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

FIRST SECTION

DECISION

Application no. 6068/12
A.K.
against Poland

The European Court of Human Rights (First Section), sitting on 26 March 2019 as a Committee composed of:

Aleš Pejchal, *President,*
Tim Eicke,
Jovan Ilievski, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 4 January 2012,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of cases in respect of the complaint under Article 3 of the Convention and the applicant's reply to that declaration,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr A.K., is a French national who was born in 1972 and lives in Pantin. He was represented before the Court by Ms S. Kling, a lawyer practising in Strasbourg.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, 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.

1. The applicant's detention in Gliwice Remand Centre

(a) The period of the applicant's detention

4. The applicant was detained in Gliwice Remand Centre (*Areszt Śledczy*) from 20 March 2008 to 11 June 2010 (approximately two years and three months). During that time he was detained in overcrowded cells for eight months and three weeks.

(b) The conditions of the applicant's detention

5. The applicant submitted that during his detention he had been held in cells in which the floor space per person had been less than the statutory minimum standard of 3 m^2. He further submitted that there had been no lighting in the cells between 8 am and 10 am, and no lighting in a toilet area after 10 pm; that the cells had been dirty, the walls had been covered in mould, and there had been no access to hot water. He was allowed one hour of outdoor exercise every day. The applicant submitted that CCTV cameras had been installed in the communal showers, in violation of his privacy. A shower was allowed once a week for five minutes and the shower area did not provide for any privacy, as it did not have shower cabins or curtains.

6. The Government submitted that having regard to the information provided by the Central Board of Prison Service and the domestic civil proceedings, the applicant was detained in overcrowded cells in Gliwice Remand Centre for approximately eight months and three weeks. As regards monitoring by CCTV cameras, the communal shower area was supervised by the internal CCTV in accordance with Article 73a of the Code of Execution of Criminal Sentences, mainly for security reasons. In particular the Government provided that (1) the recorded material was transferred to a separate room of the chief of the prison guard (2) each day, recordings were analysed and destroyed if not retained for evidence purposes (3) the recordings were not available to third parties (4) the intimate parts of the prisoners were automatically darkened or deformed so it was impossible to display them and (5) the purpose of the monitoring of the communal shower area was to ensure security in the prison unit as well as protection of the life and health of inmates.

(c) Civil proceedings against the State Treasury

7. On 3 April 2009 the applicant lodged a civil action against the State Treasury and Gliwice Remand Centre seeking 100,000 Polish zlotys (PLN) (approximately EUR 25,000) in compensation for violation of his personal

rights on account of his detention in overcrowded cells, inadequate medical care and CCTV cameras being installed in shower facilities in the above-mentioned prison.

8. On 17 February 2010 the Gliwice Regional Court (*Sąd Okręgowy*) dismissed the applicant's claim. The 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 and further under Article 248 of the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy*). The court established that between May 2008 and April 2009 the applicant had been detained in five different cells in which the floor space per person had been below 3 m^2 for a period of eight months and three weeks. The space per person ranged between 2.03 and 2.73 m2. The court, nonetheless, found the overcrowding lawful in the light of Article 248 of the Code of Execution of Criminal Sentences. The domestic court further noted that, by the virtue of Article 73(a) of the same Code, prisons were permitted to install CCTV cameras on their premises. In the Regional Court's opinion, the applicant received the necessary medical care during his detention. He had unrestricted access to the prison doctor, had blood tests every three months, had been treated for haemorrhoids, and had received psychiatric attention. He was also prescribed a special diet for prisoners with liver disease but did not receive any special medication. The fact that his medical condition did not deteriorate during his detention justified the lack of further, specialist treatment.

9. In the first-instance court's view, the fact that the applicant was detained in overcrowded cells was not on its own sufficient to establish inhuman or degrading treatment. The presence of other elements aggravating the applicant's detention (such as poor sanitary conditions, lack of hygiene, deprivation of sleep, poor or strong lighting, or inadequate ventilation), in addition to overcrowding, could have indicated violation of the applicant's personal rights. According to the domestic court such elements could not have been present, as the applicant had not complained about them. The Regional Court concluded that neither the lack of privacy in the shower facilities nor the alleged lack of adequate medical care violated the applicant's personal rights under Article 23 of the Civil Code.

10. The applicant appealed. On 29 July 2010 the Katowice Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's appeal. It fully confirmed the findings of the first-instance court.

11. The applicant lodged a cassation appeal. On 18 August 2011 the Supreme Court (*Sąd Najwyższy*) refused to examine it.

2. The applicant's detention in Wojkowice Prison

(a) The period of the applicant's detention and his medical examination

12. The applicant was detained in Wojkowice Prison (*Zakład Karny*) on two occasions: from 11 June 2010 to 23 February 2011 and from 15 June 2011 to 25 August 2011. He underwent four medical examinations, two in June 2010 and two in July 2010.

(b) The conditions under which the applicant's medical examination took place, and his complaints

13. The applicant filed complaints regarding the conditions of his medical examination in the Wojkowice Prison, in particular the lack of privacy and the presence of a prison guard during the examination. Firstly, he complained to the administration of Wojkowice Prison and then addressed the same complaint to the Ombudsman.

