



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

FOURTH SECTION

CASE OF KOŁODZIŃSKI v. POLAND

(Application no. 44521/04)

JUDGMENT

STRASBOURG

8 January 2008

FINAL

07/07/2008

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 Kołodziński v. Poland,

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

Nicolas Bratza, *President*,
Giovanni Bonello,
Kristaq Traja,
Lech Garlicki,
Ljiljana Mijović,
Jan Šikuta,
Paivi Hirvelä, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 44521/04) 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 Leszek Kołodziński (“the applicant”), on 19 August 2004.

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

3. On 12 April 2007 the President of the Fourth Section decided to communicate the complaint concerning the monitoring of the applicant’s correspondence 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 1949 and lives in Gdańsk, Poland.

A. Criminal proceedings against the applicant

5. On 16 July 2004 the applicant was arrested on suspicion of robbery. On 17 July 2004 the Gdańsk District Court (*Sąd Rejonowy*) ordered that the

applicant be remanded in custody until 16 October 2004. It found that there were reasonable grounds – in particular, evidence from witnesses – for suspecting him of the offence charged. The court further noted that the applicant was liable to a statutory maximum sentence of at least 12 years' imprisonment. It also found that there was a risk that the applicant might tamper with evidence.

6. On 11 October 2004 the Gdańsk District Court prolonged the applicant's detention until 16 January 2005. It considered that the reasons for keeping him in detention were still valid and the need to secure the proper conduct of the investigation justified holding him in custody. It referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant. It also found that there was a risk that the applicant might tamper with evidence, given the nature of the charges against him and the fact that he had acted with other co-accused.

7. The applicant's detention was subsequently prolonged by the District Court on unspecified dates. The courts' decisions were based on Article 258 § 1 of the Code of Criminal Procedure, which lists grounds for pre-trial detention, such as, the risk that an accused will abscond or go into hiding or a justified fear that an accused will attempt to induce witnesses or co-defendants to give false testimony or to obstruct the proper course of proceedings by any other unlawful means.

8. On 27 October 2005 the Gdańsk District Court convicted the applicant of two counts of robbery and sentenced him to 3 years and 6 months' imprisonment. The applicant appealed.

9. On 26 September 2006 the Gdańsk Regional Court (*Sąd Okręgowy*) upheld the impugned judgment.

10. The applicant did not lodge a cassation appeal.

B. Censorship of the applicant's correspondence

11. The applicant's letter to the Court dated 24 November 2004 bears a stamp marked "censored" (*cenzurowano*), "the prosecutor" (*prokurator*) followed by an illegible signature. It appears that the envelope in which that letter was sent had been cut open and subsequently resealed with adhesive tape. According to the postmark the letter was posted on 8 December 2004.

12. The application form submitted by the applicant and dated 13 January 2005 bears a stamp marked "censored" (*cenzurowano*), "the judge" (*sędzia*) followed by an illegible signature. The envelope bears a stamp confirming that the applicant's letter was received for dispatch by the prison administration on 18 January 2005. However, according to the postmark the letter was not posted until 31 January 2005. It also appears that the envelope was cut open and subsequently resealed with adhesive tape.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law concerning the censorship of prisoners' 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 5 § 1 OF THE CONVENTION

14. The applicant complained that his detention was in breach of Article 5 § 1 of the Convention, which provides, in so far as relevant, as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

15. The Court notes, however, that the applicant's detention was based on Article 258 § 1 of the Code of Criminal Procedure and that he was detained on reasonable suspicion of having committed a serious offence (see paragraph 7 above). It accordingly finds that the decision to place the applicant in custody had a legal basis and was issued by the competent judicial authority. There is nothing to suggest that the legal basis for his detention was not clearly defined or, therefore, lacked the degree of foreseeability required by the Convention. The Court is therefore satisfied that the applicant's detention complied with the requirements of Article 5 § 1. Moreover, the Court does not discern any appearance of arbitrariness in the decisions of the relevant judicial authorities on the applicant's detention. It also observes that the lawfulness of the detention was repeatedly reviewed by the competent domestic courts (see *Malik v. Poland*, no. 57447/00, § 26, 4 April 2006).

16. Against that background, the Court concludes that the applicant's detention was “lawful” within the meaning of Article 5 § 1 of the Convention.

