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

FOURTH SECTION

DECISION

Application no. 15390/15
Aleksander CZUKOWICZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 24 January 2017 as a Committee composed of:
Vincent A. De Gaetano, *President,*
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*
Having regard to the above application lodged on 16 March 2015,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aleksander Czukowicz, is a Belarusian national who was born in 1970 and is detained in Czarne Prison.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant was arrested on 2 February 2009 in Ukraine and extradited to Poland for the purpose of criminal proceedings. He was convicted of murder and sentenced to fifteen years' imprisonment by the Jelenia Góra Regional Court on 5 October 2012 (III K 54/13). He appealed, and on 5 June 2013 the Wrocław Court of Appeal dismissed the appeal (II Aka 54/13). On 4 October 2013 the applicant's legal-aid lawyer submitted a legal opinion about lack of grounds to prepare a cassation appeal.

4. On 19 March 2009, during his pre-trial detention in the Jelenia Góra Remand Centre, the applicant was presented with a prosecutor's order for a blood sample to be taken from him for the purpose of criminal proceedings (*pobranie krwi od podejrzanego*). This order was drafted in Polish and reasoned in the following words:

> "in the current phase of the investigation it is necessary to examine the blood of the suspect charged with murder on the basis of Article 148 § 2(4) of the Criminal Code".

5. On the same day the applicant informed staff at the Jelenia Góra Remand Centre that he had not sufficiently understood the prosecutor's order and that he would like to speak with his lawyer. The applicant was not given a translation of the order, nor was he allowed to speak with his lawyer. The agents of Jelenia Góra Remand Centre decided to use force against the applicant in order to take blood from him (*środki przymusu bezpośredniego*). A translation of the order was eventually presented to the applicant on 2 April 2009.

6. On 29 June 2011 the applicant instituted civil proceedings against the State Treasury for compensation related to the taking of the blood sample, the use of force and the lack of a translated order of the prosecutor prior to the taking of the sample. The applicant submitted that at that time, in 2009, he did not speak Polish well enough to understand the order.

7. On 29 September 2011 the Jelenia Góra District Court dismissed the applicant's request for legal aid, finding the proceedings in question not complicated, and holding that the applicant was skilled enough to represent himself before the court. On 26 October 2011 the Jelenia Góra District Court upheld its decision of 29 September 2011.

8. On 17 December 2013 the Jelenia Góra District Court dismissed the applicant's claims (I C 769/11). The court found that the applicant had sufficiently understood the prosecutor's order and that the use of force was lawful as he had refused to give the blood sample. The applicant had understood the nature of the act to be performed as he had said, when heard before the court, that he had been afraid that somebody would stain the evidence with his blood in order to implicate him. The record of the decision to use force against the applicant for the purpose of taking his blood were examined as evidence and the court found that the applicant had been verbally informed about the order. The court established that the applicant had lodged his action for compensation two years and three months after the events complained of (and five months after he had been transferred to a different prison facility). The applicant had not lodged any complaints with the prison services.

9. On 13 November 2014 the Jelenia Góra Regional Court dismissed the applicant's appeal (II Ca 643/14). The second-instance court decided that the applicant was not entitled to legal aid, despite the fact he was a foreigner, because his Polish was good enough to enable him to represent

himself before the court of first instance. The court held that the applicant had a good command of spoken and written Polish, on the basis of the spoken and written statements he had made during the proceedings. The court established that the applicant had not lodged any request for access to the case file. The court upheld the first-instance court's findings.

B. Relevant domestic law

10. Article 74 of the Code of Criminal Procedure reads as follows:

> " 1. An accused is under no obligation to prove his innocence or to submit evidence against himself.
>
> 2. An accused is, however, under the obligation to submit:
>
> 1) to an external examination of his body and to other examinations not involving any invasion of bodily integrity; in particular, the fingerprints of the accused may be taken, and he may be photographed and presented to other people, in order to establish his identity,
>
> 2) to psychological and psychiatric examinations and to examinations involving certain tests to be conducted upon his body, except surgical procedures, provided that they are effected by an authorised person from the health-service staff, according to medical directions, and do not constitute a challenge to the health of the accused, if such examinations are indispensable; in particular, the accused shall be under an obligation, in conformity with the above conditions, to submit blood, hair and excreta samples, with the exclusion of subsection 3),
>
> 3) to the taking by a police officer of a swab of buccal mucous, if this is indispensable and there is no justifiable concern that it would constitute a challenge to the health of the accused or others.
>
> 3. The examinations or actions referred to in paragraph 2 subsection 1) may be also performed with respect to the suspect and in conformity with the conditions referred to in paragraph 2 subsection 2) or 3), blood, hair, buccal mucous, or other samples of excreta may also be taken. "

COMPLAINTS

11. The applicant asserted that the Polish authorities had unlawfully taken a blood sample from him.

12. He further complained under Article 6 of the Convention about the refusal to grant him an interpreter on 19 March 2009.

