



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

FOURTH SECTION

**CASE OF MISIAK v. POLAND**

*(Application no. 43837/06)*

JUDGMENT

STRASBOURG

3 June 2008

**FINAL**

*03/09/2008*

*This judgment may be subject to editorial revision.*



**In the case of Misiak 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,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 May 2008,

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

**PROCEDURE**

1. The case originated in an application (no. 43837/06) 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 Roman Misiak (“the applicant”), on 17 October 2006.

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

3. On 5 March 2007 the President of the Fourth Section decided to communicate the complaint concerning the monitoring of the applicant’s correspondence 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 Gdańsk.

**A. Criminal proceedings against the applicant**

5. On 9 August 2006 the applicant was arrested on suspicion of fraud and placed in pre-trial detention. The grounds for this decision are

unknown, since the applicant has not produced a copy of it.

6. On 3 November 2006 the Gdańsk District Court (*Sąd Rejonowy*) extended the applicant's detention until 9 February 2007. It relied on the reasonable suspicion that the applicant had committed the offence with which he had been charged. It referred to the likelihood of a severe sentence of imprisonment being imposed on the applicant and the need to secure the proper conduct of the proceedings. The court further found that there was a risk that the applicant might go into hiding, given that earlier he could not be found at his place of permanent residence.

7. The applicant submitted that he unsuccessfully appealed against decisions extending his detention.

8. The applicant maintained that during his arrest he was treated in a degrading manner by police officers and that he was subjected to threats. On 19 February 2007 the Gdańsk District Prosecutor instituted an investigation into the applicant's complaints against the police officers. The investigation is still continuing.

## **B. Censorship of the applicant's correspondence**

9. The applicant submitted that during his detention his correspondence was censored by the authorities. He produced five envelopes. All the envelopes bear a stamp that reads: "Censored, date ..., Prosecutor" (*Ocenzurowano, dnia ... Prokurator*). Those envelopes contained letters from:

- 1) the Penitentiary Association "Patronat" (*Stowarzyszenie Penitencjarne "Patronat"*), a non-governmental organisation, acting, *inter alia*, on behalf of prisoners and former prisoners, sent on 30 August 2006;
- 2) the Supreme Court, sent on 26 September 2006;
- 3) the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment, sent on 27 September 2006;
- 4) the Ministry of Justice; sent on 27 September 2006;
- 5) the Ombudsman, sent on 28 September 2006.

10. The applicant produced one envelope that indicates as the addressee of the letter the Governor of Sztum Prison and bears a stamp that reads: "Censored, date ..., Prosecutor" (*Ocenzurowano, dnia ... Prokurator*). A hand-written note indicates case file no. IC 119/05.

11. One envelope bears traces of having been opened - its sides were cut open and resealed using self-adhesive tape.

12. The applicant submitted that a letter addressed to him by the Court had been opened and read by the authorities. In a note sent to the applicant from Sztum Prison (*Zakład Karny*) on 21 December 2006, he was informed that on 29 November 2006 a letter from the European Court of Human Rights to the applicant had been delivered by the District Prosecutor's Office. The note further states that the letter had clearly been damaged.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant domestic law and practice concerning the censorship of prisoners' correspondence is set out in the Court's judgment in the case of *Kliza v. Poland*, no. 8363/04, §§ 29-34, 6 September 2007.

## THE LAW

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

14. The applicant complained under Article 8 of the Convention that during his detention his correspondence was censored by the authorities. The relevant part of this provision 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

##### *1. The Government's preliminary objection on 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 24 §§ 1 and 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 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, a breach of which could entitle the claimant to an award in respect of non-pecuniary damage.