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

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

18. The applicant complained under Article 6 § 1 of the Convention about unfairness of the proceedings in that he had been convicted despite being innocent. However, according to Article 35 § 1 of the Convention:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ...”

19. The Court finds that the applicant did not file a cassation appeal with the Supreme Court against the final judgment of the Gdańsk Regional Court of 26 September 2006.

20. In that regard, the Court observes that under Polish law and in accordance with the practice of the Supreme Court a cassation appeal can be brought by a party alleging a flagrant breach of any substantive or procedural provision of law capable of affecting the substance of the judgment (see, *Kucharski v. Poland* (dec.), no. 51521/99, 16 October 2003).

21. The cassation appeal was therefore a remedy that would have permitted the applicant to submit the substance of the present complaint to the domestic authorities effectively and to seek relief.

22. It follows that the complaint is inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and must be rejected pursuant to Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

23. The Court raised of its own motion an issue under Article 8 of the Convention on account of the fact that the applicant's correspondence with the Court had been censored. The relevant part of this provision 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

1. *The Government's preliminary objection on exhaustion of domestic remedies*

24. The Government submitted that the applicant had not exhausted all available domestic remedies. He had failed to bring an action under Article 24 §§ 1 and 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 to make a claim in respect of non-pecuniary damage.

25. The Government further submitted that the provisions of the Civil Code were reinforced by the provisions of the Polish Constitution, in particular Article 49 (which protects the freedom and secrecy of communication) and Article 77 (which secures to everyone the possibility of seeking redress for damage caused by a public authority).

26. 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 the confidentiality of his correspondence with the Central Board of the Prison Service and the Central Electoral Office. The Regional Court held that the confidentiality of correspondence was a personal right protected under Article 23 of the Civil Code whose breach could entitle the claimant to an award in respect of non-pecuniary damage.

27. The applicant did not comment.

2. *The Court's assessment*

28. The Court notes that the complaint under Article 8 of the Convention concerning the alleged censorship of the applicant's correspondence was raised *ex officio*. The two letters at issue were sent by the applicant to the Court and he could not have been aware that they had been censored by the authorities. In these 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.

29. Even had the applicant complained about the censorship of his letters to the Court, it has to be noted that the alleged interference with his correspondence occurred in 2004 and 2005, whereas the Government relied on the Warsaw Regional Court's judgment of 27 November 2006. Any relevance the latter judgment might have to the present case is therefore reduced by the fact that it was delivered after the relevant time (see, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX). Furthermore, the Court observes that the judgment relied on by the Government was given by a first-instance court.

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

3. Conclusion as to admissibility

31. 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

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

33. 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.

2. The Court's assessment

(a) Existence of an interference

34. The Court first observes that the applicant's letter of 24 November 2004 bears a stamp marked "censored", "the prosecutor", followed by an illegible signature. In addition, the envelope had been opened and resealed with adhesive tape (see paragraph 11 above).

35. The Court further notes that the application form submitted by the applicant and dated 13 January 2005 bears a stamp marked "censored", "the judge", followed by an illegible signature. The envelope bears a stamp indicating that the applicant's letter was received and dispatched by the prison administration on 18 January 2005. However, according to the postmark the letter was posted with a 13 day delay. It appears that the envelope was cut open and subsequently resealed with adhesive tape (see paragraph 12 above).

36. 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; *Pisk-Piskowski v. Poland*, no. 92/03, § 26, 14 June 2005; and *Micha v. Poland*, no. 13425/02, § 58, 4 May 2006). It follows that in respect of the applicant's letter there was an "interference" with his right to respect for his correspondence under Article 8.

37. 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 law"

38. 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).

39. The Government noted that the impugned interference took place on two occasions between 24 November 2004 and 31 January 2005 when the applicant was in detention on remand. The Government referred to the amendments introduced to the Code of Execution of Criminal Sentences on 24 July 2003, but did not point to a concrete basis in the domestic law that would justify such interference.

40. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained on remand 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, is also applicable to detained persons (see *Michta v. Poland* no. 13425/02, § 61, 4 May 2006; and *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".

41. That being so, 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 30,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

44. The Government submitted that the applicant's claim was excessive and linked to the applicant's detention on remand. 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.

45. 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 for 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 1,000 under this head.

B. Costs and expenses

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

C. Default interest

47. 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* 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 8 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President