CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF SKAŁKA v. POLAND

(Application no. 43425/98)

JUDGMENT

(This version has been rectified under article 81 of the Rules of Court on 17 September 2003)

STRASBOURG

27 May 2003

FINAL

27/08/2003

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 Skałka v. Poland,

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

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr L. GARLICKI, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 3 October 2002, 6 March 2003 and 6 May 2003,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 43425/98) 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 Edward Skałka ("the applicant"), on 17 October 1997.

2. The applicant, who had been granted legal aid, was represented by Mr Adam Bezucha, a lawyer practising in Kłodzko. The Polish Government ("the Government") were represented by their Agent, Mr Krzysztof Drzewicki, of the Ministry of Foreign Affairs.

3. The applicant complained under Article 6 § 1 that the proceedings were conducted by courts which lacked impartiality and alleged that his criminal conviction was in breach of Article 10 of the Convention.

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 Third 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.

6. By a decision of 12 June 2001 the Court declared the complaint under Article 6 § 1 inadmissible.

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

8. By a decision of 3 October 2002, the Court declared the remainder of the application admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1941. He is currently serving a prison sentence.

10. On 16 December 1993 the Nowy Targ District Court convicted the applicant of aggravated theft and sentenced him to imprisonment. While in prison, on unspecified dates the applicant wrote a letter to the Penitentiary Division of the Katowice Regional Court and he received a reply. Dissatisfied with that reply, on 15 November 1994 the applicant sent a letter to the President of the Katowice Regional Court, complaining about the judge who had replied to his letter. The relevant passages of the applicant's letter read:

> "(...) It cannot be excluded that further acts of that kind on the part of the Penitentiary Division of the Regional Court would make me complain to the judicial supervision about the irresponsible clowns placed in that Division.
>
> I will start by saying that any little cretin, whether he wears a gown or not, should vent his need to intimidate others by making allusions to legal responsibility [for their acts] on his mistress, if he has one, or on his dog, but not on me. I am not going to be afraid of any such clown who wants to intimidate me, but the truth is that my request of 18 August 1994 was addressed to the court, not to some fool.
>
> I expect that the President of the Katowice Regional Court will somehow convey my request to that bully and that he will, at the same time, read his reply to me (...)
>
> Not only does [the judge] write rubbish about my alleged request for a pardon, which my request was absolutely not, but he also intimidates me. If he is such a brilliant lawyer that he is able to reply to questions that were not asked – and his legal skills can be seen if the content of my letter is compared with his reply – he should find a relevant legal provision to use against me. It would not change the fact that such a limited individual, such a cretin should not take the post of a reliable lawyer who would know how to reply to a letter. A cretin he will remain and I see no reason to be afraid of any legal consequences. "You know, you understand, shut up" – that is all the education he has, as a fool does not need any better."

11. Subsequently, on an unspecified date, the Sosnowiec District Prosecutor instituted criminal proceedings against the applicant. On 31 January 1994 the prosecuting authorities lodged a bill of indictment against the applicant with the Sosnowiec District Court. He was charged with proffering insults against a State authority at its headquarters or in

public, an offence punishable under Article 237 of the Criminal Code 1969, committed by sending a letter to the President of the Katowice Regional Court. In this letter the applicant had insulted an unidentified judge of that court's Penitentiary Division and all judges of that court. The applicant had been questioned in connection with the offence. He had stated that he had not meant the court as a whole, but only one judge, and this in his personal, not professional, capacity. He maintained that the letter could only be regarded as an insult against a private person, but not a State institution.

12. On 6 September 1995 the Sosnowiec District Court convicted the applicant of insulting a State authority and sentenced him to eight months' imprisonment. The court found that on 15 November 1994 the applicant had sent a letter to the President of the Regional Court in which he referred to all judges of the Regional Court's Penitentiary Division in an insulting and abusive manner as "irresponsible clowns". Moreover, further on in the same letter, he referred in a particularly insulting manner ("*w sposób szczególnie obraźliwy*") to an unidentified judge of the same Division, to whom he had allegedly written certain letters, which remained unanswered.

13. The court had regard to the results of the applicant's examination by psychiatrists who found that he could be held criminally responsible.

The court further took into consideration the questioning of the applicant during the investigations. He had denied that he had committed a criminal offence. He had stated that the charge against him did not correspond to the facts of the case as in his letter he referred to a particular person, not to the court as a whole, and that the phrases construed as insults concerned the judge in his personal capacity only. When later heard by the court, the applicant had stated that he had written this letter with a specific person in mind, namely a judge who had previously examined his various complaints. He maintained that he had not named that judge, because the letter from the Penitentiary Division in reply to his complaints, which had provoked him to write his impugned reply, had not been signed. The applicant had also stated that he was of the view that the opinions formulated in his letter were, in the circumstances of the case, correct.

