



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

FOURTH SECTION

CASE OF ERYK KOZŁOWSKI v. POLAND

(Application no. 12269/02)

JUDGMENT

STRASBOURG

4 November 2008

FINAL

04/02/2009

This judgment may be subject to editorial revision.

In the case of Eryk Kozłowski v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 7 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 12269/02) 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 Eryk Kozłowski (“the applicant”), on 16 October 2001.

2. 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 detention on remand had been unlawful and had lasted too long; that the criminal proceedings against him had exceeded a reasonable time; and that his right to respect for his family life had been violated.

4. On 12 December 2007 the President of the Fourth Section 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

5. The applicant was born in 1975 and lives in Szczecin.

A. The applicant's pre-trial detention and criminal proceedings against him

6. The applicant was arrested on 17 June 1999.

7. On 18 June 1999 the Szczecin District Court (*Sąd Rejonowy*) ordered that the applicant be detained until 17 September 1999 in view of the reasonable suspicion that he had assaulted a police officer and committed robbery. The court also referred to the risk that the applicant would obstruct the investigation.

8. The applicant appealed.

9. On 14 December 1999 the Szczecin Regional Court (*Sąd Okręgowy*) upheld the challenged decision.

10. The applicant's detention was repeatedly extended by several decisions of the Szczecin Regional Court. Appeals by the applicant against those decisions were unsuccessful. In their decisions, the courts relied on the reasonable suspicion that the applicant had committed the offences with which he had been charged and on their serious nature.

11. On 5 April 2000 the Szczecin Regional Court convicted the applicant as charged and sentenced him to five years and six months' imprisonment.

12. The applicant appealed against the first-instance judgment.

13. On 29 June 2000 the Poznań Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case.

14. On 11 September 2001 the Szczecin Regional Court again gave judgment and sentenced the applicant to four years and six months' imprisonment. The court did not deduct the term of the applicant's pre-trial detention, finding that at the time of detention he was serving prison sentences imposed in other sets of proceedings.

15. The prosecutor and the applicant's lawyer lodged appeals.

16. On 28 January 2002 the Poznań Court of Appeal upheld the first-instance judgment.

17. The applicant requested the Minister of Justice to lodge a cassation appeal on his behalf.

18. On 8 January 2003 the Minister of Justice informed the applicant that he had found no grounds for lodging a cassation appeal.

B. Restrictions on the applicant's personal contact with his family and censorship of his correspondence

19. During his detention, the applicant requested several times to be allowed to maintain personal contact with his family. He has not specified which members of his family he meant. Nor is it clear from the courts' decisions refusing the contacts.

20. On 9 December 1999 the Szczecin Regional Court informed the applicant's father that a letter from the applicant had been opened and seized "on account of its content".

21. The applicant has produced six decisions given by the Szczecin Regional Court on the following dates: 18 February, 4 October and 14 December 2000, and 10 January and 3 July 2001. All these decisions refer to "the applicant's family" without specifying any particular person. They comprise very brief reasoning and refuse the applicant personal contact with his family "in view of a suspicion that the family would obstruct the proceedings", without further explanation.

22. On 18 February 2000 the applicant's parents informed the Szczecin Regional Court that they had not seen their son for eight months and requested the court to give reasons for the refusal to allow them to visit him.

23. From a handwritten note on the letter from the applicant's parents it emerges that they were informed on the same day that the refusal was justified by the fear that they would obstruct the proceedings.

24. From the Visiting Records (*Karta Ewidencji Widzeń*) produced by the Government it emerges that at the initial stage of proceedings the applicant's parents visited him once, in April 2000. Further visits were not allowed.

25. On 10 December 2000 the applicant requested the Szczecin Regional Court to allow him to receive a visit from his family during the Christmas season.

26. On 14 December 2000 he was informed that the visits had been stopped due to a fear that the applicant's family would obstruct the proceedings.

27. On an unspecified date in January 2001 the applicant again requested the court for permission to resume visits with his family.

