



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

FOURTH SECTION

CASE OF WENERSKI v. POLAND (No. 2)

(Application no. 38719/09)

JUDGMENT

STRASBOURG

24 July 2012

FINAL

24/10/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Wenerski v. Poland (no. 2),

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 3 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 38719/09) 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 Ernest Wenerski (“the applicant”), on 16 June 2009.

2. The applicant, who had been granted legal aid, was represented by Mr L. Korpecki, a lawyer practising in Łódź. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant mainly complained under Article 3 of the Convention of the inadequate conditions of his detention, in particular overcrowding.

4. On 6 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Kluczbork.

A. Background

6. The applicant has a long criminal record. He has been detained on several occasions since 1997.

7. The present application concerns his detention in Łódź Remand Centre during the following periods of time: (1) from 1 September 2004 until 10 March 2005, (2) from 20 May until 30 November 2005, (3) from 14 December 2005 until 19 January 2007, (4) from 5 February until 22 July 2007 and (5) from 8 January 2009 until an unspecified date in June 2010.

8. It appears that the applicant has been in continuous detention since 1 September 2004, first in Łódź Remand Centre and then in other detention facilities. Immediately before 1 September 2004 he was detained in Chełm Remand Centre and on an unspecified date in June 2010 he was transferred to Kluczbork Prison.

9. The applicant suffers from epilepsy and has regular seizures. He has also been diagnosed with a personality disorder.

B. Recommendations of medical experts concerning the applicant's confinement

10. Three reports on the applicant's health were obtained from experts in neurology, psychiatry and psychology in the course of the first-instance civil proceedings in tort (see paragraph 28 below). The domestic court wished to obtain the experts' opinion as to whether or not the applicant was fit for detention and, in the affirmative, whether special conditions needed to be created for him in the remand centre.

11. The first report was prepared on 2 October 2006 by Dr G.B., an expert in neurology. The report stated that the applicant's epilepsy did not, in itself, require that special conditions be created for him in the remand centre. Detention in a multi-person cell according to the standards in place would not have a negative effect on the course of the applicant's illness. The expert recommended, however, that the applicant be assigned a bottom bunk in a cell which was not overcrowded.

12. The second report was drafted on 9 August 2008 by Dr M.B., an expert in psychiatry. The expert found that the applicant suffered from a mild personality disorder and experienced occasional mood swings. Detention in ordinary prison conditions would not exacerbate the applicant's disorder.

13. The third report was prepared on 21 April 2009 by Dr L.S., an expert in psychology. The expert found that the applicant suffered from a personality disorder with an increased tendency to emotional outbursts which manifested themselves in self-injury. The expert concluded, however,

that the applicant's personality disorder had developed in his early life and was independent of the overcrowding and difficult conditions of detention.

C. The course of the applicant's illness and the medical care provided to him in Łódź Remand Centre

14. As established by the domestic courts, during the first four terms of his detention in Łódź Remand Centre the applicant had numerous epileptic fits. The fits often resulted in minor facial and bodily injuries such as cut lips, bruises, skin abrasions and bumps to the head. On one occasion the applicant bit his tongue. On another occasion, he cut his head against the edge of the bed.

15. It was also found that during his epileptic fits the applicant had received first aid from his fellow inmates. Where the seizures occurred during the day, an in-house doctor had been called in to examine the applicant. At night or on public holidays the authorities had called for an ambulance.

16. The applicant submitted copies of five ambulance reports issued after each post-seizure intervention in the remand centre (on 24 April, 2, 12 and 19 May and 16 June 2005).

17. During the first four terms of his detention the applicant did not receive medical help after an epileptic fit on at least two occasions. On an unspecified date in March 2007 the warden instructed the applicant's cell mates to turn the applicant on his side and to put something in his mouth. Likewise, when the applicant was detained in cell no. 149 in block no. 2, wing no. 4, he did not receive any assistance during his epileptic fit because the warden considered that the applicant had been simulating.

18. After his seizures the applicant usually rested in his cell.

19. The domestic courts established that the applicant had a record of self-mutilation. He had received adequate medical treatment after each self-injury.

20. On 9 March 2005 and 19 June 2006 the applicant had EEG scans in the hospital of Łódź Prison.

D. General conditions of the applicant's detention in Łódź Remand Centre

21. In the course of the civil proceedings the domestic courts established that from 2002 until 2006 the statutory minimum space per prisoner was significantly reduced in Łódź Remand Centre because of the nationwide problem of overcrowding and the fact that the remand centre was undergoing extensive renovation and many cells were out of use.