14. The court considered that it was beyond any doubt that it was the applicant who had written the impugned letter. The analysis of its content and form led to the conclusion that the applicant had acted with the firm intention of insulting the Regional Court as a judicial authority. He had first addressed himself to the judges of that court as a group, and then focused on one unidentified judge. Accordingly, it had to be understood that the applicant had insulted the court as the State authority, and the unidentified judge could be regarded as a symbol of that court.

The court further observed that the applicant, as a citizen, had a constitutional right to criticise the State authorities. However, the impugned letter had largely exceeded the limits of acceptable criticism and was directly aimed at lowering the court in the public esteem.

The court further observed that the sentence was commensurate with the applicant's degree of guilt and with the seriousness of the offence. The assessment of the latter had been made having regard to the nature and importance of the interests protected by the criminal law provision applied in the case, i.e. by Article 237 of the Criminal Code.

15. The applicant and his officially assigned lawyer lodged appeals against this judgment.

16. On 19 June 1996 the Katowice Court of Appeal, following a request from all of the judges of the Katowice Regional Court to be allowed to step down, considered that, in view of fact that the offence had been directed against the judges of that court, it was in the interest of the good administration of justice and the impartiality of the court that the appeal be transferred to the Bielsko-Biała Regional Court.

17. On 10 September 1996 the Bielsko-Biała Regional Court upheld the contested judgment, having examined both the appeal lodged by the applicant himself and that of his lawyer.

The court first noted that the first-instance court had accurately established the facts of the case. The court went on to state that it shared the conclusions of the first-instance court, namely that the content and form of the letter called for the conclusion that the applicant had acted with the firm intention of insulting the Regional Court as a State authority. The legal assessment of the facts of the case was correct, and the sentence imposed corresponded to the degree of the applicant's guilt. The applicant had a long criminal record, even though he had been assessed positively by the penitentiary services, and could be held criminally responsible. The applicant's lawyer had argued that the applicant had intended to insult a specific person, not an institution. However, in the light of the court's other findings, this analysis was rejected.

18. The applicant's lawyer lodged a cassation appeal with the Supreme Court.

19. On 2 June 1997 the Supreme Court dismissed the appeal and confirmed the contested judgment. The court referred to the grounds of appeal in which it had been argued that the conviction had been in flagrant breach of Article 237 of the Criminal Code in that the applicant's acts, in the light of his submissions as to his motives, did not amount to a punishable criminal offence.

20. The Supreme Court first noted that the grounds of the applicant's cassation appeal had been laconic and limited in their reasoning. Moreover, it clearly transpired therefrom that in fact the applicant's lawyer contested the assessment of evidence and the factual findings made by the lower courts, whereas the purpose of the cassation appeal was only to bring procedural complaints to the attention of the Supreme Court. This in itself constituted a sufficient basis for dismissing the appeal as not being in

compliance with the requirements laid down by the applicable procedural provisions.

21. However, the court emphasised, it was worth noting that the Regional Court in its judgment had examined all complaints submitted in the appeal against the first-instance judgment, including those concerning the assessment of evidence and the factual findings of the first-instance court. No new arguments had been submitted to the Supreme Court to show that there had been any procedural shortcomings in the proceedings. Certainly the argument that the applicant's acts could not be regarded as a criminal offence could not be regarded as such a procedural complaint.

22. The Supreme Court went on to state that the applicant's abusive letter, referred to and quoted by the Regional Court, had clearly exceeded the limits of acceptable criticism. Even if it were acknowledged that in the second part of the letter the applicant had focused on one judge, it had to be recognised that at the beginning he had attacked all the judges of the Regional Court. The appellate court correctly had regard thereto. It had also indicated why it considered that the applicant's attitude could be qualified as an offence under Article 237 of the Criminal Code 1969. The Supreme Court therefore dismissed the cassation appeal as unfounded.

II. RELEVANT DOMESTIC LAW

23. Article 237 of the Criminal Code 1969, applicable at the relevant time, read as follows:

> "Anyone who insults a State authority at the place where it carries out its duties or in public, is liable to up to two years' imprisonment, to a restriction of personal liberty or a fine."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicant complained that his criminal conviction ran counter to Article 10 of the Convention, which reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are

prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

25. The Government submitted that, in assessing the limits of acceptable criticism towards the judiciary, regard must be had to the special role of the judiciary in society. As a guarantor of justice, a fundamental value in a State in which the rule of law is observed, the courts have to enjoy public confidence if they are to be successful in carrying out their duties. It might therefore prove necessary to protect such confidence against destructive attacks that are essentially unfounded (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p.17, § 34).