28. At a hearing on 10 January 2001 the Szczecin Regional Court refused the applicant's request, giving the same reasons.

29. On 11 January 2001 the applicant's lawyer appealed against that decision. She pointed to the fact that allowing visits in the way they had been granted at the beginning of the applicant's detention (through a glass door and under the supervision of the prison staff) did not constitute any danger to the proper course of the proceedings.

30. On 15 January 2001 the President of the Criminal Division of the Szczecin Regional Court (*Przewodniczący Wydziału Karnego*) refused to hear the appeal finding that it was inadmissible in law.

31. Between December 1999 and April 2000 as well as between 3 September 2000 and 16 September 2001 the applicant's family was not allowed to visit him in prison.

32. It appears that after 16 September 2001 the applicant's family was allowed to resume visits and that after that date visits were held at regular intervals, once or twice a month on average.

33. The applicant also submitted that he had not been allowed to make telephone calls while detained and that the refusal of contacts had included visits in the presence of a prison officer.

II. RELEVANT DOMESTIC LAW

34. The relevant domestic law regulating detainees' and prisoners' contact with the outside world is stated in the Court's judgment in *Ferla v. Poland*, no. 55470/00, § 26, 20 May 2008.

THE LAW

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

35. The applicant complained that his detention had been in breach of Article 5 § 1 of the Convention.

36. However, the Court notes that the applicant's detention was based on Article 258 § 1 of the 1997 Code of Criminal Procedure. Furthermore, the Court observes on the basis of the material in the case file that the applicant was detained on reasonable suspicion of having committed a criminal offence. The Court accordingly finds that the decision to place the applicant in custody had a legal basis and was issued by the appropriate judicial authority. There is nothing to suggest that the legal basis for his detention was not clearly defined or lacked the necessary foreseeability required under the Convention. The Court is therefore satisfied that the applicant's detention complied with the requirements of Article 5 § 1 (c). Moreover, the Court does not see any appearance of arbitrariness on the part of the relevant judicial authorities when deciding on the applicant's detention.

37. The Court therefore concludes that the applicant's detention was "lawful" within the meaning of Article 5 § 1 of the Convention.

38. 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 § 3 OF THE CONVENTION

39. The applicant complained under Article 5 § 3 that his right to a trial within a reasonable time had been violated.

40. The applicant's detention started on 17 June 1999 when he was arrested on suspicion of having committed robbery. On 5 April 2000 the Szczecin Regional Court convicted him as charged.

41. From that date he was detained "after conviction by a competent court, within the meaning of Article 5 § 1 (a) and, consequently, that period of his detention falls outside the scope of Article 5 § 3 (see *Kudła v. Poland* [GC], no. 30210/96, § 104, ECHR 2000-XI).

42. On 29 June 2000 the Poznań Court of Appeal quashed the applicant's conviction. After that date his detention was again covered by Article 5 § 3. It continued until 11 September 2001 when the applicant was sentenced again by the Szczecin Regional Court.

43. However, even the periods between 17 June 1999 and 5 April 2000 as well as between 29 June 2000 and 11 September 2001 (2 years and 2 days) cannot be taken into account, because at the time of detention the applicant was serving other prison sentences imposed by the courts in other sets of proceedings (see paragraph 14 above). Accordingly, these periods are also governed by Article 5 § 1 (a) and fall outside the scope of Article 5 § 3.

44. It follows that the complaint under Article 5 § 3 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE EXCESSIVE LENGTH OF CRIMINAL PROCEEDINGS

45. The applicant complained under Article 6 § 1 that the proceedings against him had been excessively long.

46. However, he did not lodge a complaint of unreasonable length of proceedings in accordance with the relevant provisions of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki* – "the 2004 Act").

47. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention for failure to exhaust domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF CENSORSHIP OF CORRESPONDENCE

A. The Government's objection as to non-exhaustion of domestic remedies

48. The Government submitted that the applicant had not exhausted all available domestic remedies. He had failed to bring an action under Article 24 § 2 read in conjunction with Article 448 of the Civil Code. These provisions would have allowed him both to assert that by censoring his correspondence the authorities had breached his personal rights protected by the Civil Code, and to claim compensation for non-pecuniary damage.

49. 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 the secrecy of his correspondence with the Central Board of the Prison Service and the Central Electoral Office. The Regional Court held that the secrecy of an individual's correspondence was one of the personal rights protected under Article 23 of the Civil Code and that in the event of a breach a claimant could be entitled to an award of compensation for non-pecuniary damage. The judgment of 27 November 2006 was subsequently upheld in the relevant part by the Warsaw Court of Appeal's judgment of 28 June 2007.

B. The Court's assessment

50. The Court notes that the alleged interference with the applicant's correspondence occurred on 9 December 1999, 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).

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

52. The Court reiterates however that, pursuant to Article 35 § 1 of the Convention, the Court may only deal with a matter "within a period of six months from the date on which the final decision was taken".

53. The Government have not addressed that issue in their observations.

54. However, it is not open to the Court to set aside the application of the six-month rule solely because a Government have not made a preliminary objection based on it (see *Walker v. United Kingdom* (dec.), no. 34979/97, ECHR 2000-I, *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-...).

55. The Court notes that the applicant was informed of the seizure of his son's letter on 9 December 1999. The applicant's application was lodged with the Court on 16 October 2001.

56. The Court recalls that the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to an applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect or prejudice on the applicant (see e.g. *Hilton v. the United Kingdom*, no. 12015/86, Commission decision of 6 July 1988, DR 57, p. 108; *Finucane v. the United Kingdom*, (dec.), no. 29178/95, ECHR 2003-VIII).

In the instant case there was no final decision taken, because at the relevant time the applicant did not have any effective remedy before the national authorities (see paragraph 50 above). Accordingly, the six-month time-limit began to run on 9 December 1999, being the end of the situation of which the applicant complains. Since the application was introduced on 16 October 2001, it was presented more than six months after the date of the situation of which the applicant complains.

57. It follows that the complaint under Article 8 on account of the alleged censorship of correspondence is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF RESTRICTIONS OF THE APPLICANT'S CONTACTS WITH HIS FAMILY

58. The applicant complained under Article 8 of the Convention about the restrictions placed on his personal contact with his family. This provision reads:

“1. Everyone has the right to respect for his private and family life, his home and 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.”

59. The Government contested that argument.

A. Admissibility

60. 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 parties' arguments

(a) The Government

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

62. However, in their opinion there had been no violation of Article 8 of the Convention. They maintained that during the whole term of the applicant's detention and imprisonment many visits requested by the members of the applicant's family had been allowed. As regards the restrictions imposed on the visits with the applicant's parents the Government further maintained that he could have exchanged correspondence with them. They submitted that the restrictions imposed on the applicant's contact with his parents, who had been called as witnesses in the proceedings, had been justified by the need to secure the proper conduct of the proceedings.

63. The Government further submitted that in the course of one of the visits the applicant's brother tried to clandestinely hand over an envelope to the applicant. They also pointed to the fact that the applicant had been allowed to make phone calls and in this way contact his family.

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

(b) The applicant

65. The applicant argued that from December 1999 to April 2000 and from August 2000 to September 2001 he had not been allowed to see his family. He further maintained that the reason for refusing family visits had been arbitrary as the risk of obstruction of the proceedings relied on by the domestic authorities had been unjustified.

2. *The Court's assessment*

(a) General principles

66. The Court reiterates that detention, likewise 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 to maintain contact with his close family (see, *mutatis mutandis*, *Messina v. Italy* (no. 2) no. 25498/94, § 61, 28 September 2000).

