



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF BARTOSIŃSKI v. POLAND

(Application no. 13637/03)

JUDGMENT

STRASBOURG

13 October 2009

FINAL

13/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bartosiński 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,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 13637/03) 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 Krzysztof Bartosiński (“the applicant”), on 3 April 2003.

2. The applicant was represented before the Court by Ms Lucyna Rutkowska, a lawyer practising in Toruń. 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 correspondence with the Court had been opened and read by the prison authorities.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

5. On 7 September 2007 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Krzysztof Bartosinski, is a Polish national who was born in 1972 and lives in Lubianka.

7. By a decision of the Bydgoszcz District Court of 14 September 2002 the applicant was arrested and remanded in custody on suspicion of illegal production and sale of alcohol, selling cigarettes without payment of excise duty and membership of an organised criminal group. According to the applicant's submissions, police officers used force against him during his arrest and insulted him. When ordering his detention, the court found that the evidence obtained in the case, in particular the testimonies of the other suspects and of a witness, bills, minutes of searches and telephone conversations, indicated a high probability that the applicant had committed the offences. The applicant's detention was therefore necessary in order to prevent collusion and to avert the risk that he would exert pressure on witnesses or that the suspects would coordinate their testimonies.

8. During the investigation the applicant's detention was successively prolonged by detention orders issued by the Inowrocław District Court or the Gdańsk Court of Appeal and dated 11 December 2002, 11 March and 27 August 2003.

9. The applicant submits that the decision of 11 December 2002 was served on him on 16 December 2002 and that for 4 days he had been kept in custody without having been provided with a relevant detention order.

10. In his letter of 3 April 2003 the Bydgoszcz Regional Prosecutor admitted that the service of the applicant's motion for release had been delayed for 5 days before reaching the Prosecutor Office.

11. In further letters, the Regional Prosecutor stated among other things that the applicant's correspondence with the prosecutor had not been delayed by the Prosecutor Office. On 15 May 2003, following the applicant's complaint to the Ombudsman about delays in the service of official letters, the President of the Inowrocław District Court clarified that the applicant's letter to the Regional Prosecutor of 27 January 2003 had been forwarded to the prosecutor on 14 February 2003 and that a letter dated 13 February had been served on the applicant on 28 February 2003.

12. The applicant submitted an envelope containing a letter from the Court, bearing several stamps of the Police Detention Centre dated 8 and 16 March 2004 including a stamp "censored" ("*ocenzurowano*") with an illegible date.

13. By a decision of 14 August 2003 the Bydgoszcz Regional Prosecutor granted the applicant permission to receive a visit from members of his family in the presence of an officer of the Central Investigation Office. The prosecutor stated that the applicant had previously been granted two visits, on 28 February and 10 June 2003, and that neither the family nor the applicant had requested more frequent meetings. On 29 September 2003 the Regional Prosecutor replied to the applicant that further visits had not been granted since no requests for such had been made.

14. On 29 March 2004 the applicant was released from detention. The proceedings are pending.

II. RELEVANT DOMESTIC LAW

15. The legal provisions governing monitoring of detainees' correspondence applicable at the material time are set out in a judgment delivered by the Court on 6 December 2005 (*Wasilewski v. Poland*, no. 63905/00, §§ 16-21)

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. The applicant complained under Article 8 of the Convention about the monitoring by the authorities of the detention centre of his correspondence with his family and with the Court. He alleged that a number of his letters had never reached his family, certain domestic authorities and the Court.

Article 8, 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 (exhaustion of domestic remedies)

17. The Government submitted that the applicant had not exhausted all available domestic remedies. He had failed to bring an action under Article 23 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 claim compensation for non-pecuniary damage.

18. 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 23 of the Civil Code and that in the case of a breach a claimant might be entitled to an award in respect of non-pecuniary damage.

19. The applicant contested the Government's arguments and submitted that the remedy in question had not been effectively available to him.

