



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

FOURTH SECTION

CASE OF ZBOROWSKI v. POLAND

(Application no. 45133/06)

JUDGMENT

STRASBOURG

15 January 2008

FINAL

15/04/2008

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 Zborowski 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,

Ján Šikuta,

Päivi Hirvelä, *judges*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 45133/06) 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 Mirosław Zborowski (“the applicant”), on 23 October 2006.

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

3. On 8 January 2007 the President of the Fourth Section of the Court 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 1958 and lives in Poznań.

A. The criminal proceedings against the applicant

5. The applicant was charged with forgery of the wills of several persons in order to inherit from them, acting in co-operation with others. On 18 January 2001 he was detained on remand.

6. On 23 April 2004 the Szamotuły District Court found the applicant guilty and sentenced him to 8 year's imprisonment.

7. On 15 January 2005 the Poznań Regional Court quashed the judgment of the District Court on the ground of serious procedural shortcomings. The proceedings are pending. Apparently the applicant was released pending trial.

B. The monitoring of the applicant's correspondence

1. Private correspondence with unknown third persons

8. The applicant produced photocopies of several envelopes containing letters sent to him during his detention on remand (no sender was indicated on the photocopies submitted). The envelopes bear a stamp "censored on" (*ocenzurowano dnia...*), a handwritten date and an illegible signature:

- 1) the envelope marked "censored on 25 April 2002";
- 2) the envelope marked "censored on 26 April 2002", bearing also a stamp of the Szamotuły District Court Criminal Division;
- 3) the envelope marked "censored on 14 May 2002";
- 4) the envelope bearing a post office stamp of 27 May 2002, marked "censored on 14 June 2002";
- 5) the envelope bearing a post office stamp of 14 June 2002, marked "censored on 21 June 2002";
- 6) the envelope bearing a post office stamp of 25 October 2002, "censored" on 4 December 2002;
- 7) the envelope bearing a post office stamp of 2 December 2002, marked "censored on 23 December 2002";
- 8) the envelope bearing a post office stamp of 20 December 2002, "censored" on 3 January 2003;
- 9) the envelope bearing a post office stamp of 7 February 2003, marked "censored on 12 February 2003";
- 10) the envelope bearing a post office stamp of 15 February 2003, marked "censored on 28 February 2003";
- 11) the envelope bearing a post office stamp of 4 March 2003, marked "censored on 11 March 2003";
- 12) the envelope bearing a post office stamp of 18 March 2003, marked "censored on 24 March 2003";
- 13) the envelope bearing a post office stamp of 23 June 2003, marked "censored on 27 June 2003";
- 14) the envelope marked "censored on 8 July 2003";
- 15) the envelope bearing a post office stamp of 31 July 2003, marked "censored on 5 August 2003";
- 16) the envelope bearing a post office stamp of 4 August 2003, marked "censored on 8 August 2003";

- 17) the envelope bearing a post office stamp of 24 September 2003, marked “censored on 6 October 2003”;
- 18) the envelope marked “censored on 30 October 2003”;
- 19) the envelope marked “censored on 23 December 2003”;
- 20) the envelope bearing a post office stamp of 12 February 2004, marked “censored on 16 February 2004”;
- 21) the envelope bearing no post office stamp, “censored on 16 February 2004”;
- 22) another envelope with an illegible post office stamp, marked “censored on 16 February 2004”;
- 23) the envelope bearing a post office stamp of 23 February 2004, “censored on 26 February 2004”;
- 24) the envelope bearing a post office stamp of 10 March 2004, “censored on 18 March 2004”;
- 25) the envelope bearing a post office stamp of 16 March 2004, marked “censored on 24 March 2004”;
- 26) the envelope bearing a post office stamp of 26 March 2004, marked “censored on 5 April 2004”;
- 27) the envelope bearing a post office stamp of 1 April 2004, marked “censored on 6 April 2004”;
- 28) the envelope marked “censored on 28 April 2004”;

2. The applicant's correspondence with his counsel, with State institutions and with the Council of Europe Information Office

9. The following envelopes containing letters from the applicant's lawyer bear a stamp “censored on” (*ocenzurowano dnia...*), a handwritten date and an illegible signature:

- 1) the envelope marked “censored on 8 April 2002”;
- 2) the envelope marked “censored on 25 April 2002”.

10. The letter sent to the applicant by the Poznań Fiscal Inspection Office (*Urząd Kontroli Skarbowej*) bears a stamp “censored on”, a handwritten date “21 March 2003” and an illegible signature. It also bears a stamp of the Szamotuły Detention Centre.

11. The letter sent to the applicant by the Information Office of the Council of Europe and also bearing a stamp of the University of Warsaw bears a stamp “censored on”, a handwritten date “18 February 2003” and an illegible signature.

12. The applicant also submitted several copies of his letters sent during 2003 to the Fiscal Inspection Office and the Poznań Court of Appeal, bearing similar “censored on” stamps.

13. The applicant submitted that he possessed a number of other letters which had been censored in a similar way.

14. The applicant informed the authorities about the alleged censorship of his correspondence, complaining that his correspondence had not been censored by a judge, but by a secretary of the court.

15. On 22 November 2004 the President of the Poznań Regional Court informed the applicant in writing that although the envelopes had been signed by a secretary, the correspondence had been censored by judges. He also informed the applicant that the practice of having a “censored” stamp signed by a secretary had been discontinued.

