



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

FOURTH SECTION

**CASE OF FERLA v. POLAND**

*(Application no. 55470/00)*

JUDGMENT

STRASBOURG

20 May 2008

**FINAL**

*20/08/2008*

*This judgment may be subject to editorial revision.*



**In the case of Ferla 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. 55470/00) 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 Sławomir Ferla (“the applicant”), on 12 October 1999.

2. The applicant, who had been granted legal aid, was represented by Mr Piotr Sendecki, a lawyer practising in Lublin. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his right to respect for his family life had been infringed.

4. On 10 November 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Falkowo, Poland.

6. On 24 December 1998 the applicant and his wife attended a dinner organised by their neighbours. An argument broke out between the applicant and his neighbour. They left the room and began struggling in the

kitchen. Subsequently, they stopped the tussle and the applicant returned home. Apparently, a few minutes later, when the neighbour was on his way to a church, the applicant assaulted him and beat him unconscious.

7. On 25 December 1998 the applicant was arrested on charges of aggravated assault and placed in the Gdańsk District Detention Centre (*Rejonowy Areszt Śledczy*).

8. On the same date the applicant's wife gave a statement to the police. She stated that she had attended the dinner, but she had not known anything about the struggle in which her husband had taken part, as she had stayed in the room with the other women. She had found out about it only after her husband had been arrested by the police.

9. On 26 December 1998 the applicant's wife confirmed her previous statement.

10. The applicant's wife applied for permission to visit the applicant in prison. On an unknown date the Sopot District Prosecutor (*Prokurator Rejonowy*) refused her request.

11. On 4 February 1999 the applicant applied for permission to be visited by his wife. On 19 February 1999 the Sopot District Prosecutor refused this request. The prosecutor held that on account of the fact that the applicant's wife had been called as a witness by the prosecution no such permission could be granted.

12. Meanwhile, on 11 February 1999 the applicant's wife again gave a statement to the police. Having been duly informed of her rights, she refused to testify against her husband in the case.

13. On 18 March 1999 the prosecutor allowed the applicant's wife to visit the applicant in prison.

14. On 23 March 1999 the applicant's wife visited him in prison. However, they could communicate during the visit only by internal phone and she was not allowed to bring their four-year old son.

15. On 27 May 1999 the applicant requested the Gdańsk District Court to allow his wife to visit him. On 30 May 1999 he lodged a complaint with the District Court against the decision to refuse his wife permission to visit him.

16. On 23 June 1999 the Gdańsk Regional Court (*Sąd Okręgowy*) informed the applicant that he should not be allowed to have any personal contact with his wife as she was a witness in the proceedings against him. However, the court stressed that the applicant could be visited by adults who were not witnesses in his case and by his four-year old son. The court further noted that the next hearing was set for 16 August 1999. If the applicant's wife testified on that date she would be allowed to visit him in prison.

17. On 29 June 1999 the applicant asked the Regional Court to indicate a person who could accompany his son to the detention centre. The court in reply informed the applicant that he should indicate such a person. As the applicant failed to do so, his son did not visit him in prison.

18. On 8 July 1999 the President of the Regional Court informed the applicant that his wife was not allowed to visit him in the detention centre since she had testified twice in the investigative stage of the proceedings and those testimonies were relevant to the offences with which the applicant had been charged. The date of the hearing in the applicant's case had been set for 20 May 1999 and his wife ought to have testified on that date. However, a request by the applicant's lawyer for an expert psychiatrist's report caused an adjournment of the trial until 16 August 1999. The president further noted that until the applicant's wife testified in the trial the court had the right to refuse her requests to visit the applicant, in order to secure the proper conduct of the proceedings.

19. The applicant's wife failed to appear at the hearing held on 16 August 1999 before the Gdańsk Regional Court and in consequence she was fined.

20. The applicant's wife subsequently applied again for permission to visit him in prison.

21. During the hearing held on 5 November 1999 the applicant's wife refused to testify in the proceedings against her husband.

22. The applicant submitted that his wife was allowed to visit him in prison before the end of November 1999.

23. On 10 December 1999 the applicant was convicted as charged and sentenced to four years' imprisonment. The court extended the applicant's detention until the judgment became final.

