CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF PŁOSKI v. POLAND

(Application no. 26761/95)

JUDGMENT

STRASBOURG

12 November 2002

FINAL

12/02/2003

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 Płoski v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mrs E. PALM,
Mrs V. STRÁŽNICKÁ,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr L. GARLICKI, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 22 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 26761/95) against the Republic of Poland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Wacław Płoski ("the applicant"), on 27 July 1994.

2. The applicant, who had been granted legal aid, was represented by Mrs B. Słupska-Uczkiewicz, a lawyer practising in Wrocław, Poland. The Polish Government ("the Government") were represented by their Agent, Mr K. Drzewicki.

3. The applicant alleged, in particular, that the refusal to allow him to attend the funerals of his parents was in breach of Article 8.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

7. By a decision of 4 December 2001 the Court declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1949 and lives in Wrocław, Poland.

10. On 22 February 1994 the applicant was arrested by the police.

11. On 24 February 1994 the applicant was brought before the Wrocław District Prosecutor (*Prokurator Rejonowy*) who charged him with larceny and detained him on remand.

12. On 2 July 1994 the applicant's mother died.

13. On 3 July 1994 the applicant made an application for leave to attend the funeral of his mother. The application was in the following terms:

> "I kindly ask you to grant me leave, on the basis of the telegram received on 3.7.94, [to attend] the funeral of my mother Płoska Stefania, address Bełchatów 67-400, Osiedle Dolnośląskie, Blok 225 – who died, which is confirmed by the telegram [informing] that her funeral will take place on 5.07.1994.
>
> I very kindly ask you to grant me leave – I would like to pay last respects to my mother, a beloved person whom I lost. I ask you to agree to my request – I thank you very much for that."

14. The application was accompanied by the statement of a prison officer who supported the applicant's request.

15. On 4 July 1994 the Wrocław-Śródmieście District Court refused the permission to grant the applicant leave considering that he "was a habitual offender whose return to the prison cannot be guaranteed."

16. On 5 July 1994 the Penitentiary Judge rejected the applicant's application for leave to attend the funeral of his mother. The judge's decision was worded as follows:

> "Further to the application of 3.07.1994 for compassionate leave I hereby inform you that, after analysing the case, I have not found grounds for granting such leave because there are no compassionate circumstances as referred to in Art. 59 § 1 of the Code of the Enforcement of Sentences. I should inform you that the Wrocław-Śródmieście District Court on 4.07.94 (...) refused permission to grant compassionate leave."

17. On 3 August 1994 the applicant's father died.

18. On 6 August 1994 the applicant made an application for leave to attend the funeral of his father. The application was in the following terms:

> "I kindly ask you to grant me a compassionate leave because my father Wacław Płoski has died. The funeral will take place on 8.08.1994 and I would like to attend it and to pay last respects to him. I should add that this is yet another death because in July 94 my mother died and I did not attend her funeral. Now my dad has died, so that I have been left without parents and I would like to bid farewell and attend my dad's funeral. I declare that I will return from leave on time and I will not breach the trust. I ask you to agree to my request and I thank you for that."

19. The application was accompanied by the statement of a prison officer who confirmed that the applicant's "behaviour was beyond reproach" and that he "stayed in touch with his wife and children."

20. On 8 August 1994 the Wrocław-Śródmieście District Court refused permission to grant the applicant leave. The court gave the following reasons for its decision:

> "The charges against the accused involve a significant danger to society. The accused Wacław Płoski is a habitual offender within the meaning of Article 60 § 2 of the Criminal Code. In the court's view, his return to the Detention Centre cannot be guaranteed. It should be pointed out that the next hearing has been fixed for 11 August 1994. For these reasons the above decision has been made."

21. On 9 August 1994 the Penitentiary Judge refused the applicant's application for leave to attend the funeral of his father. The judge's decision was worded as follows:

> "Further to the application of 6.08.1994 for compassionate leave I hereby inform you that, after analysing the case, I have not found grounds for granting such leave because there are no compassionate circumstances as provided by Art. 59 § 1 of the Code of the Enforcement of Sentences – permission refused by the Wrocław-Śródmieście District Court"

22. In a letter of 17 January 1995 the applicant requested the President of the Wrocław Regional Court (*Sąd Wojewódzki*) to provide him with a written explanation of the reasons for which he had not been allowed to attend, either alone or under police escort, the funerals of his mother and father. On 31 January 1995 the Legal Secretary of the Wrocław Regional Court advised the applicant that his requests for leave had been rejected because he had been a recidivist posing a risk of absconding.