14. On 8 July 2010 the Ombudsman informed the applicant that the issue of the presence of a prison guard during a prisoner's medical examination had been previously addressed to the Ministry of Justice. The issue had not been fully resolved and would therefore be considered by the Ombudsman again.

15. On 26 July 2010 the applicant was informed by the authorities of Wojkowice Prison that on the basis of Article 115 § 7 of the Code of Execution of Criminal Sentences the medical examination was done under the supervision of a prison guard for security reasons. Additionally, he was informed that such supervision should have been done outside the medical room unless security or the doctor required otherwise.

16. On 13 October 2011 the governor of Wojkowice Prison informed the applicant that a prison guard could be present during a medical examination under prison regulations.

17. The Government submitted that on 8 December 2009 the General Director of the Prison Service had issued a guideline according to which "*in situations where provision of Article 115 § 7 of the Code of Execution of Criminal Sentences is applicable, the officer or the employee of the medical facility treating a detained person should conduct the medical examination without the presence of a non-medical officer*". The director of Wojkowice Prison gave an order that during a medical examination the supervising officer should wait in the vestibule between the consulting room and the waiting room. During the applicant's medical examination the supervising officer was not present in the consulting room and stayed in a separate vestibule behind a closed door, so that he could enter the consulting room only at the request of the doctor for security reasons.

B. Relevant domestic law and practice

1. Overcrowding

18. A detailed description of the relevant domestic law and practice governing conditions of detention in Poland and domestic remedies available to detainees alleging that the conditions of their detention were inadequate are set out in the Court's pilot judgments in the cases of *Orchowski v. Poland* (no. 17885/04), and *Norbert Sikorski v. Poland* (no. 17599/05), adopted on 22 October 2009 (see §§ 75-85 and §§ 45-88 respectively). More recent developments are described in the Court's decision in the case of *Łatak v. Poland* (no. 52070/08) adopted on 12 October 2010 (see §§ 25-54).

2. CCTV cameras in communal shower areas

19. The relevant part of Article 73a of the Code of Execution of Criminal Sentences reads as follows:

> "1. Detention facilities may be monitored through an internal system of devices registering images or sound, including closed-circuit television.
>
> 2. Monitoring, ensuring the observation of a prisoner's behaviour, may be used in particular in prison cells including parts designated for sanitary and hygienic purposes, in baths, in premises designated for visits, in places of employment of detainees, on traffic routes, and in prison yards, as well as to ensure observation of the prison grounds outside buildings, including the lines of external walls.
>
> 3. Monitored images or sound may be registered with the help of appropriate devices.
>
> 4. Monitoring and registering of sound may not include information subject to the seal of confession or secret protected by law.
>
> 5. Images from closed-circuit television installed in the part of the prison cell designated for sanitary and hygienic purposes and in baths shall be transmitted to monitors or other devices referred to in paragraph 3 in a manner making it impossible to show [detainees'] private parts or their intimate physiological functions ..."

20. Pursuant to Article 73 (a) §§ 6 and 7, if the registered material is not relevant for the prison security or security of an individual prisoner it shall be immediately destroyed. The prison governor decides for how long the relevant registered material should be stored and how it is to be used.

3. Presence of non-medical personnel during medical examination of prisoners

21. Article 115 § 7 of the Code of Execution of Criminal Sentences reads as follows:

> "... A prisoner serving a prison sentence in a closed penal facility receives medical treatment in the presence of non-medical personnel; medical treatment of the prisoner

may be conducted in the absence of the non-medical personnel at the request of either the non-medical officer or the employee of the medical facility...”

22. In its judgment of 26 February 2014 (case no. K 22/10), the Constitutional Court held:

“...The first sentence of Article 115 §7 of the Code of Execution of Criminal Sentences as implying mandatory the presence of non-medical personnel during medical examinations (a) of prisoners not requiring such presence; [and] (b) by not describing the conditions for exemption from this obligation, is not in conformity with Article 47 in connection with Article 31 section 3 of the Polish Constitution ...”

THE LAW

A. Complaint under Article 3 of the Convention

23. The applicant complained of inadequate conditions of detention, in particular overcrowding in Gliwice Remand Centre. He relied on Article 3 of the Convention, which reads as follows:

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

24. The Government, by a letter of 9 July 2015, informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by this part of the application. They further requested the Court to strike out this part of the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

“... The Government hereby wish to express – by way of the unilateral declaration – their acknowledgement of the violation of Article 3 of the Convention regarding the conditions of the applicant’s detention in the Gliwice Detention Centre in connection with overcrowding.

Having regard to the particular circumstances of the case, the Government declare that they offer to pay the applicant the amount of PLN 11,700 (eleven thousand seven hundred Polish zlotys) which they consider to be reasonable in the light of the Court’s case law ... The sum referred to above includes PLN 2,700 (two thousand seven hundred Polish zlotys) which is to cover the costs and expenses of the proceedings before the domestic courts, which are payable by the applicant to the State Treasury on account of the decision of the Supreme Court of 18 August 2011 (no. V CSK 510/10).