20. The Court notes that the alleged interference with the applicant's correspondence occurred in 2004, whereas the Government relied on the Warsaw Regional Court's judgment of 27 November 2006. The judgment was reviewed by the Warsaw Court of Appeal on 28 June 2007 and became final. 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).

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

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. Principles established under the Court's case-law

23. The Court recalls 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).

24. As to the expression "in accordance with the law", the Court has established three fundamental principles. The first one is that the interference in question must have some basis in domestic law. The second principle is that "the law must be adequately accessible", a person must be able to have an indication that is adequate, in the circumstances, of the legal

rules applicable to his case. The third principle is that “a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable a person to regulate his conduct; he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail” (see *Silver*, cited above, §§ 86-88).

25. It is important to respect the confidentiality of correspondence with the Court since it may concern allegations against prison authorities or prison officials. The opening of letters both to and from the Convention organs undoubtedly gives rise to the possibility that they will be read and may conceivably, on occasion, also create the risk of reprisals by prison staff against the prisoner concerned (see *Campbell*, cited above, p. 22, § 62). No compelling reasons have been found to exist for monitoring or delaying an applicant's correspondence with the Court (see *Campbell*, cited above, §§ 48 and 62; and *Peers v. Greece*, no. 28524/95, § 84, ECHR 2001-III and *Drozdowski v. Poland*, no. 20841/02, §§ 27-31, 6 December 2005).

2. Application of the principles to the circumstances of the present case

a. Existence of an interference

26. The Court notes that its letter sent to the applicant in March 2004 bears censorship stamps, including the stamp “Censored” (*cenzurowano*) of 8 and 16 March 2004.

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; *Michtha 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.

b. Whether the interference was “in accordance with the law”

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

29. 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, no. 13425/02, § 61, 4 May 2006, and *Kwiek v. Poland*, no. 51895/99, § 44, 30 May 2006). Thus, censorship of the two letters of the Court's Registry to the applicant was contrary to domestic law. It follows that the interference in the present case was not "in accordance with the law".

30. 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

31. The applicant further complained under Article 3 of the Convention that police officers had used excessive force against him at the time of his arrest and had insulted and beaten him. He also alleged a violation of Article 5 § 4 of the Convention maintaining that the lawfulness of his detention had not been decided speedily by the courts, due to the fact that his correspondence had been delayed by the authorities. He further alleged a breach of Article 6 of the Convention given the unfairness of the criminal proceedings and the unlawful publicity about the proceedings in the media, which had negatively affected their fairness. Under the same provision the applicant also complained about the poor quality of his defence conducted by a legal-aid lawyer. In addition, under Article 8 of the Convention the applicant complained that visits from his family in prison were rarely granted and his letters to his family were open and read. Finally, the applicant alleged that in view of his overall treatment in the course of the proceedings, he had been discriminated against contrary to Article 14 of the Convention.

32. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that there is nothing in the case file which would disclose a violation of the Convention.

33. It follows that this part of the application must be rejected as being manifestly ill-founded in accordance with 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.”

A. Damage

35. The applicant claimed 75,000 Polish zlotys (PLN) in respect of non-pecuniary damage.

36. The Government argued that the applicant's claims were exorbitant. They asked the Court to rule that a finding of a violation of Article 8 constituted in itself sufficient just satisfaction. In the alternative, they invited the Court to assess the amount of just satisfaction on the basis of its case-law in similar cases and having regard to national economic circumstances.

37. The Court finds that the applicant has suffered non-pecuniary damage which is not sufficiently compensated by the finding of a violation of Article 8 of the Convention. Considering the circumstances of the case, the Court awards the applicant EUR 500 under this head.

B. Costs and expenses

38. The applicant also asked for reimbursement of costs and expenses incurred in connection with the proceedings in amount of 1,830 PLN.

39. The Government did not object to the claim.

40. Having regard to all information in its possession, the Court decides that the sum should be awarded in full.

C. Default interest

41. 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 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;
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 500 (five hundred euros) in respect of non-pecuniary damage and EUR 450 (four hundred and fifty euros) in respect of costs and expenses, 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 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 13 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President