2002 when the applicant had been detained on remand.

32. 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 *Michtha 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”.

33. 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.

34. Having regard to this finding, the Court does not consider it necessary to examine this complaint under Article 34 of the Convention (see *Pisk-Piskowski*, cited above, § 29).

b. The applicant's correspondence with “Amnesty International” and “Transparency International”

35. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference.

36. Having regard to the provisions of Article 217 § 1 of the Code of Execution of Criminal Sentences the Court accepts that there was a legal basis for the opening and reading of the letters in question.

37. The Court recalls that in a number of its previous judgments – for instance, those in the cases of *Matwiejczuk v. Poland* (no. 37641/97, judgment of 2 December 2003, § 101) and of *Mianowski v. Poland* (no. 42083/98, judgment of 16 December 2003, § 65) – it has already dealt with the question whether Polish law as it stood at the material time indicated with reasonable clarity the scope and manner of control of prisoners' correspondence. The Court has found that the applicable provisions of Polish law were adequately accessible. Furthermore, bearing in mind the impossibility of attaining absolute certainty in the framing of laws and the risk that the search for certainty may entail excessive rigidity, it has accepted that the provisions were formulated with sufficient precision (see *Kwiek*, cited above, § 46).

38. The Court is satisfied that the provision in question pursued the legitimate aim of “the prevention of disorder or crime”. However, as regards the necessity of the interference, the Government have not submitted any reasons which could justify the control of the applicant's correspondence with recognised non-governmental organisations, even if one of them does not deal with human rights as such but with the fight against corruption. Accordingly, the interference complained of was not necessary in a democratic society within the meaning of Article 8 § 2 of the Convention (see, *mutatis mutandis*, *Puzinas v. Lithuania*, no. 44800/98, § 21, 14 March 2002). There has consequently been a violation of Article 8.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that he had been ill-treated by police officers, namely that he had been subjected to psychological pressure while being interrogated.

40. The Court observes that the applicant did not provide sufficient information to make his allegations plausible. Furthermore, it appears that he did not raise those complaints before any competent authority. The Court therefore considers that the applicant's allegations are entirely unsubstantiated.

41. 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE UNFAIRNESS OF THE PROCEEDINGS

42. The applicant further complained that the proceedings in his case were unfair. In particular, he alleged that the domestic courts had erroneously assessed the evidence and that he had been wrongly convicted. He did not rely on any specific provision of the Convention. This complaint falls to be examined under Article 6 § 1 of the Convention.

43. The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting 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, § 28, ECHR 1999-I, with further references).

44. In the present case the applicant did not allege any particular failure to respect his right to a fair hearing on the part of the relevant courts. Indeed, his complaints are limited to a challenge to the result of the proceedings. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 50,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

48. The Government argued that the applicant's claims were exorbitant. 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.

49. 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 finds that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of Article 8 of the Convention. Considering the circumstances of the case, the Court awards the applicant EUR 1,200 under this head.

B. Costs and expenses

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

C. Default interest

51. 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 the interference with 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. *Holds* that it is not necessary to examine the complaint under 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 1,200 (one thousand two 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 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş ARACI
Deputy Registrar

Nicolas BRATZA
President