17. The applicant did not comment.

*2. The Court's assessment*

18. The Court notes that the censorship concerned letters of 30 August 2006, 8 September 2006, 26 September 2006 and two letters of 27 September 2006 and 28 September 2006. The date of the letter sent by the European Court of Human Rights, which was damaged, is unknown; however, it must have been sent before 27 November 2006. Any relevance the aforementioned 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). Furthermore, the Court observes that the judgment relied on by the Government was given by a first-instance court. In the aforementioned case an appellate judgment was given by the Warsaw Court of Appeal on 28 June 2007. The Court of Appeal upheld the Regional Court's judgment.

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

*3. Conclusion as to admissibility*

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. The submissions before the Court*

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

22. The Government, having regard to the particular circumstances of the case and the Court's case-law, refrained from expressing their opinion on the merits of the application.

*2. The Court's assessment*

**(a) Existence of an interference**

23. The Court first observes that the envelopes that contained letters from:

1) the Penitentiary Association "Patronat" (*Stowarzyszenie Penitencjarne "Patronat"*), a non-governmental organisation, acting, *inter alia*, on behalf of prisoners and former prisoners, sent on 30 August 2006;

2) the Supreme Court, sent on 26 September 2006;  
3) the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment, sent on 27 September 2006;  
4) the Ministry of Justice; sent on 27 September 2006;  
5) and the Ombudsman, sent on 28 September 2006, all bear a stamp that reads: “Censored, date ..., Prosecutor” (see paragraph 9 above).

24. The Court notes that one of the envelopes had been opened and resealed with adhesive tape (see paragraph 11 above).

25. Furthermore, the Court observes that one envelope that indicates as the addressee of the letter the Governor of Sztum Prison bears a stamp that reads: “Censored, date ..., Prosecutor” (*Ocenzurowano, dnia ... Prokurator*). A hand written note indicates case file no. IC 119/05 (see paragraph 10 above).

26. The Court observes that, in a note from Sztum Prison (*Zakład Karny*) of 21 December 2006, the applicant was informed that on 29 November 2006 a letter from the European Court of Human Rights to the applicant was delivered by the District Prosecutor Office. The note further states that the letter had clearly been damaged.

27. 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 v. Poland*, no. 13425/02, § 58, 4 May 2006).

28. It follows that in respect of the applicant’s letters there was an “interference” with his right to respect for his correspondence under Article 8.

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

29. 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).

30. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, persons detained on remand, like the applicant, enjoy the same rights as those convicted by a final judgment. Article 102 (11) of the same Code provides that the convicted persons are entitled to uncensored correspondence with the State authorities and the

Ombudsman. Furthermore, Article 103 of the same Code contains the prohibition of censorship of correspondence with the European Court of Human Rights. Both Articles expressly relate to convicted persons; however they are also applicable to detained persons (see *Micha v. Poland*, cited above, and *Kwiek v. Poland*, no. 51895/99, § 23 and 44, 30 May 2006). Thus, censorship of the applicant's letters was contrary to the domestic law. It follows that the interference in the present case was not "in accordance with the law".

31. That being so, 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

32. The applicant complained that during his arrest he was treated in a degrading manner by the police officers and subjected to threats. The Court notes that on 19 February 2007, at the applicant's request, the Gdańsk District Prosecutor instituted an investigation against the police officers concerned and the investigation is still pending (see paragraph 8 above).

It follows that this complaint is premature and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

33. The applicant further complained, in general terms under Article 5, that his pre-trial detention was unjustified, as no consideration was given to the possibility of imposing on him other, less severe, preventive measures. The Court finds nothing in the case file which might disclose any appearance of a violation of the Convention.

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, who did not claim costs and expenses, left the amount of just satisfaction to be awarded to the Court's discretion.

36. The Government submitted that they were not able to comment on this aspect, as the applicant had not specified an amount.

37. The Court considers that the applicant must have sustained some non-pecuniary damage on account of the unlawful interferences with his



correspondence. Ruling on an equitable basis and having regard to its established case-law, the court awards him EUR 1,000 under that head.

38. 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;
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 1,000 (one thousand 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.

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

Lawrence Early  
Registrar

Nicolas Bratza  
President