24. On 24 March 2000 the applicant and his wife were deprived of their parental rights in respect of their son S. F. The child was placed in a care institution. The court held that the applicant was in prison and the mother was a regular abuser of alcohol. The court further pointed out that on 19 March 2000 the mother had left her son unattended in the street, which had considerably endangered her child's security.

25. On 26 April 2000 the Court of Appeal upheld the applicant's conviction.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Code of Execution of Criminal Sentences

26. Pursuant to Article 217 of the Code of Execution of Criminal Sentences of 1997 a detainee is allowed to receive visitors, provided that he obtained permission from the investigating prosecutor (at the investigative stage) or from the trial court (once the trial has begun).

### B. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006

The relevant extracts from the Recommendation read as follows:

#### **“Part II Conditions of imprisonment**

##### *Contact with the outside world*

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicant complained that during his detention he had been deprived of personal contact with his family for a significant period of time, in breach of Article 8 of the Convention which provides as relevant:

“1. Everyone has the right to respect for his ... family life...

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.”

28. The Government contested that argument.

#### A. Admissibility

29. The Court notes that the application 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 parties' arguments*

##### **(a) The Government**

30. The Government agreed that some interference with the applicant's right to respect for his family life had occurred in the case at issue.

31. However, in their opinion there had been no violation of Article 8 of the Convention. They maintained that the applicant had spent almost one year in detention. During this period he had obtained one visit from his wife, on 23 March 1999, and pursuant to the decision of the court of 23 June 1999 he could have obtained visits from his son after identifying an adult person to accompany him during such visits. In addition he could have exchanged correspondence with his family, in particular with his wife. In this respect they submitted that the restrictions imposed on the applicant's contact with his wife had been justified by the need to secure the proper conduct of the proceedings. However, they also acknowledged that the applicant's wife had never testified against the applicant.

32. With reference to the applicant's allegations that the decisions refusing him visits from his wife and his son had damaged the quality of his family life, the Government noted that on 4 March 2000 the applicant and his wife had been deprived of parental rights with respect to their son. In the Government's opinion, this decision appeared to undermine the applicant's arguments regarding the strength of his family life.

33. In sum, the domestic authorities maintained a fair balance of proportionality between the needs to secure the process of obtaining evidence and the applicant's right to respect for his family guaranteed under Article 8 of the Convention.

**(b) The applicant**

34. The applicant argued that from 25 December 1998 to November 1999 he had only been allowed to see his wife once, on 23 March 1999. That had not been enough. He further maintained that the reason for refusing his wife's visits had been arbitrary. The authorities had referred to the fact that his wife had been called as a witness in the proceedings against the applicant. However, he stressed that she had refused to testify in the investigation stage of the proceedings against him. Therefore, there had been no substantive reasons to deny her the right to visit her husband in prison.

35. The applicant further averred that the refusal to allow family visits in prison had resulted in the dissolution of family bonds and finally deprivation of parental rights in respect of his son. Lastly, he pointed out that his wife had taken advantage of her statutory right and had repeatedly refused to testify during the proceedings against him. For these reasons there had been no grounds to refuse to allow him to be visited by his wife.

36. In conclusion, the authorities had acted unlawfully, as they had infringed the basic principle of the Convention system – proportionality.

*2. The Court's assessment*

**(a) General principles**

37. The Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on private and family life. However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see, *mutatis mutandis*, *Messina v. Italy* (no. 2) no. 25498/94, § 61, 28 September 2000, unreported).

38. Such restrictions as limitations on the number of family visits, supervision of those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special arrangements for visits constitute an interference with his rights under Article 8 but are

not, by themselves, in breach of that provision (*ibid.* §§ 62-63; see also *Kucera v. Slovakia*, no. 48666/99, §§ 127-128, 17 July 2007).

39. Nevertheless, any restriction of that kind must be “in accordance with the law”, must pursue one or more legitimate aims listed in paragraph 2 and, in addition, must be justified as being “necessary in a democratic society”. As to the latter criterion, the Court would further reiterate that the notion of “necessity” for the purposes of Article 8 means that the interference must correspond to a pressing social need, and, in particular, must be proportionate to the legitimate aim pursued. When assessing whether an interference was “necessary” the Court will take into account the margin of appreciation left to the State authorities but it is a duty of the respondent State to demonstrate the existence of the pressing social need motivating the interference (see, among other examples, *McLeod v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII, p. 2791, § 52; *Płoski v. Poland*, no. 26761/95, § 35, 12 November 2002; and *Baginski v. Poland*, no. 37444/97, § 89, 11 October 2005).