22. It was found that during the first four terms of his detention in Łódź Remand Centre the applicant had consecutively occupied fourteen different

cells, which measured between 10.5 and 12 sq. m and were shared by four to six prisoners. The living space in the applicant's cells had ranged between 2 and 2.4 sq. m per person. The courts did not consider that the overcrowding had been of a temporary nature since the applicant had spent several years with approximately 2 sq. m of personal space.

23. The applicant submitted that the maximum permissible capacity of his cells in Łódź Remand Centre had been significantly exceeded on a permanent basis. For example, cell no. 159 in block no. 1, wing no. 4, which was designed for two people, had in fact been shared by six prisoners including the applicant. Cell no. 151 in block no. 1, wing no. 4 measured 12 sq. m and was designed to accommodate four prisoners. It had in fact been occupied by six persons including the applicant. Cell no. 92, block no. 3, wing no. 3 measured 12.7 sq. m and had been shared by six instead of four prisoners.

24. The civil courts established that overcrowding in prisons and remand centres had a clear negative impact on prisoners' health and the sanitary conditions of their detention. Moreover, the difficult living conditions had led to increased stress and aggression among the prisoners. The applicant had been involved in quarrels and fights with his fellow inmates. On several occasions he had received a disciplinary punishment as a result.

25. The domestic courts further established that on an unspecified date in 2004 the applicant had shared a single cell with another prisoner. Because his fellow inmate was recovering from an injury the applicant had been assigned the top bunk bed despite medical recommendations to the contrary. The applicant had to climb onto his bed from the lower bunk because there was no ladder. The top bunk was not equipped with a security rail.

26. The courts also noted that during the first four terms of his detention in Łódź Remand Centre the applicant had for the most part been committed to cells which required renovation. On one occasion only, for an unspecified period of time in the autumn of 2006, he had been placed in cell no. 151, which had been freshly renovated and thus had airtight windows and was not damp.

27. The applicant submitted that the cells in which he had been held during all five terms of his detention in Łódź Remand Centre had been dirty, not ventilated and infested with bugs and mould. The toilet annex in each of his cells had been separated from one side only and with just a sheet of fabric. As a result, the prisoners had had no privacy when using the toilet and a foul odour was constantly in the air.

E. Civil action for infringement of the applicant's personal rights

28. On 18 February 2005 the applicant brought a civil action in tort, seeking compensation in the amount of 70,000 Polish zlotys (PLN, approximately 18,000 euros, EUR) because, as he claimed, during his

detention in Łódź Remand Centre he had been held in overcrowded cells in conditions which had been unsuitable for a person in his state of health. The applicant argued that, as a result, his health had deteriorated and he had suffered distress and physical pain when he had injured himself during his epileptic fits.

29. At a hearing on 25 May 2008 the applicant specified that his civil action concerned his detention from 1 September 2004 until 22 July 2007.

30. On 26 May 2009 the Łódź Regional Court (*Sąd Okręgowy*) found in the applicant's favour and awarded him PLN 2,000 in respect of non-pecuniary damage.

31. In the course of the proceedings the domestic court obtained three medical reports prepared by experts in psychiatry, psychology and neurology (see paragraphs 10 to 13 above) and testimonies from the applicant, his fellow inmates and the remand centre's staff. The facts which were established by the domestic court on the basis of that material are described in the relevant paragraphs above.

32. The Łódź Regional Court examined the applicant's claim under Articles 23 and 24 of the Civil Code (*Kodeks Cywilny*), in conjunction with Article 448 of that Code.

33. The domestic court held that the applicant's personal rights, namely his right to dignity and to humane treatment, had been infringed in that he had been held in severely overcrowded cells (approximately 2 sq. m per person) for a long period of time (several years). The overcrowding in Łódź Remand Centre had not been of a temporary nature and had not been justified by any exceptional circumstances.

34. On the other hand the first-instance court noted that, as suggested by the expert in neurology, the course of the applicant's epilepsy had been independent of the conditions of his detention. The overcrowding in itself had not aggravated the frequency of the applicant's epileptic fits. However, it might have influenced his personality disorder. Moreover, the risk of the applicant injuring himself during his epileptic fits had been higher in overcrowded cells.