26. In the Government's argument, in the present case the applicant had criticised the Katowice Regional Court in an obviously insulting and abusive manner. In his letter he had not formulated any concrete request and had only suggested that his previous request had remained unanswered. That letter had been aimed at insulting an unidentified judge of the Penitentiary Division and all judges of the Katowice Regional Court. The applicant had referred to these judges as "irresponsible clowns". Furthermore, he had referred to an unidentified judge of that court in a particularly insulting manner, labelling him several times "a small-time cretin" ("*kretynek")*, "a clown" ("*błazen*"), "an illiterate" ("*analfabeta*"), "a fool" ("*dureń*"), "such a limited individual" ("*tego rodzaju ograniczone indywiduum*"), "outstanding cretin" ("*spotęgowany kretyn*").

27. The Government further emphasised that the purpose of the applicant's conviction had exclusively been to protect the Katowice Regional Court against an offensive and abusive verbal attack. Moreover, in the present case the requirements of such protection did not have to be weighed against the interest of open discussion of matters of public concern since the applicant's remarks were not uttered in such a context (see *Janowski v. Poland* [GC], no. 25716/94, ECHR 1999-I, pp. 199-200, § 33).

28. The applicant submitted that in his letter of 15 November 1994, which had given rise to his later criminal conviction, he had expressed strong criticism of an unidentified judge of the Katowice Regional Court. The offensive words used in the letter could not amount to an insult to the judiciary, since they had not been addressed against the official acts of the court, but against a person working at that court. Therefore the applicant should not have been convicted of the offence punishable under Article 237 of the 1969 Criminal Code, since an insult directed at a person working for a certain official institution cannot be perceived as an insult to that

institution itself, and it was only insulting of institutions which was punishable under that provision.

29. It was further argued that expressing criticism against an unidentified employee of a court constituted an exercise of freedom of expression within the meaning of Article 10 of the Convention. The courts convicting the applicant of an offence had manifestly breached his rights in a manner incompatible with this provision.

B. The Court's assessment

30. It is not in dispute between the Parties that the applicant's conviction amounted to an interference with the applicant's freedom of expression and that this interference was "prescribed by law" as required by Article 10 of the Convention, namely by Article 237 of the Criminal Code 1969, applicable at the relevant time.

31. It is also a common ground that the interference pursued a legitimate aim of maintaining the authority of the judiciary within the meaning of Article 10 of the Convention.

32. The Court recalls that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among others, the following judgments: Jersild v. Denmark, 23 September 1994, Series A no. 298, § 31; *Janowski*, cited above, § 30, ECHR 1999-I; and *Nilsen and Johnsen v. Norway*, no. 23118/93, § 43, to be published in the official reports of the Court's judgments and decisions; *Perna v. Italy*, no. 48898/99, § 38).

33. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see *Janowski*, cited above, § 30).

34. The work of the courts, which are the guarantors of justice and which have a fundamental role in a State governed by the rule of law, needs to enjoy public confidence. It should therefore be protected against

unfounded attacks (see, e.g. *Prager and Oberschlick*, cited above, § 34; *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, pp. 233-234, § 37).

The courts, as with all other public institutions, are not immune from criticism and scrutiny. Persons detained enjoy in this area the same rights as all other members of society. A clear distinction must, however, be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate punishment would not, in principle, constitute a violation of Article 10 § 2 of the Convention.

35. It is finally recalled that in exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which they were made. In particular, it must determine whether the interference in question was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see, among other authorities, *Nikula v. Finland,* no. 31611/96, 23 March 2002, § 44).

36. In the present case, the applicant, while serving a prison sentence, wrote a letter to the Penitentiary Division of the Katowice Regional Court and received a reply. Obviously dissatisfied with that reply, on 15 November 1994 the applicant sent a further letter to the President of the Katowice Regional Court, complaining about the unidentified judge who had replied to his first letter. It is not open to doubt that the applicant used insulting words in his second letter. He stated that "irresponsible clowns" were placed in the Penitentiary Division of that court, and went on to shower further abuse upon the author of the reply complained of: "small-time cretin", "some fool", "a limited individual", "outstanding cretin" (see § 9 above). The Court also observes that the tone of the letter as a whole was clearly derogatory.

37. It should also be noted that the applicant did not formulate any concrete complaints against the letter, which had so aggrieved him. He expressed his anger and frustration, but did not take reasonable care to articulate clearly why, in his view, the letter complained of deserved such a strong reaction.

38. On the other hand, as regards the requirements that the interference must comply with, and in particular as regards the proportionality test to be applied (see § 34 above), the Court recalls that in assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see *Ceylan v. Turkey* [GC], no. 23556/94, § 49, ECHR 1999-IV).

