



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

FOURTH SECTION

CASE OF STĘPNIAK v. POLAND

(Application no. 29366/03)

JUDGMENT

STRASBOURG

29 January 2008

FINAL

29/04/2008

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 *Stepniak v. Poland*,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovski,

Lech Garlicki,

Ljiljana Mijović, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 8 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 29366/03) 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 Mr D. Stepniak on 25 July 2003.

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

3. On 5 January 2007 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 1964 and lives in Bytom.

1. The applicant's detention

5. On 21 October 2002 the applicant was arrested. By a decision of 24 October 2002 the District Court in Wodzisław Śląski remanded him in custody on charges connected with organised crime. It had regard to evidence gathered by the prosecuting authorities which indicated that the

applicant had committed the offences concerned. The applicant appealed, to no avail.

6. The same court subsequently extended the applicant's detention by decisions of, *inter alia*, 10 July and 7 October 2003 and 7 March 2004, until, respectively, 15 October 2003, 19 January and 19 July 2004. The court relied on the evidence gathered in the case which pointed to the likelihood of the applicant's guilt. It was also of the view that the applicant, if released, could hinder the proper course of the investigations and judicial proceedings by exerting pressure on witnesses and by colluding with his co-accused. It noted that many persons appeared to have been involved in the commission of the offences concerned and that it was therefore necessary to obtain a considerable amount of evidence. It also had regard to the applicant's criminal record.

7. On numerous other occasions the prosecuting authorities refused to release the applicant, relying on the same arguments and referring to the evidence gathered in the investigation.

8. On an unspecified number of occasions the applicant was allowed to see his wife during his detention. Between 15 December 2002, the date on which the applicant's wife gave birth to a son, and 21 November 2003 the applicant saw her and his son on at least three occasions.

9. On 30 September 2003 the prosecuting authorities lodged a bill of indictment with the Wodzisław Śląski District Court. The applicant was charged with multiple counts of fraud.

10. On 11 December 2003 the court ordered that the applicant should serve a prison sentence imposed on him by a final judgment given in another criminal case concurrently with the present detention.

11. Hearings in the case were held on 7 January, 18 February and 25 October 2004. On the latter date the applicant was convicted as charged.

2. Censorship of the applicant's correspondence

12. The applicant submitted envelopes of two letters sent to him by the Court on 15 January 2004 and 30 March 2004. The envelope of the first letter bears the stamp "Censored (*cenzurowano*) – the Wodzisław Śląski District Court – Date", signed with an illegible signature. The envelope of the second letter bears the full official stamp of the Wodzisław Śląski District Court and a handwritten note "censorship" (*cenzura*), accompanied by a handwritten date, 9 April 2004.

II. RELEVANT DOMESTIC LAW

13. The legal provisions governing monitoring of detainees' correspondence applicable at the material time are set out in a judgment delivered by the Court on 6 December 2005 (*Wasilewski v. Poland*, no. 63905/00, §§ 16-21).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

14. 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.”

A. Admissibility (exhaustion of domestic remedies)

15. The Government submitted that the applicant had not exhausted all available domestic remedies. He had failed to bring an action under Article 23 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.

16. In this connection, the Government relied on the Warsaw Regional Court's judgment of 27 November 2006 in which a prisoner had been awarded 5,000 Polish zlotys (PLN) 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 a breach a claimant might be entitled to an award of non-pecuniary damages.

17. The applicant did not comment.

18. The Court notes that the alleged interference with the applicant's correspondence occurred in 2004, whereas the Government relied on the Warsaw Regional Court's judgment of 27 November 2006, which was confirmed by the Warsaw Court of Appeal on 28 June 2007 and became final. Any relevance that this 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).

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

20. 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

21. The Court notes that its two letters sent to the applicant on 15 January 2004 and 30 March 2004 bear censorship stamps. The envelope of the first letter bears the stamp “Censored (*cenzurowano*) – the Wodzisław Śląski District Court – Date”, signed with an illegible signature. The envelope of the second letter bears the official stamp of the Wodzisław Śląski District Court and a handwritten note “censorship” (*cenzura*), accompanied by a handwritten date, 9 April 2004.

22. 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; *Michta v. Poland*, no. 13425/02, § 58, 4 May 2006). It follows that in respect of both of the applicant's letters there was an “interference” with his right to respect for his correspondence under Article 8.

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

23. The Government did not indicate a specific legal basis in domestic law for the impugned interference. The Court notes that the interference took place on two occasions when the applicant was in detention.

24. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, detained persons 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, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, censorship of the two letters of the Court's Registry to the applicant was contrary to domestic law. It follows that the interference in the present case was not “in accordance with the law”.

25. 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

1. Lawfulness of detention

26. The applicant also complains that his detention was unjustified and therefore unlawful.

27. The Court reiterates that the reasonableness of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5 § 1 (c). Having a “reasonable suspicion” presupposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 16, § 32). However, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at a later stage of the process of criminal investigation (see *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 27 § 55).

28. In the light of the documents in the file, there is no indication that there was no reasonable suspicion against the applicant which provided grounds for his detention or that the authorities did not have at their disposal evidence in support of imposition of detention.

29. 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.

2. Right to respect for family life

30. The applicant also complains that while detained he was not allowed to see his family.

31. However, the Court observes that the applicant was apparently allowed, on an unspecified number of occasions, to see his wife during his detention. On 15 December 2002 she gave birth to a son. From that date until 21 November 2003 the applicant saw his son on at least three occasions (see paragraph 8 above). Hence, he was in fact allowed to have contacts with his family. In any event, this complaint does not appear to be substantiated.

32. Having regard to the above, the Court considers that the applicant has not made out his case under Article 8 of the Convention. The Court finds no discernible shortcomings indicating non-compliance with the requirements of this Article.

33. 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

34. 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.”

35. The applicant claimed 25,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

36. 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.

37. The Court 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 500 under this head.

B. Costs and expenses

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

C. Default interest

39. 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*

(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 500 (five 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;

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

Done in English, and notified in writing on 29 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President