23. On 26 May 1995 the applicant was convicted of larceny and received a prison term.

24. On 27 February 1996 the applicant was released from prison.

II. RELEVANT DOMESTIC LAW

25. The relevant provisions of the Code of the Enforcement of Sentences 1969 read as follows:

Article 59:

> "§ 1 In compassionate cases the Penitentiary Judge may allow the prisoner to leave the prison, if necessary under the escort of prison officers, for a period not exceeding 5 days; ...
>
> § 2 In urgent cases the Prison Governor may grant temporary leaves for a period described in § 1 (...)"

Article 88 § 2:

> "... [T]he leave described in Article 59 may be granted only after a permission has been obtained from the organ at whose disposal the detainee remains."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

26. The applicant contended that the refusal to allow him to attend the funerals of his parents violated Article 8 of the Convention, which in so far as relevant provides:

> "1. Everyone has the right to respect for his private and family life ...
>
> 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."

27. The Court reiterates that it has already examined complaints about the refusal of leave to attend the funeral of a relative (see, *Marincola and Sestito v. Italy*, application no. 42662/98, 25 November 1999, unreported; *Georgiou v. Greece*, application no. 45138/98, 13 January 2000, unreported). It considered that the circumstances of these cases did not disclose a breach of Article 8 of the Convention.

The Court considers that, while it is not formally bound to follow any of its previous decisions, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases. Since the Convention is first and foremost a system for the protection of human rights, the Court must however have regard to the changing conditions in Contracting States and

respond, for example, to any emerging consensus as to the standards to be achieved (see, among other authorities, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 70, ECHR 2001-I).

A. Arguments before the Court

1. The applicant

28. The applicant submitted that the decisions rejecting his applications for leave to attend the funerals of his parents were arbitrary and violated Article 8. He had never breached the trust placed in him by the prison authorities when they had allowed him to leave the prison on other occasions. Moreover, if the authorities considered that there was a risk of his absconding they could have ordered escorted leaves provided for by Article 59 § 1 of the Code of Enforcement of Sentences. The applicant also submitted that decisions rejecting his applications for leave were not in accordance with domestic law because they were based on § 1 instead of § 2 of Article 59.

2. The Government

29. The Government admitted that the rejection of the applications for leave to attend the funerals constituted an interference with the applicant's right to respect for his family life. However, they asserted that it was an "inherent and unavoidable consequence ... of the detention on remand". Furthermore, the interference was in accordance with the law as it was based on Articles 59 § 1 and 88 § 2 of the Code of Enforcement of Sentences. In addition, it was necessary in a democratic society in the interest of public safety and for the prevention of disorder or crime.

B. The Court's assessment

1. General principles

30. 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, 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).

31. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aims pursued. In determining whether an interference was

"necessary in a democratic society" the Court will take into account that a margin of appreciation is left to the Contracting States. Furthermore, the Court cannot confine itself to considering the impugned facts in isolation, but must apply an objective standard and look at them in the light of the case as a whole (see, among other authorities, *Matter v. Slovakia*, no. 31534/96, § 66, 5 July 1999, unreported).

2. Application of the above principles to the instant case

(a) Existence of interference

32. It was not disputed that the refusal to allow the applicant to attend the funerals of his parents constituted an interference with his right to respect for his private and family life.

The Court finds no reason to reach a different conclusion.

(b) Justification for the interference

(i) "In accordance with the law"

33. The Court is satisfied that the interference, which was based on Articles 59 § 1 and 88 § 2 of the Code of Enforcement of Sentences, was "in accordance with the law".

(ii) Legitimate aim

34. The Court agrees with the Government's submission that the interference took place in the interests of "public safety" and "for the prevention of disorder or crime".