39. In this respect the Court's attention has been drawn, first and foremost, to the fact that the courts chose to impose a prison sentence of eight months on the applicant, which cannot but be regarded as a harsh measure. The Court notes that the first instance-court observed that the sentence was commensurate with the applicant's degree of guilt and with the seriousness of the offence. The assessment of its seriousness had been made having regard to the nature and importance of the interests protected by the provision of substantive criminal law applied in the case (see § 13 above). In the Court's view, this reasoning of the domestic court does not seem to address sufficiently the question of why it considered that the applicant's guilt was so grave, and why, in the particular circumstances of the case, the offence was considered serious enough to warrant eight months' imprisonment.

The Court further notes that the applicant had never previously been convicted of a similar offence. Had the applicant been so convicted, it would have been more acceptable that the courts would choose to impose a harsh sentence on him in order to make it more dissuasive in the face of his impenitence.

40. As regards the context in which the impugned statements were uttered, the Court recalls that the phrase "authority of the judiciary" includes, in particular, the notion that the courts are, and are accepted by the public at large as being the proper forum for the settlement of legal disputes and for the determination of a person's guilt or innocence on a criminal charge (*Worm v. Austria*, judgment of 29 August 1997, Reports 1997-V, § 40). What is at stake as regards protection of the authority of the judiciary, is the confidence which the courts in a democratic society must inspire in the accused, as far as criminal proceedings are concerned, and also in the public at large (see, *mutatis mutandis*, among many other authorities, *Fey v. Austria*, judgment of 24 February 1993, Series A no. 255-A, p. 12, § 30).

41. In the circumstances of the present case the Court considers that the interest protected by the impugned interference was important enough to justify limitations on the freedom of expression. In consequence, an appropriate sentence for insulting both the court as an institution and an unnamed but identifiable judge would not amount to a violation of Article 10 of the Convention.

Therefore, the question in the case is not whether the applicant should have been punished for his letter to the Regional Court, but rather whether the punishment was appropriate or "necessary" within the meaning of Article 10 § 2. It is the Court's assessment that the sentence of eight months' imprisonment was disproportionately severe. Even if it is in principle, for the national courts to fix the sentence, in view of the circumstances of the case, there are common standards which this Court has to ensure with the

principle of proportionality. These standards are the gravity of the guilt, the seriousness of the offence and the repetition of the alleged offences.

42. In the Court's view, the severity of the punishment applied in this case exceeded the seriousness of the offence. It was not an open and overall attack on the authority of the judiciary, but an internal exchange of letters of which nobody of the public took notice. Furthermore, the gravity of the offence was not such as to justify the punishment inflicted on the applicant. Moreover, it was for the first time that the applicant overstepped the bounds of the permissible criticism. Therefore, while a lesser punishment could well have been justified, the courts went beyond what constituted a "necessary" exception to the freedom of expression.

43. The Court therefore concludes that Article 10 has been violated.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant submitted that he had been sentenced to ten months prison sentence at the time when the average salary in Poland was PLN 2,100. Therefore he argued that the pecuniary and non-pecuniary damage that he had suffered amounted to PLN 21,000, i.e. the sum he would have been able to earn had he not been imprisoned.

46. The Government submitted that the applicant's claims were grossly excessive and that the damage sustained by the applicant, if any, should be assessed in the light of the relevant case-law of the Court in its cases against Poland, and with regard to the national economic circumstances.

47. As to the claim for pecuniary damages, the Court first notes that in fact in the criminal proceedings concerned in the present case the applicant was sentenced to eight, not ten, months of prison sentence. However, in any event, the Court observes that when the applicant was convicted, he was already serving a prison sentence imposed by the previous judgment given on 18 December 1993 by the Nowy Targ District Court (see § 9 above). It has not been argued, or shown, that because of the criminal conviction concerned in the present case he had to give up paid employment of any kind. The Court finds that there is not sufficient evidence of a causal link between the violation of Article 10 it has found and the pecuniary damage

allegedly sustained by the applicant. This claim must therefore be dismissed.

48. The Court considers that in the circumstances of the case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. It therefore sees no reasons for awarding the applicant any sum under this head.

B. Costs and expenses

49. The applicant, who was granted legal aid, claims EUR 32 in reimbursement for costs of translation by a sworn translator over and above EUR 815 he received in legal aid.

50. The Court is satisfied that the sum claimed was actually and necessarily incurred, and reasonable as to quantum (see, among other authorities, *Jecius v. Lithuania*, no. 34578/97, § 112, ECHR 2000). It therefore awards the full amount.

C. Default interest

51. 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. *Holds* that there has been a violation of Article 10 of the Convention;

2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

3. *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, EUR 32 (thirty-two euros) in respect of costs and expenses, to be converted into Polish zlotys 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 amount 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 27 May 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER Deputy Registrar	Georg RESS President