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

# FOURTH SECTION

# DECISION

Application no. 58935/11
Paweł ROSTKOWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 8 November 2016 as a Committee composed of:

Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 August 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr Paweł Rostkowski, is a Polish national who was born in 1978 and at the material time detained in the Białystok Remand Centre.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

### A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. In 2007 the applicant began serving a fifteen-year sentence for robbery and fraud.

*1. Request for leave to attend the applicant's son's first Holy Communion*

5. In February 2011 the applicant requested leave to attend his son's first Holy Communion for the period between 13 and 17 May 2011. He argued that his presence would improve his relations with his son.

6. On 25 February 2011 the Bialystok Remand Centre issued an opinion, known as a "criminology prognosis", which was negative for the applicant. It was noted that the applicant had previously attempted to escape from a police convoy, had committed serious offences for which he was serving a lengthy sentence, and had not maintained close relations with his family. His mother and sister lived abroad, and his former common-law wife had started a new family.

7. On 23 March 2011 the prison judge of the Białystok Regional Court (*sędzia penitencjarny*) dismissed the applicant's request. The judge considered that the event, however honourable, could not be characterised as of particular importance within the meaning of Article 141a of the 1997 Code of Execution of Criminal Sentences (see paragraph 14 below). The judge acknowledged that retaining a bond between the applicant and his son was important, but he considered that part of the punishment of serving a prison sentence was the inevitable curtailment of participation in such important family occasions. The judge reminded the applicant that it was his choice to continue to commit crimes and that he must have realised that this would affect his family life, as had already occurred with the breakdown of his relationship with his son's mother. In respect to the applicant's assertion that the leave would improve his relations with the boy, the judge noted that the latter had been living with his mother and her new partner, and even if leave was granted it would only be for a short period of time. In those circumstances the leave could not substantially strengthen relations between the applicant and his son. It should not be forgotten that the applicant already had sporadic contact with his son, limited to telephone conversations and mail correspondence.

8. The applicant appealed against this decision to the Białystok Regional Court. He questioned what constituted a sufficiently important case for a convicted person to be granted compassionate leave, and claimed bias on the part of the judge.

9. On 10 May 2011 the Białystok Regional Court upheld the prison judge's decision. The court considered that attending his son's first Holy Communion was not, objectively, an event of particular importance to the applicant. The court further considered that the prison judge had not acted unlawfully.

*2. Leave to participate in Easter celebrations*

10. In March 2011 the applicant requested leave to celebrate Easter with his family, in particular his grandparents.

11. On 9 March 2011 the prison judge of the Białystok Regional Court rejected the applicant's request for leave from 23 to 24 April 2011 to celebrate Easter with his family. The judge considered that the event was not of sufficient importance for companionate leave to be granted, and underlined that serving a custodial sentence inevitably affected one's ability to participate in family life and will impact on the convicted person's contact with close relatives during religious holidays too. He considered that the applicant had to face the consequences of his criminal acts. In any case, the judge noted that the applicant's closest family members did not keep in close contact with him, since his previous partner now had a new partner, his sister lived abroad, and he had only sporadic contact with his grandparents.

12. The applicant appealed against this decision.

13. On 19 April 2011 the Białystok Regional Court upheld the decision of the prison judge.

### B. Relevant domestic law

14. Article 141a of the 1997 Code of Execution of Criminal Sentences reads, in so far as relevant, as follows:

> "1. In cases which are of particular importance for a convicted person, he or she may be granted permission to leave prison for a period not exceeding five days, if necessary under the escort of a prison officer or in the company of another trustworthy person (*osoba godna zaufania*)."

## COMPLAINT

15. The applicant complained under Article 8 of the Convention about the two refusals to grant him compassionate leave from prison to attend his son's first communion and to spend Easter with his grandparents.

## THE LAW

16. The applicant's complaints related to the refusals by the prison authorities to grant him leave from prison to attend his son's first communion and celebrate Easter with his grandparents. He argued that the refusals had been groundless and had deprived him of the opportunity to

participate in important moments in the lives of his family. The applicant invoked Article 8 of the Convention which reads 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."