35. The domestic court observed that a breach of personal rights ought to be redressed primarily through non-pecuniary means. The applicant, however, had sought only pecuniary compensation. Taking the view that the applicant's suffering had been of a minor degree, the court awarded him PLN 2,000 for non-pecuniary damage. The applicant was also ordered to pay PLN 1,000 (approximately EUR 240) in partial reimbursement of his lawyer's fee.

36. Following an appeal by the applicant, the Łódź Court of Appeal on 30 October 2009 changed the first-instance judgment by increasing the amount of the applicant's award to PLN 5,000 (approximately EUR 1,180).

37. The appellate court considered that the findings of fact and law which had been made by the regional court had been correct. It held,

however, that the amount of compensation awarded had been inadequate in view of the degree of harm suffered by the applicant.

38. A cassation appeal was not available under the applicable provisions.

F. Complaints to the penitentiary authorities

39. On numerous occasions the applicant complained to the Łódź Regional Inspectorate of the Prison Service (*Okręgowy Inspektorat Służby Więziennej*) about the inadequate medical care and living conditions in Łódź Remand Centre.

40. His complaints were considered manifestly ill-founded (decisions of 15 May 2009 in reply to the complaint of 6 March 2009 and of 16 July 2009 in reply to the complaint of 25 May 2009).

II. RELEVANT DOMESTIC LAW AND PRACTICE

41. The provisions pertaining to medical care in detention facilities and general conditions of detention, and the relevant domestic law and practice, are set out in the Court's judgments in *Kaprykowski v. Poland*, no. 23052/05, §§ 36-39, 3 February 2009, *Sławomir Musiał v. Poland*, no. 28300/06, §§ 48-61 ECHR 2009-... (extracts) and *Orchowski v. Poland*, no. 17885/04, §§ 74-85, 13 October 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that the conditions of his detention in Łódź Remand Centre where he had been held for a period of over four years had been inadequate taking into account his particular health condition, namely epilepsy and personality disorder. He alleged that the cells had been overcrowded, badly ventilated, and without a fixed partition separating the toilet. The applicant submitted that such conditions attained a minimum level of severity amounting to inhuman and degrading treatment in breach of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

43. The Government did not make any comment on the admissibility and merits of the case.

A. Admissibility

44. The Court recalls at the outset that its competence to decide whether an applicant is a victim does not depend on an objection being raised by the respondent Government (see *Hay v. the United Kingdom* (dec.), no. 41894/98, ECHR 2000-XI; and *Staykov v. Bulgaria*, no. 49438/99, § 89, 12 October 2006). Before going into the merits of each complaint, the Court must be satisfied of the applicant's continuing status as a victim in respect of it, this question being relevant at all stages of the proceedings (see, as a recent authority, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006-V (no. 1)). The Court reiterates on this point that a decision or measure favourable to an applicant is not in principle sufficient to deprive him of this status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (*ibid.*, § 180).

45. The Court observes that in the compensation proceedings instituted by the applicant the courts acknowledged that he had been held in severely overcrowded cells for a long period of time (see paragraph 33 above). They also examined what influence such conditions might have had on the applicant's state of health taking into account his epilepsy and personality disorder (see paragraph 34 above). The Court thus accepts that the courts did acknowledge the failure of the domestic authorities to comply with Article 3 of the Convention in these respects. It thus remains to be determined whether the compensation awarded to the applicant amounted to sufficient redress.

The applicant was awarded the equivalent of EUR 1,180 in compensation; however, he had been ordered to reimburse approximately EUR 240 of the lawyer's fees.

46. The just satisfaction awarded by the Court of Appeal amounts to approximately 25 per cent of what the Court would be likely to have awarded the applicant in accordance with its practice, taking into account the particular circumstances of the case. The Court therefore concludes that the redress provided to the applicant at domestic level, considered on the basis of the facts of which he complains before the Court, was insufficient. In these circumstances, the Court considers that the applicant can still be considered as a "victim" of a violation of Article 3 of the Convention.

47. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

48. The Court firstly notes that on 20 January 2009 it found a breach of Article 3 of the Convention in the first case brought by the applicant on account of the State's failure to provide him with necessary and urgent treatment for his right eye socket (see *Wenerski v. Poland*, no. 44369/02, § 64, 20 January 2009). The first application and the present one both raise issues of alleged inhuman and degrading treatment of the applicant during his detention. However, the circumstances of both cases differ substantially since the present case raises new complaints relating to the conditions of the applicant's detention arising out of overcrowding and the applicant's epilepsy.