67. Restrictions such as limitations put 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 visit arrangements, constitute an interference with his rights under Article 8 but are not of themselves in breach of that provision (*ibid.* §§ 62-63; see also *X v. the United Kingdom*, no. 8065/77, Commission decision of 3 May 1978, Decisions and Reports 14, p. 246).

68. Any restriction of that kind must be applied "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 remain proportionate to the legitimate aim pursued. 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 behind 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, and *Płoski v. Poland*, no. 26761/95, § 35, 12 November 2002).

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

(i) *Existence of interference*

69. The Government did not contest before the Court that the restrictions on the applicant's personal contact with his family constituted an "interference" with his family life. The Court sees no reason to hold otherwise.

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

70. The Court notes that the contested measure was applied under Article 217 of the 1997 Code of Execution of Criminal Sentences (see paragraph 34 above). It consequently holds that the interference was “in accordance with the law”.

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

71. The Government maintained that the restrictions in issue had been necessary in order to secure the proper conduct of the criminal proceedings against the applicant, in particular as the applicant’s parents had been called as witnesses in the proceedings against the applicant.

72. The Court notes that the limitations on the applicant’s contact with his parents were imposed after the judicial stage of the proceedings had begun on the grounds that they had been witnesses called by the prosecution (however, this was not expressly mentioned by the domestic courts refusing contacts with the applicant’s parents). The 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”

73. 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.

74. The Court observes at the outset that the applicant’s parents were refused permission to visit the applicant from the beginning of the applicant’s detention, that is from 17 June 1999 until April 2000 (see paragraph 24 above). No visits were allowed between December 1999 and April 2000. Subsequently, between May and July 2000 the applicant’s parents visited him five times. Between 3 September 2000 and 16 September 2001 (over one year) no visits at all were allowed.

75. The Court accepts that, initially, the resort to that measure could have been considered reasonably necessary 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.

76. However, with the passage of time and given the severity of those consequences, as well as the authorities’ general obligation to assist the applicant in maintaining contact with his family during his detention, the situation called, in the Court’s opinion, for a careful review of the necessity of keeping him in complete isolation from his mother.

77. In that regard, the Court notes that the applicant’s parents had been visiting the applicant after the first-instance court judgment (see paragraphs 10 and 22 above) and after remittal of the case for re-examination. The

Government failed to provide a plausible explanation as to why during the proceedings on remittal the domestic authorities had not seen any obstacle to the applicant's parents visiting him in prison. The domestic courts did not consider any alternative means of ensuring that the applicant's contact with his parents would not lead to any collusive action or otherwise obstruct the process of taking evidence, such as, for instance, subjecting of their contact to supervision by a prison officer or to other restrictions on the nature, frequency and duration of contact (see, *a contrario*, *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR-2001; *Kučera v. Slovakia*, no. 48666/99, § 130, ECHR 2007-...). Nor did they give detailed reasons for their decisions, limiting themselves to a general reference to a risk of "obstructing the proceedings".

78. In the circumstances, and having regard to the duration of the restrictions on the applicant's contact with his parents, the Court concludes that they went beyond what was necessary in a democratic society "to prevent disorder and crime". Indeed, the measure in question diminished 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 of proportionality between the means employed and the aim they sought to achieve.

(c) Conclusion

79. There has, accordingly, been a violation of Article 8 of the Convention in regard to the applicant's right to respect for his family life.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

82. The Government considered the sum in question exorbitant. They requested the Court to rule that the finding of a violation would constitute in itself sufficient just satisfaction. In the alternative, they invited the Court to make an award of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

83. The Court accepts that the applicant suffered non-pecuniary damage - such as distress and frustration resulting from the prolonged impossibility of having contact with his family - which would not be sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,500 under this head.

B. Costs and expenses

84. The applicant did not make any claim for costs and expenses.

C. Default interest

85. 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 under Article 8 of the Convention concerning restrictions of the applicant's contacts with his family admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention on account of restrictions of the applicant's contacts with his family;
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, 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President