



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF KRAWIECKI v. POLAND

(Application no. 49128/06)

JUDGMENT

STRASBOURG

9 June 2009

FINAL

09/09/2009

This judgment may be subject to editorial revision.

In the case of Krawiecki 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,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 19 May 2009,

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

PROCEDURE

1. The case originated in an application (no. 49128/06) 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 Stanisław Krawiecki (“the applicant”), on 13 November 2006.

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

3. On 23 May 2008 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

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

4. The applicant was born in 1966 and lives in Lubiąż.

5. On 6 January 2006 the applicant was remanded in custody. The grounds for this decision are unknown, since the applicant has not produced a copy of the order.

6. On 7 November 2006 the Swiebodzin District Court (*Sąd Rejonowy*) extended the applicant’s detention. On the same day the court decided to discontinue the criminal proceedings against him. The court held that the applicant at the time of the commission of the offence had been incapable of

recognising its significance or controlling his conduct because of his mental illness. The applicant had been diagnosed with schizophrenia (paranoid subtype).

7. On 1 October 2007 the applicant was placed in a mental hospital.

8. On 22 April 2008 the Świebodzin District Court decided to extend the applicant's detention at the mental hospital. The court held that he was still suffering from severe schizophrenia.

9. On 22 July and 20 November 2008 the Świebodzin District Court decided to discontinue the criminal proceedings against the applicant due to his mental illness. The applicant's state of health was confirmed by a medical certificate of 1 October 2008.

10. In the light of the applicant's submissions, it is impossible to establish the facts relating to his detention.

11. On 4 December 2006 the Court received a letter from the applicant dated 23 November 2006. The letter was sent while the applicant was detained in the Szamotuły Remand Centre (*Areszt Śledczy*). It bears the following stamp: "District Court in Świebodzin, censored" (*Sąd Rejonowy Świebodzin, Cenzurowano*), a handwritten date: "28.11.06" and an illegible signature.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law concerning censorship of detainees' 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

13. The Court raised of its own motion an issue under Article 8 of the Convention on account of the fact that the applicant's correspondence with the Court had been censored. 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."

A. Admissibility

1. The Government's preliminary objection on exhaustion of domestic remedies

14. The Government submitted that the applicant had not exhausted available domestic remedies. He had failed to bring an action under Article 24 § 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.

15. 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 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. 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.

16. Moreover, the Government relied on the Śrem District Court judgment of 21 December 2005, upheld by the Poznań Regional Court on 19 May 2006. The plaintiff was awarded 1,000 Polish zlotys by the second-instance court as just satisfaction for the prison authorities' having opened a letter sent to him by the European Court of Human Rights.

17. The applicant did not comment.

2. The Court's assessment

18. 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 to obtain redress for the alleged breach of his right to respect for his correspondence.

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

3. The Government's preliminary objection on abuse of the right of the application

20. The Government further raised an objection as to the language used by the applicant in pursuing his case before the Court. They specified that

the application contained provocative and insulting language concerning their Agent, the Government's civil servants and domestic judges. In the Government's opinion even the mental disorder could not create an excuse for such actions and the applicant's intolerable conduct was contrary to the spirit of the right of individual petition. They concluded that the application should therefore have been rejected under Article 35 § 3 of the Convention.

4. The Court's assessment

21. The Court notes that the applicant sent a number of letters making serious defamatory and groundless accusations against civil servants and domestic judges. However, the Court points out that the applicant is suffering from a severe mental disorder, which has been confirmed by a medical certificate. For the same reasons several criminal proceedings against the applicant were discontinued by the domestic courts. Consequently, he is incapable of recognising the significance of his words or controlling his conduct.

The Court therefore rejects this preliminary objection by the Government.

5. Conclusion as to admissibility

22. 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

23. The Court notes that the applicant's letter dated 23 November 2006 bears a stamp marked "District Court in Świebodzin, censored" (*Sąd Rejonowy Świebodzin, Cenzurowano*), a handwritten date: "28.11.06" and an illegible signature (see paragraph 11 above).

24. 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 v. Poland*, no. 13425/02, § 58, 4 May 2006). It follows that in respect of both of the applicant's letters there was an "interference" with his right to respect for his correspondence under Article 8.

2. *Whether the interference was “in accordance with the law”*

25. The Government did not indicate a specific legal basis in domestic law for the interference. The Court notes that the interference took place on one occasion when the applicant was in detention.

26. The Court observes that, according to Article 214 of the Code of Execution of Criminal Sentences, detained persons should 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, was also applicable to detained persons (see *Michtha v. Poland*, cited above, § 61, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, the censorship of the applicant’s letter to the Court’s Registry was contrary to domestic law. It follows that the interference in the present case was not “in accordance with the law”.

27. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. Lastly, relying on all Articles of the Convention, the applicant submitted that he had been ill-treated during his detention. However, the applicant’s submissions are very confused and it is impossible to establish the facts related to his detention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

B. Costs and expenses

32. The applicant did not make any claim for costs and expenses involved in the proceedings.

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.

Done in English, and notified in writing on 9 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President