17. The Government contested that argument. They argued that the Convention did not guarantee an unconditional right to leave from prison. Moreover, the events for which the applicant applied for leave were not of particular importance, given the circumstances of the case. His contacts with his son were sporadic and indirect. Therefore it was correct for the authorities to consider that attending his son's first Holy Communion would not improve such weak relations. The same applied as regards his intention to spend Easter with his grandparents as, according to the applicant's own statement, he had not seen them for nine years. The remand centre in which the applicant was detained had issued a negative opinion which assessed his contacts with his family as sporadic, indirect and mainly negative. Moreover, the authorities took into account that the applicant had attempted to escape a police convoy in the past. The Government underlined that the applicant had never been deprived of the opportunity to maintain contact with his family through visits, telephone conversations and correspondence. In sum, they considered that the State had acted within the margin of appreciation afforded to it in the matter of leave from prison.

18. The Court reiterates that any interference with an individual's right to respect for his private and family life will constitute a breach of Article 8 of the Convention, unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" in the sense that it was proportionate to the aims sought to be achieved (see, among other authorities, *Elsholz v. Germany* [GC], no. 25735/94, § 45, ECHR 2000-VIII).

19. The Court has already found that the refusal of leave to attend a relative's funeral or to visit an ailing relative constituted an interference with the right to respect for family life (see *Płoski v. Poland*, no. 26761/95, § 32, 12 November 2002, and *Giszczak v. Poland*, no. 40195/08, § 27, 29 November 2011). However, the Court found the authorities' decision to allow a leave from prison but under police escort did not exceed the margin of appreciation left to the respondent State (see *Kosiński v. Poland*, no. 20488/11, §§ 19- 24, 9 February 2016).

20. The Court notes that Article 8 of the Convention does not guarantee a detained person an unconditional right to leave to attend any event important to him or her. It is up to the domestic authorities to assess each

request on its merits. The Court's scrutiny is limited to consideration of the impugned measures in the context of the applicant's Convention rights, taking into account the margin of appreciation left to the Contracting States (see *Ploski,* cited above, § 38).

21. Turning to the circumstances of the instant case, the Court firstly notes that it was not disputed by the parties that the refusals to allow the applicant to attend his son's first Holy Communion and spend Easter with his family constituted interferences with his right to respect for his private and family life. The Court is also satisfied that the interferences, which were based on Article 141a of the 1997 Code of Execution of Criminal Sentences, were "in accordance with the law" and could be considered to be in the interests of "public safety" or "for the prevention of disorder or crime". It thus remains to be determined whether they were "necessary in a democratic society" (see, *mutatis mutandis*, *Kosiński,* cited above, §19).

22. In this connection the Court observes that the prison judge based his decisions on the fact that the applicant has never been active in maintaining contacts with his son and other members of his family. His relationship with the child's mother broke down and the boy had not been visiting the applicant. The judge concluded that a short visit for his communion could not substantially ameliorate their relations. In the opinion of the prison judge the First Communion in such circumstances could not have been considered as "of particular importance" for him or to warrant leave from prison (see paragraph 7 above). Similarly, as regards the leave to celebrate Easter with his grandparents the judge pointed to the applicant's weak relations with his family (see paragraph 11 above). The Government submitted that the applicant in his application for leave stated that he had not seen his grandparents for nine years (see paragraph 17 above). The applicant has not challenged this statement. The Court also notes that both decisions were reviewed on appeal by the Bialystok Regional Court, which found that the judge had taken into account all the relevant factors and that his ruling could not be faulted (see paragraphs 9 and 13 above).

23. The Court thus considers that the authorities' decisions were well reasoned, based on facts, and had assessed each request on the merits (compare and contrast *Płoski*, cited above, §§ 36-39). The Court considers that their findings relating to weak relations with his family are relevant in assessing what was at stake for the applicant in the present case.

24. Moreover, it should be noted that the applicant was convicted of serious offences of a violent nature and at the relevant time had been serving a long-term prison sentence for four years (see paragraph 4 above). The Government explained that the refusal was also based on the negative opinion on the request for leave issued by the Remand Centre and a risk that the applicant might not return to prison after the ceremony as he had previously attempted to escape from a convoy (see paragraphs 6 and 17 above). In those circumstances the Court agrees that the authorities could

have assessed the risk associated with his release from prison as high (see, *mutatis mutandis*, *Kubiak v Poland*, no. 2900/11, § 24, 21 April 2015).

25. Examining the case as a whole the Court finds that, in the particular circumstances of the present case, the authorities' decisions did not exceed the margin of appreciation left to the respondent State and were "necessary in a democratic society", as they corresponded to a pressing social need and were proportionate to the legitimate aims pursued. Accordingly, the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 1 December 2016.

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| Andrea Tamietti<br>Deputy Registrar | Nona Tsotsoria<br>President |