



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

FOURTH SECTION

CASE OF ZBOROWSKI v. POLAND (N° 3)

(Application no. 39519/05)

**This version was rectified on 6 May 2008 under Rule 81
of the Rules of the Court**

JUDGMENT

STRASBOURG

22 April 2008

FINAL

22/07/2008

This judgment may be subject to editorial revision.

In the case of Zborowski v. Poland (N° 3)¹,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 27 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 39519/05) 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 17 October 2005.

2. The applicant was represented by Mr J. Sierakowski, a lawyer practising in Poznań. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 12 October 2006 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.

5. The applicant was detained pending trial from 18 January 2001 to 18 January 2005. During this period he corresponded with his lawyer.

¹ Title of case as rectified on 6 May 2008 under Rule 81 of the Rules of Court

6. The following envelopes sent to the applicant by his lawyer were marked “censored” in handwriting, stamped with the stamp of the Gorzów Wielkopolski Regional Prosecutor’s Office and signed in an illegible manner:

- 1) the envelope bearing a post office stamp of 5 February 2001, “censored” on 2 February 2001,
- 2) the envelope bearing no post office stamp, “censored” on 23 March 2001,
- 3) the envelope bearing no post office stamp, “censored” on 19 April 2001,
- 4) the envelope bearing no post office stamp, “censored” on 26 April 2001,
- 5) the envelope bearing no post office stamp, “censored” on 10 May 2001,
- 6) the envelope bearing no post office stamp, “censored” on 31 May 2001,
- 7) the envelope bearing no post office stamp, “censored” on 26 June 2001,
- 8) the envelope bearing no post office stamp, “censored” on 8 June 2001,
- 9) the envelope bearing no post office stamp, “censored” on 8 August 2001,
- 10) the envelope bearing no post office stamp, “censored” on 31 May 2001,
- 11) the envelope bearing a post office stamp of 10 August 2001 “censored” on 16 August 2001,
- 12) the envelope bearing a post office stamp of 16 August 2001 “censored” on 21 August 2001,
- 13) the envelope bearing no post office stamp, “censored” on 7 September 2001,
- 14) the envelope bearing no post office stamp, “censored” on 27 September 2001,
- 15) the envelope bearing no post office stamp, “censored” on 5 October 2001,
- 16) the envelope bearing no post office stamp, “censored” on 11 October 2001,
- 17) the envelope bearing no post office stamp, “censored” on 17 October 2001.

7. The applicant also submitted three other envelopes. Two of them bear a note “no censorship” (*“bez cenzury”*) followed by the stamp of the Office of the Prosecutor and an illegible signature. They also bear post office stamps of 22 March 2001 and 6 June 2001, respectively. The third one bears a stamp of the Office of the Prosecutor, a hand-written date of 15 March

2001 and an illegible signature with no information as to whether the contents had been censored.

8. The applicant submitted one of the “censored” envelopes to the District Court. On 24 February 2003 the District Court informed the Regional Prosecutor’s Office about the incident. On 14 March 2003 the Regional Prosecutor’s Office issued an explanatory note (*“notatka służbowa”*) stating that in spite of the word “censored” written on the envelope, the applicant’s correspondence had not been censored and a note “censored” on the envelope had probably been made by mistake.

9. The applicant continued to inform the authorities about the alleged censorship of his correspondence.

10. On 16 January 2004 the Regional Prosecutor who had put her signature on the envelopes (J.W.) made a declaration (*“oświadczenie”*) stating that she had never censored the applicant’s correspondence.

11. On 17 November 2003 the applicant requested that criminal proceedings be instituted against the Regional Prosecutor (J.W.) alleging censorship of his correspondence with his lawyer.

12. By a letter of 23 January 2004 the Regional Prosecutor informed the applicant that his request had been treated as a hierarchical complaint and that it had been found unsubstantiated.

13. On 18 February 2004 the applicant notified the police authorities of the offence committed by the Regional Prosecutor J.W.

14. On 6 March 2004, in reply to the letter of 23 January 2004, the applicant stated that he had not intended to lodge a complaint but had requested the institution of criminal proceedings.

15. On 2 April 2004 the Regional Prosecutor again informed the applicant that all the applicant’s requests for the institution of criminal proceedings against J.W. were to be treated as hierarchical complaints.

16. On 15 February 2005 the applicant again requested the institution of criminal proceedings against the Regional Prosecutor J.W.

17. On 16 March 2005 the Regional Prosecutor refused to institute criminal proceedings against J.W. stating that no offence had been found as the “censored” note had been probably written by mistake. On 27 March 2005 the applicant appealed.

18. On 17 August 2005 the Gorzów Wielkopolski District Court upheld the contested decision. In its reasons for its decision the court stressed that the “censored” note had been written only on envelopes and not on letters and thus no evidence had been adduced that the applicant’s correspondence had been censored. In consequence, it found that J.W. had not committed an offence of unlawful access to confidential information.

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 *Michta 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 24 §§ 1 and 2 and/or Article 23, in conjunction with Article 448 and 417 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. 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).

23. 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.

24. The applicant contested that argument.

25. The Court notes that the alleged interference with the applicant's correspondence occurred in 2001, whereas the Government relied on the Warsaw Regional Court's judgment of 27 November 2006. The judgment was reviewed by the Warsaw Court of Appeal on 28 June 2007 and became final. 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; *Lewak v. Poland*, no 21890/03, § 22-25, 6 September 2007).

26. The Court also observes that the applicant's complaints to the authorities concerning the censorship of his correspondence proved unsuccessful (see paragraphs 9 - 19 above). He accordingly exhausted the domestic remedies available to him.

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

28. 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

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

30. The Government did not comment.

31. 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 interference

32. The Court notes that the authorities marked the applicant's correspondence with his defence counsel with the "censored" stamp (see paragraph 8 above).

33. The Court further notes that the impugned interference took place when the applicant had been detained pending trial.

34. The Court considers that marking the applicant's letters with the "censored" stamp indicates that there was a reasonable likelihood that the letters had been opened and their contents read. 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*, cited above, § 58). 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

35. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, detained persons enjoy the same rights as those convicted by a final judgment. Accordingly, the prohibition of censorship of correspondence with the detainee's counsel, contained in Article 8 § 3 of the same Code, which expressly relates to convicted persons, is also applicable to persons in pre-trial detention (see *Micha v. Poland* no 13425/02, § 61, 4 May 2006; and *Kwiek v. Poland*, no 51895/99, § 44, 30 May 2006).

36. Therefore, censorship of the applicant's correspondence with his lawyer was contrary to the domestic law. It follows that the interference in the present case was not "in accordance with the law".

37. 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

38. 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

39. The applicant claimed 2,100 zlotys (PLN) in respect of pecuniary damage and 20,000 zlotys (PLN) in respect of non-pecuniary damage.

40. The Government did not comment.

41. 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 Article 8 of the Convention. Considering the circumstances of the case, the Court awards the applicant EUR 1,200 under this head. the finding of a violation of

B. Costs and expenses

42. The applicant also claimed PLN 3,600 (equivalent to approximately EUR 900 on the date of the invoice) for the costs and expenses incurred before the Court.

43. The Government did not comment.

44. According to the Court's case-law, an applicant is entitled to the reimbursement of 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 considers it reasonable to award the sum of EUR 900 for the proceedings before the Court.

C. Default interest

45. 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;
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 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage and EUR 900 (nine hundred euros) in respect of cost 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;

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

Done in English, and notified in writing on 22 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President