



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

FOURTH SECTION

CASE OF ANDRYSIAK v. POLAND

(Application no. 31038/06)

JUDGMENT

STRASBOURG

20 May 2008

FINAL

20/08/2008

This judgment may be subject to editorial revision.

In the case of Andrysiak v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 31038/06) 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 Radosław Andrysiak (“the applicant”), on 26 July 2006.

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

3. On 27 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 1976 and lives in Łódź.

5. On 19 January 2004 the applicant was arrested on suspicion of attempted burglary and assault causing bodily harm.

6. On 21 January 2004 the Sieradz District Court remanded the applicant in custody. The applicant was released from detention on 8 July 2004.

7. On 20 September 2004 the Sieradz District Court acquitted the applicant of attempted burglary and convicted him of assault. It sentenced him to one year’s imprisonment. The applicant appealed.

8. On 8 December 2004 the Sieradz Regional Court upheld the District Court judgment. The applicant lodged a cassation appeal.

9. On 16 August 2005 the Supreme Court dismissed his cassation appeal as manifestly ill-founded.

10. It transpires from the case file that in the period from 12 June 2006 to at least 4 July 2006 the applicant was again remanded in custody in connection with another set of criminal proceedings against him.

11. On 12 June 2006 the applicant sent a request for an application form to the Court. On 29 June 2006 the Court received his request.

12. On 4 July 2006 the Court sent a letter to the applicant containing a copy of the Convention, an application form and two information sheets. The envelope from this letter bears a stamp marked “censored”. The envelope also bears two stamps of the Łódź Detention Centre with the dates 14 July 2006 and 21 July 2006.

II. RELEVANT DOMESTIC LAW

13. The relevant domestic law concerning the censorship of prisoners’ correspondence is set out in the Court’s judgments in the cases of *Michtha 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 ARTICLES 8 AND 34 OF THE CONVENTION

A. The monitoring of correspondence

14. The Court raised of its own motion a complaint under Articles 8 and 34 of the Convention concerning the interference with the applicant’s correspondence. Article 8, 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.”

Article 34 provides:

“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.”

1. Admissibility

15. 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 make a claim in respect of non-pecuniary damage.

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 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.

17. The applicant did not comment.

18. The Court notes that the alleged interference with the applicant’s correspondence occurred in July 2006, 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).

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.

2. Merits

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

22. The Government refrained from expressing their opinion on the merits of the complaint under Article 8. The Government further submitted that the applicant was in no way hindered in the exercise of his right of petition to the Court, therefore, the facts of the case disclosed no breach of Article 34 of the Convention.

23. 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).

a) Existence of interference

24. The Court notes that the authorities marked the applicant’s letter to the Court with the “censored” stamp (see paragraph 12 above).

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

26. The Court considers that marking the applicant’s letter with the “censored” stamp indicates that there was a reasonable likelihood that the letter 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.

b) Whether the interference was “in accordance with the law” and whether it was justified

27. 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 European Court of Human Rights contained in Article 103 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).

28. Therefore, censorship of the letter of the Court’s Registry to the applicant was contrary to the domestic law. It follows that the interference in the present case was not “in accordance with the law”.

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

B. The seizure of correspondence

30. The applicant further complained in substance under Articles 8 and 34 about the seizure by the prison authorities of some of the documents that contained the Court's Registry letter to the applicant.

31. The Court considers that the evidence before it does not show that any of the documents sent by the Court to the applicant were seized by the prison authorities.

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

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

33. The applicant also complained under Article 5 § 1 (c) of the Convention that he was arrested and detained although there had been no reasonable suspicion that he had committed any offence.

Article 5 § 1 (c) reads, 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;”

34. Under Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted.

35. The Court observes that there is no proof in the case file that the applicant challenged the detention order or any of the decisions extending his detention.

36. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

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

39. The Government argued that the applicant's claims were exorbitant and as such should be rejected. They asked the Court to rule that a finding of a violation 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.

40. The Court finds that the applicant has suffered non-pecuniary damage which is not sufficiently compensated for by the finding of a violation of Article 8 of the Convention as regards the monitoring of the applicant's correspondence. Considering the circumstances of the case, the Court awards the applicant EUR 500 under this head.

B. Costs and expenses

41. The applicant, who was granted legal-aid but was not eventually represented by a lawyer in the proceedings before the Court, did not seek to be reimbursed for any costs or expenses in connection with the proceedings before the Court.

C. Default interest

42. 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 monitoring of 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 as regards the monitoring of the applicant's correspondence;

3. *Holds* that it is unnecessary to examine the applicant's complaint that the monitoring of his correspondence constituted an interference with the exercise of his right of individual petition provided in 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 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President