13. The applicant also complained that the civil proceedings for compensation had been unfair and about the refusal to grant him a lawyer under the legal-aid scheme and about the length of proceedings before the court of first instance (from 29 June 2011 to 17 December 2013).

THE LAW

A. The applicant's complaint about the unlawful taking of his blood sample

14. Invoking Article 6 of the Convention, the applicant complained that the Polish authorities had unlawfully taken a blood sample from him.

15. The Court reiterates that it is the master of the characterisation to be given in law to the facts of a case (see, for instance, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009). In the present case, it considers that the applicant's complaint concerning the allegedly unlawful taking of a blood sample from him might amount to an interference with his right to respect for his private life. This complaint is therefore to be examined under Article 8 of the Convention, which provides as follows:

> " 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. "

16. It should be noted that the concept of "private life" is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III, and *Y.F. v. Turkey*, no. 24209/94, § 33, ECHR 2003-IX). It can therefore embrace multiple aspects of the person's physical and social identity (see *Mikulić v. Croatia*, no. 53176/99, § 53, ECHR 2002-I).

17. The taking of a blood sample from an individual may be regarded as affecting a person's physical integrity, and, therefore, the forcible taking of such a sample might have constituted an interference with the applicant's right to respect for his "private life". The Court observes that in principle the impugned measure had a basis in domestic law, namely section 74 (2) of the Code of Criminal Procedure (see paragraph 10 above). It also served a legitimate aim, namely the "prevention of disorder or crime". The interference was "necessary in a democratic society" as the applicant had been accused of murder and, as indicated in the reasoning of the decision of 19 March 2009 (see paragraph 4 above), the examination of his blood sample had been indispensable in order to collect all the necessary evidence for the purpose of determination of the applicant's criminal liability. The applicant failed to submit any evidence to the contrary or to prove that the taking of the blood sample constituted a disproportionate measure in the circumstances of the case.

18. For the above reasons, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Remaining complaints

19. The applicant complained about the refusal to grant him an interpreter on 19 March 2009. He relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

> " 1. In the determination of his civil rights and obligations or of any criminal charge against him ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
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> ...
>
> (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

20. The Court observes that the domestic authorities found that the applicant had a knowledge of Polish which was sufficient to allow him to understand the order of the Prosecutor for him to give a blood sample (see paragraphs 8 and 9 above). They noted, in particular, that the applicant was afraid that somebody would stain the evidence with his blood, this showing full understanding of the nature of the act ordered by the Prosecutor. Moreover, he was given oral translation of the order. Nothing in the file suggests that the conclusions of the domestic courts on this point were wrong or arbitrary.

21. Having regard to the above, the Court considers that the applicant's complaint about the refusal to grant him an interpreter on 19 March 2009 is manifestly ill-founded, and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

22. In so far as the applicant complains about the outcome and alleged unfairness of the civil proceedings for compensation, the Court reiterates that it is not its task to act as an appeal court of fourth instance by calling into question the outcome of the domestic proceedings or questioning the application and interpretation of domestic law (see *Minshall v. the United Kingdom*, no. 7350/06, § 58, 20 December 2011). In other words, this Court cannot question the assessment the domestic authorities have made unless there is clear evidence of arbitrariness (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 89, ECHR 2007-I). The material at hand does not reveal any shortcomings or arbitrariness on the part of the domestic courts; the applicant essentially challenges the interpretation and application of substantive domestic law in his case.

23. As to the applicant's complaint about the refusal to grant him a lawyer under the legal-aid scheme, the Court reiterates that there is no obligation under the Convention to make legal aid available for all disputes in civil proceedings, as there is a clear distinction between the wording of Article 6 § 3 (c), which guarantees the right to free legal assistance on certain conditions in criminal proceedings, and of Article 6 § 1, which makes no reference to legal assistance (see, among other authorities, *Del Sol v. France*, no. 46800/99, § 20, ECHR 2002-II).

24. The Court considers that in the present case, the lack of legal aid did not deprive the applicant of a fair trial and did not breach his right to present an effective defence. The applicant was heard by the court and had the opportunity to present his arguments in the course of the proceedings. As noted above and as established by the domestic authorities (see paragraphs 8 and 9 above) his knowledge of Polish was good enough to allow him to participate in the proceedings. The applicant does not provide any information about his allegedly disadvantaged position in civil proceedings arising from the lack of a legal-aid lawyer.

25. Having regard to the above the Court considers that the applicant's complaints concerning the alleged unfairness of the civil proceedings on account of their outcome and the court's refusal to grant him a legal-aid lawyer are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

26. As regards the applicant's complaint about the length of civil proceedings, the Court notes that the applicant failed to have recourse to the length of proceedings complaint available under the Law of 17 June 2004 on complaint about breach of the right to have a case examined in judicial proceedings without undue delay. It follows that this complaint must be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 February 2017.

Andrea Tamietti
Deputy Registrar

Vincent A. De Gaetano
President