16. On 9 January 2006 the applicant requested that criminal proceedings be instituted against D.K. (the secretary, who had signed the envelopes), alleging censorship of his correspondence by an unauthorised person.

17. On 14 March 2006 the Szamotuły District Prosecutor refused to institute criminal proceedings against D.K. finding that no offence had been committed as D.K. had only confirmed with her signature that the censorship had been carried out by a judge. The applicant appealed.

18. On 24 July 2006 the Szamotuły District Court upheld the decision of 14 March 2006.

II. RELEVANT DOMESTIC LAW

19. 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

20. The applicant complained under Article 8 of the Convention about censorship of his correspondence. 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.”

A. Admissibility

21. 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 to claim non-pecuniary damages.

22. 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.

23. The applicant contested that argument

24. The Court notes 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 after the relevant time (see, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX; *Lewak v. Poland*, no. 21890/03, § 22-25, 6 September 2007). In this connection the Court observes that the applicant's complaint's to the authorities about the censorship of his correspondence proved unsuccessful (see paragraphs 14 -18 above).

25. Furthermore, the Court observes that the judgment relied on by the Government was given by a first-instance court. There is no indication that it has been reviewed by the higher courts and that it has become final.

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

27. 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

28. The applicant submitted that the circumstances of his case disclosed a breach of the Convention.

29. The Government contested that argument.

30. 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

31. The Court first notes that all the envelopes submitted by the applicant, were marked “censored on...” (*cenzurowano dnia ...*).

32. The Court further notes that the impugned interference took place when the applicant had been detained on remand.

33. The Government argued that except for the letter from the Fiscal Inspection Office the remaining envelopes submitted by the applicant bear no stamp of the detention centre or of any other authority which would make it possible to establish who had made the note on the envelope. They relied in this respect on the Court's finding in *Piotr Kuc v. Poland*, no. 37766/02, § 41, 19 December 2006.

34. The Court first observes that all the envelopes submitted by the applicant were stamped “censored on”, whereas in the case cited above the envelopes were only marked with a handwritten note. It is further noted that the act of censorship was confirmed by the authorities following the applicant's complaints (see paragraphs 14-18 above).

35. Accordingly the Court considers that, even if there is no separate stamp on the letters as such, there is a reasonable likelihood that the envelopes were opened by the domestic authorities (*Cabala v. Poland*, no. 23042/02, § 49, 8 August 2006; *Mianowski v. Poland*, no. 42083/98, § 63, 16 December 2003). 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; *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” and whether it was justified

a. The applicant's private correspondence

36. Having regard to the provisions of Articles 217 § 1 of the 6 June 1997 Code 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* (cited above, § 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 further considers that the censorship pursued a legitimate aim under Article 8 § 2 of the Convention, namely the prevention of crime. In the circumstances of the instant case the interference could reasonably be considered necessary in a democratic society, having regard to the following factors: the fact that there was no sender indicated on the envelopes submitted, the applicant was indicted on charges of forgery committed in co-operation with other persons and the need to secure the proper conduct of the trial.

39. Thus, the authorities were entitled, within the margin of appreciation left to them under Article 8 § 2, to consider the control of these particular letters to be necessary “for the prevention of disorder or crime”. Accordingly, the interference was justified.

40. The Court therefore finds that, in the particular circumstances of the case, the monitoring of the applicant's private correspondence with unidentified persons can be regarded as having been necessary in a democratic society within the meaning of Article 8 § 2 of the Convention. Accordingly, the Court concludes that there has been no violation of Article 8 of the Convention in this respect.

b. The applicant's correspondence with his counsel, with state institutions and with the Council of Europe Information Office

41. The Government argued that the censorship of the applicant's correspondence with the Fiscal Inspection Office was justified in the light of the nature of the charges facing the applicant.

42. 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 detainee's counsel, with the State authorities and with the Council of Europe Information Office, contained in Articles 8 § 3, 102 (11) and 103 of the same Code, which expressly relates to convicted persons, was also applicable to persons detained on remand (see *Micha v. Poland* no. 13425/02, § 61, 4 May 2006; *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006).

43. Therefore, censorship of the applicant's correspondence with his lawyer, with the Council of Europe Information Office, with the Fiscal Inspection Office and with the Court of Appeal was contrary to the domestic law. It follows that the interference in the present case was not "in accordance with the law".

44. Accordingly, the Court does not consider it necessary to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with. There has consequently been a violation of Article 8.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

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

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

48. The Court considers that in the particular circumstances of the case, the finding of a violation would not constitute sufficient just satisfaction for non-pecuniary damage sustained by the applicant. Having regard to the extent of the violation found, the Court awards the applicant EUR 1,500.

B. Costs and expenses

49. Without providing supporting documents, the applicant's lawyer claimed costs and expenses incurred before the domestic courts and before the Court, amounting to PLN 9,110¹.

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

51. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 1,000 for the proceedings before the Court.

¹ Approx. EUR 2,450

C. Default interest

52. 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 application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention in respect of the monitoring of the applicant's correspondence with his defence counsel, the State authorities and the Council of Europe Information Office;
3. *Holds* that there has been no violation of Article 8 of the Convention in respect of the monitoring of the applicant's private correspondence;
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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, 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 amounts 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 15 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President