The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that

> period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points.
>
> The Government would respectfully suggest that the above declaration might be accepted by the Court as "any other reason" justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention ..."

25. In his letter of 8 October 2015 the applicant's lawyer referred to some of the Government's submissions: however, she did not comment on the Government's unilateral declaration.

26. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application or part of it out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

27. The Court has established in a number of cases, including cases brought against Poland, its practice concerning complaints of inadequate conditions of detention (see the cases of *Orchowski v. Poland; Norbert Sikorski v. Poland;* and *Łatak v. Poland*, all cited above).

28. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c)).

29. Moreover, in view of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

30. In view of the above, it is appropriate to strike the application out of the list in so far as it relates to the complaint under Article 3 of the Convention.

B. Complaint under Article 8 of the Convention

1. Monitoring the communal shower area in the Gliwice Remand Centre by the CCTV cameras

31. The applicant complained about general conditions of his detention in Gliwice Remand Centre, in particular the lack of privacy in the communal shower area. He relied on Articles 3 and 8 of the Convention.

32. However, the Court, being the master of the characterisation to be given in law to the facts of a case (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 43, ECHR 2012, and *Söderman v. Sweden* [GC],

no. 5786/08, § 57, ECHR 2013), considers that the above complaint should be examined solely 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."

33. The Court reiterates that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, ECHR 2005-IX, and *Szafrański v. Poland*, no. 17249/12, § 35, 15 December 2015). The circumstances of imprisonment, in particular considerations of security and the prevention of crime and disorder, may justify restrictions on those rights; nonetheless, any restriction must be justified in each individual case (see *Biržietis v. Lithuania*, no. 49304/09, § 45, 14 June 2016).

34. The Court further 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. However, normal restrictions and limitations consequent on prison life and discipline during lawful detention are not matters which would constitute a violation of Article 8, either because they are considered not to constitute an interference with the detainee's private and family life, or because any such interference would be justified (see *D.G. v. Ireland*, no. 39474/98, §§ 104-05, ECHR 2002-III).

35. Turning to the case at hand, the Court notes that the monitoring of the communal shower area was carried out in accordance with the law, namely Article 73a of the Code of Execution of Criminal Sentences. That provision provided detailed regulation concerning the means of monitoring, its purpose, and destruction of the recordings that were not used for evidence or security reasons (see paragraph 19 above). It appears from the domestic regulation and the Government's submissions that the monitoring was carried out for security reasons both of the prisoners themselves and the security inside the prison, thus it pursued the legitimate aims of "the protection of the rights and freedoms of others" and "the prevention of disorder or crime".

36. With regard to a question whether the interference in the form of monitoring in the present case was necessary in a democratic society, the

Court takes into account that the recordings were transferred to a separate room, where only a limited number of prison staff had access to them; they were analysed on a daily basis for evidence or security purposes, and if not necessary they were immediately destroyed; the recordings were made in such a way that the intimate parts of the prisoners' bodies were darkened or deformed (see paragraph 6 above).

37. The Court is satisfied that the relevant measures were narrowly tailored, taking into account all the precautions implemented by the domestic authorities. It finds that the interference at issue was proportionate to the legitimate aims sought and that, accordingly, it was necessary in a democratic society within the meaning of Article 8 § 2 of the Convention.

38. Taking into consideration the above, the Court concludes that this part of the applicant's complaint under Article 8 of the Convention is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. The lack of privacy during the medical examination in Wojkowice Prison

39. The applicant further complained of the lack of privacy during his medical examination in Wojkowice Prison. He relied on Article 8 of the Convention.

40. The Government contested that argument. In particular, they stated that the medical examination of the applicant was supervised by a prison guard; however, he was not present in the consulting room but stayed in a separate vestibule behind a closed door. Therefore, this complaint should be declared inadmissible as manifestly ill-founded.

41. The Court will examine the complaint in the light of the general principles relating to prisoners' private lives, as stated in paragraphs 33 and 34 above.

42. The Court notes that the applicant had four medical examinations inside the prison. On each occasion he was accompanied to the consulting room by a prison guard who then did not personally attend the examination but stayed in a separate vestibule behind a closed door (see paragraph 17). This arrangement was made in order to implement, on the one hand, the security requirement and provision of Article 115 § 7 of the Code of Execution of Criminal Sentences at the time and, on the other, the new guidelines on the application of this provision in practice issued on 8 December 2009 by the General Director of the Prison Service (see paragraph 17). From the facts of the case it appears that the medical examination of the applicant was carried out without the presence of any non-medical staff of the prison and privacy of medical treatment and doctor-patient confidentiality was respected for the applicant.

43. Accordingly, the Court considers that the remainder of the applicant's complaint under Article 8 of the Convention is also manifestly

ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases in so far as it relates to the complaint under Article 3 of the Convention;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 18 April 2019.

Renata Degener Deputy Registrar	Aleš Pejchal President