



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

FOURTH SECTION

CASE OF *ĆWIERTNIAK* v. POLAND

(Application no. 26846/05)

JUDGMENT

STRASBOURG

22 July 2008

FINAL

22/10/2008

This judgment may be subject to editorial revision.

In the case of *Ćwiertniak v. Poland*,

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

Giovanni Bonello, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 1 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 26846/05) 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 Wojciech *Ćwiertniak* (“the applicant”), on 13 July 2005.

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

3. The applicant alleged unfairness of the criminal proceedings in his case.

4. On 16 November 2006 the President of the Fourth Section decided to give notice of the application to the Government. It was decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1969 and lives in Zamość.

A. The criminal proceedings against the applicant

6. On 12 September 2003 the Otwock District Court convicted the applicant of having committed a series of robberies acting in an organised criminal group and sentenced him to ten years' imprisonment. The applicant appealed against the judgment.

7. On 21 September 2003 the Warsaw Regional Court partly amended the judgment. The applicant lodged a cassation appeal with the Supreme Court.

8. On 30 June 2005 the Supreme Court dismissed the cassation appeal as manifestly ill-founded.

B. The monitoring of the applicant's correspondence

9. On 16 August 2005 the applicant sent his application form to the Court. The envelope in which it was delivered bears several stamps of the Zamość Prison and a handwritten note: censored, D[istrict] C[ourt] [*ocenzurowano SR*]. Two sides of the envelope had been resealed with sellotape. The envelope itself was delivered in a plastic cover, apparently sealed by the post office.

II. RELEVANT DOMESTIC LAW

10. The relevant domestic law concerning the censorship of prisoners' correspondence is set out in the Court's judgment in the case of *Michtha v. Poland*, no. 13425/02, §§ 33-39, 4 May 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

11. 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.”

12. The Government raised a preliminary objection that the applicant failed to exhaust domestic remedies. They refrained from expressing their opinion on the merits of the complaint under Article 8.

A. Admissibility

13. The Government submitted that the applicant had not exhausted all available domestic remedies. He had failed to bring an action under Article 24 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 claim non-pecuniary damages.

14. 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 24 of the Civil Code and that in the case of its breach a claimant may be entitled to an award of non-pecuniary damages.

15. The applicant did not comment.

16. The Court notes that the complaint under Article 8 of the Convention concerning the alleged censorship of the applicant's correspondence was raised of its own motion. The letter at issue was sent by the applicant to the Court and he could not have been aware that it had been censored by the authorities. In those circumstances, the applicant cannot be required to bring any domestic proceedings in order to obtain redress for the alleged breach of his right to respect for his correspondence.

17. Even assuming that the applicant did complain about the censorship of his letter to the Court, it has to be noted that the alleged interference with the applicant's correspondence occurred in 2005, whereas the Government relied on the Warsaw Regional Court's judgment of 27 November 2006. Any relevance that the latter 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).

18. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed (see *Lewak v. Poland*, no. 21890/03, § 26, 6 September 2007).

19. The Government further submitted that the applicant's case should be struck out of the Court's list pursuant to Article 37 § 1(a) of the Convention. They maintained that the applicant had indicated in his observations of 19 March 2007 that he did not wish to pursue the

application in so far as it related to the issue of the alleged interference with Article 8 of the Convention.

20. The Court observes that the applicant expressly indicated in his observations of 19 March 2007 that he did not have any pecuniary claims in respect of the issue raised by the Court of its own motion. He also submitted no financial claims in respect of his main complaint relating to the alleged unfairness of the criminal proceedings against him. In view of this, the Court finds no grounds whatsoever for concluding that the applicant does not intend to pursue his application and that it is appropriate to strike the case out of the list.

21. 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

22. The Court notes that the envelope in which the applicant's application form of 16 August 2005 was sent to the Court from the Zamość Prison bears several stamps of the Zamość Prison and a handwritten note: censored, D[istrict] C[ourt] [*ocenzurowano SR*]. It appears that the envelope had been cut open and subsequently resealed with adhesive tape. The envelope itself was delivered in a plastic cover, apparently sealed by the post office.

23. The Court considers that, even if there is no separate stamp on the application form as such, there is a reasonable likelihood that the envelope had been opened by the domestic authorities. 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 *Michta*, cited above, § 58).

It follows that there has been 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"

24. The Government did not indicate a concrete legal basis in the domestic law for the impugned interference. The Court observes that when the interference took place the applicant had served a sentence of imprisonment following his final conviction (see paragraph 8 above). In

respect of convicted persons Article 103 § 1 of the Code of Execution of Criminal Sentences provided a specific statutory prohibition on censorship of their correspondence with the European Court of Human Rights (see *G.K. v. Poland*, no. 38816/97, § 110, 20 January 2004, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006).

Thus, censorship of the applicant's letter to the Court was contrary to the 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

26. The applicant complained that the criminal proceedings in his case had been unfair. He relied on Article 6 of the Convention, which in so far as relevant provides as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

27. However, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

28. In the present case the applicant did not allege any particular failure on the part of the relevant courts to respect his right to a fair hearing. Indeed, his complaints are limited to challenging the result of the proceedings leading to his allegedly wrongful conviction. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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.”

30. The applicant did not submit a claim for just satisfaction.

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.

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

Fatoş Aracı
Deputy Registrar

Giovanni Bonello
President