**(b) Application of the above principles to the present case**

*(i) Existence of interference*

40. The Government did not dispute that the restrictions on the applicant’s personal contact with his family constituted an “interference” with his family life (see paragraph 30 above). The Court sees no reason to hold otherwise.

*(ii) Whether the interference was “in accordance with the law”*

41. The Court notes that the contested measure was applied under Article 217 of the Code of Execution of Criminal Sentences. It consequently holds that the interference was “in accordance with the law”.

*(iii) Whether the interference pursued a “legitimate aim”*

42. The Government maintained that the restriction in issue had been necessary in order to secure the proper conduct of the criminal proceedings against the applicant, the more so as the applicant’s wife had been a witness in the proceedings against the applicant.

43. The Court notes that the limitations on the applicant’s contact with his wife were imposed on the grounds that the applicant’s wife had been a witness in the proceedings against him (see paragraphs 11, 16 18 above). The impugned measure can accordingly be considered as having been taken in pursuance of “the prevention of disorder and crime”, which is a legitimate aim under Article 8.

(iv) *Whether the interference was “necessary in a democratic society”*

44. It remains for the Court to ascertain whether the authorities struck a fair balance between the need to secure the process of obtaining evidence in the applicant’s case and his right to respect for his family life while in detention.

45. The Court accepts that initially the resort to that measure could be considered necessary and reasonable from the point of view of the aims sought by the authorities even though it inevitably resulted in harsh consequences for the applicant’s family life. It must consider however, whether the continued application of these measures was compatible with the requirement of respect for the rights guaranteed by Article 8 of the Convention.

46. In that regard, the Court notes that the applicant’s wife was a witness in the criminal proceedings against him. She first testified during the investigative stage of the proceedings, stressing that she had no information to offer regarding the event in question. Subsequently she confirmed her testimony. She refused to testify during the investigation and repeated her refusal once the trial started (see paragraphs 8, 9, 12 and 21 above). Nevertheless, between 25 December 1998 and an unknown date in November 1999 she was only allowed to visit the applicant once - on 23 March 1999.

47. The Court observes that the domestic authorities did not consider any alternative means of ensuring that the applicant’s contact with his wife would not lead to collusion or otherwise obstruct the process of taking evidence such as, for example, subjection of their contact to supervision by a prison officer or by imposing other restrictions on the nature, frequency and duration of contact (see *Klamecki (no.2) v. Poland*, no. 31583/96, § 151, 3 April 2003). In addition, while the authorities repeatedly referred to the fact that the applicant’s wife had been a witness in the proceedings they did not see any obstacle to her visiting the applicant in prison on 23 March 1999 (see paragraph 14 above).

48. In the circumstances, and having regard to the duration and the nature of the restrictions on the applicant’s contact with his wife, the Court concludes that they went beyond what was necessary in a democratic society “to prevent disorder and crime”. Indeed the measure in question reduced the applicant’s family life to a degree that can be justified neither by the inherent limitations involved in detention nor by the pursuance of the legitimate aim relied on by the Government. The Court therefore holds that the authorities failed to maintain a fair balance between the means employed and the aim sought to be achieved.

49. It follows that there has been a violation of Article 8 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 30,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

52. The Government contested the claim.

53. The Court accepts that the applicant certainly suffered non-pecuniary damage – such as distress and frustration resulting from the prolonged impossibility of having contact with his wife. It therefore awards the applicant 1,500 euros (EUR) in respect of non-pecuniary damage.

### B. Costs and expenses

54. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, sought reimbursement of EUR 2,000 for costs and expenses incurred in the proceedings before the Court.

55. The Government contested this claim.

56. 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 are reasonable as to quantum. The Court notes the applicant was paid EUR 850 in legal aid by the Council of Europe. 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 2,000 for the proceedings before it, less the amount received by way of legal aid from the Council of Europe. The Court thus awards EUR 1,150 for costs and expenses.

### C. Default interest

57. 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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage and EUR 1,150 (one thousand one hundred and fifty euros) in respect of costs and expenses, to be converted into Polish zlotys at the rate applicable at the date of the settlement plus any tax that may be chargeable on the above amounts;
  - (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 20 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President