49. A summary of the general principles applicable to the Court's examination of medical care and conditions of detention under Article 3 may be found in the Court's judgments in *Ślawomir Musiał* and *Orchowski* (cited above, §§ 85-88 and §§ 119-229 respectively).

50. The Court notes that the applicant limited his complaint to several periods from 2004 until 2010 when he had been detained in Łódź Remand Centre and which amounted to approximately four years (see paragraphs 7 and 42 above).

51. As mentioned before, the Government did not submit any observations concerning the merits of the case. However, the domestic proceedings instituted by the applicant reveal that the applicant was affected by the problem of overcrowding as during the most part of the period under consideration he was placed in cells where the space per detainee was about 2 sq. m. (see paragraphs 22 and 33 above).

52. The Court has already found in its two pilot judgments in the cases of *Orchowski* and *Norbert Sikorski* that, for many years, namely from 2000 until at least mid-2008, overcrowding in Polish prisons and remand centres had revealed a structural problem consisting of "a practice that [was] incompatible with the Convention" (see *Orchowski*, cited above, § 151, and *Norbert Sikorski v. Poland*, no. 17599/05, §§ 155-156, 22 October 2009).

53. Taking all these elements into consideration, the Court finds it established that for several years the applicant was detained in overcrowded cells with less than 3 sq. m. of personal space (see *Musiałek and Baczyński v. Poland*, no. 32798/02, § 130, 26 July 2011).

54. Moreover, the Court notes that during his detention the applicant undeniably suffered from epilepsy and had been diagnosed with a personality disorder.

55. The domestic courts and experts established that the applicant's state of health had been independent of the conditions of his detention and had not been incompatible with detention (see paragraph 34 above). The Court is not in a position to contradict such findings.

56. Nevertheless, the Court accepts that the very nature of the applicant's condition made him more vulnerable than the average detainee and that his detention in the conditions described above can reasonably be considered to have exacerbated his feelings of distress. The overcrowding increased tension among prisoners and no doubt had an impact on the applicant's personality disorder. Moreover, during his seizures the applicant sustained injuries which had clearly been worsened by overcrowded and cluttered cells.

57. Indeed, during his stay in Łódź Remand Centre the applicant had numerous epileptic fits which often resulted in facial and bodily injuries (see paragraphs 14-20 above). The applicant bit his tongue, cut his head against the edge of the bed, cut his lips and sustained bruises, skin abrasions and bumps to the head. In all these incidents his fellow inmates provided immediate assistance. Only later was an in-house doctor or an ambulance called. On a few occasions he received no medical assistance after his seizures.

58. In this connection the Court reiterates that it has previously criticised a situation in which the staff of a remand centre feels relieved of its duty to provide security and care to a detainee suffering from frequent epileptic fits by making his cellmates responsible for providing him with daily assistance or, if necessary, with first aid (see *Kaprykowski v. Poland*, no. 23052/05, § 74, 3 February 2009).

59. Assessing the facts of the case as a whole, having regard in particular to the cumulative effects of the inappropriate living conditions during the applicant's incarceration and his vulnerable medical condition which necessitated frequent medical assistance, the Court considers that the nature, duration and severity of the ill-treatment to which the applicant was subjected are sufficient to be qualified as inhuman and degrading (see *Egmez v. Cyprus*, no. 30873/96, § 77, ECHR 2000-XII; *Labzov v. Russia*, no. 62208/00, § 45, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 42, 20 January 2005).

There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

60. The applicant also complained that his detention conditions breached his right to respect for his physical and mental integrity and his right to privacy and the protection of his private space. He relied on Article 8 of the Convention, which in its relevant part reads as follows:

“1. Everyone has the right to respect for his private ... 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.”

61. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

62. However, having found a violation of Article 3, the Court considers that no separate issue arises under Article 8 of the Convention with regard to the conditions of the applicant's detention and the medical treatment he received.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. Lastly, the applicant complained, invoking Articles 6 and 13 of the Convention, of the unfairness of the civil proceedings for compensation before the domestic courts.

64. The Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

65. The Court has examined the remainder of the 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 the applicant has failed to substantiate his complaints.

66. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed EUR 20,000 in respect of non-pecuniary damage.

69. The Government did not comment on the applicant's claim.

70. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

71. The applicant, who had been represented by a lawyer and had been granted legal aid from the Council of Europe, did not make any claim in respect of costs and expenses.

C. Default interest

72. The Court considers it appropriate that the default interest rate 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 Articles 3 and 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that no separate issue arises under Article 8 of the Convention;
4. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President