(iii) "Necessary in a democratic society"

35. The Court reiterates firstly that it will not confine itself to considering the impugned facts in isolation, but will apply an objective standard and look at them in the light of the case as a whole, taking into account a margin of appreciation left to the respondent State (see paragraph 31 above). The Court emphasises that, even if a detainee by the very nature of his situation must be subjected to various limitations of his rights and freedoms, every such limitation must be nevertheless justifiable as necessary in a democratic society. It is the duty of the State to demonstrate that such necessity really existed, i.e. to demonstrate the existence of a pressing social need. The Court notes that the applicant lost both parents in a space of one-month (see paragraphs 12 and 17 above). Both applications for leave to attend the funerals were accompanied by the statements of prison officers supporting them; what is more, the second of these statements confirmed that the applicant's behaviour in prison was beyond reproach (see paragraphs 14 and 19 above).

36. Furthermore, the Court considers that the reasons given by domestic authorities (see paragraphs 15-16 and 20-21 above) for rejecting the applications are not persuasive. In particular, the authorities' concerns that the applicant "was a habitual offender whose return to the prison cannot be guaranteed" and that the charges relating to larceny involved "a significant danger to society" could have been addressed by escorted leaves. However, despite the fact that the possibility of escorted leaves was afforded by domestic law (see paragraph 25 above), the authorities apparently did not even consider it. In addition, the second application was rejected by the Penitentiary Judge on 9 August 1994, i.e. a day after the funeral of the applicant's father had taken place (see paragraphs 18 and 21 above). Moreover, the Penitentiary Judge's conclusion that the applicant's case did not disclose compassionate circumstances is not supported by the facts.

37. The Court also notes that apparently the charges brought against the applicant did not concern violent crime and that he was released as early as February 1996 (see paragraphs 23 and 24 above). Therefore, the applicant could not be considered as a prisoner without any prospect of being released from a prison. It is aware of the problems of a financial and logistical nature caused by escorted leaves and the instances of shortage of police and prison officers. However, taking into account the seriousness of what is at stake, namely refusing an individual the right to attend the funerals of his parents, the Court is of the view that the respondent State could have refused attendance only if there had been compelling reasons and if no alternative solution – like escorted leaves – could have been found.

38. The Court would reiterate that Article 8 of the Convention does not guarantee a detained person an unconditional right to leave to attend a funeral of a relative (see the case-law referred to in paragraph 27 above). It is up to domestic authorities to assess each request on its merits. It'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.

39. The Court concludes that, in the particular circumstances of the present case, and notwithstanding the margin of appreciation left to the respondent State, the refusals of leave to attend the funerals of the applicant's parents, were not "necessary in a democratic society" as they did not correspond to a pressing social need and were not proportionate to the legitimate aims pursued. There has therefore been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. Mr Płoski sought 300,000 zlotys (PLN) for non-pecuniary damage. He submitted that the inability to attend the funerals of his parents caused him lasting suffering since he was deeply committed to family values.

42. The Government submitted that the applicant's claim was exorbitant. They asked the Court to rule that in the event that it found a violation, this finding would in itself constitute sufficient just satisfaction. In the alternative, they requested the Court to assess the amount of just satisfaction to be awarded on the basis of its case-law in similar cases, having regard to national circumstances.

43. The Court considers that, in the circumstances of this particular case and deciding on an equitable basis, the applicant should be awarded the sum of 1,500 euros (EUR) for non-pecuniary damage.

B. Costs and expenses

44. The applicant also claimed PLN 14,800 together with VAT by way of legal costs and expenses incurred in the preparation and defence of his case before the Court. This included 37 hours' work at an hourly rate of PLN 400.

45. The Government asked the Court to award the costs and expenses only in so far as they have been actually and necessarily incurred and were reasonable as to quantum.

46. The Court notes that it was not considered necessary to invite the parties to an oral hearing in Strasbourg. Having regard to equitable considerations, it awards the applicant EUR 1,800 together with any value-added tax that may be chargeable, less EUR 630 already paid by way of legal aid (see, *mutatis mutandis*, *McShane v. the United Kingdom*, no. 43290/98, §160, 28 May 2002, unreported).

C. Default interest

47. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points (see *Christine Goodwin v. the United Kingdom* [GC], application no. 28957, § 124, to be published in ECHR 2002-...).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement;
      (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 1,800 (one thousand eight hundred euros) for costs and expenses, plus any value-added tax that may be chargeable, less EUR 630 (six hundred and thirty euros);
   (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President