

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

FOURTH SECTION

CASE OF KARABIN v. POLAND

(Application no. 29254/06)

JUDGMENT

STRASBOURG

7 January 2014

This judgment is final but it may be subject to editorial revision.



In the case of Karabin v. Poland,

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

George Nicolaou, *President,*
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 5 December 2013,

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

PROCEDURE

1. The case originated in an application (no. 29254/06) 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 Klaudiusz Karabin ("the applicant"), on 5 July 2006.

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

3. The applicant alleged, in particular, a breach of Article 3 of the Convention in that during his detention in Mysłowice Remand Centre he had been detained in overcrowded cells and that the State had failed to secure to him adequate living conditions throughout his detention.

4. On 11 July 2011 the application was communicated to the Government.

5. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1978 and lives in Mysłowic

A. The period and the conditions of the applicant's detention

7. From 22 October 2002 to 21 February 2003 the applicant was detained on remand in Mysłowice Remand Centre. Subsequently, from

13 October 2003 to 26 November 2003, from 31 August 2005 to 7 March 2006 and from 21 April 2006 to 30 July 2007 he served his sentence of imprisonment there.

8. On 3 May 2006 the applicant received a disciplinary punishment of 14 days of solitary confinement. He was also subject to certain restrictions concerning accessibility of the prison canteen, religious service, outdoor activities, etc. Furthermore, he was limited in receiving packages until the end of that quarter.

9. The applicant submitted that throughout his detention in Mysłowice Remand Centre he had been held in overcrowded cells which did not meet the basic standards of hygiene. According to the official statistics published by the Prison Service (Służba Więzienna) at the relevant time the overcrowding in the facility ranged from 23 to 67%.

10. The Government did not submit any information as to the number of detainees held in Mysłowice Remand Centre.

B. Civil action concerning the conditions of the applicant's detention (*case no. I C 145/06*)

11. On 27 February 2006 the applicant brought a civil action in tort against Mysłowice Remand Centre, seeking compensation for the infringement of his personal rights on account of the inadequate conditions of his detention.

12. On 15 May 2006 the Mysłowice District Court (Sąd Rejonowy) acknowledged that, at times, the applicant had indeed been held in overcrowded conditions. It dismissed his claim, finding that this practice had not been unlawful, as the penitentiary judge had been duly informed about the situation. The District Court also held that the applicant had failed to demonstrate that he had suffered any harm as a result of the overcrowding. It further considered that the overall sanitary conditions and the quality of food in the defendant remand centre had been adequate.

13. On 2 June 2006 the applicant appealed against the above first instance judgment.

14. On 8 June 2006 the Mysłowice District Court decided to exempt the applicant from the court fee for appeal. The applicant was called to rectify the appeal by providing the court with a copy of the appeal, by informing the court about the scope of his appeal, by informing the court about the content of his appeal request and by paying the basic fee of 30 Polish zlotys [PLN] (approx. 7 euros [EUR] within 30 days. The court also informed the applicant that lack of rectification would result in rejection of the appeal.

15. On 22 June 2006 the same court rejected the applicant's appeal for failure to pay the basic court fee.

16. The applicant's interlocutory appeal against that decision was rejected on 28 July 2006 for failure to pay the applicable court fee. The applicant did not appeal against the latter decision.

C. Other actions concerning the conditions of the applicant's detention

17. On 26 March 2007 the applicant filed a complaint about the conditions of his detention to the Regional Inspectorate of the Prison Service (*Okręgowy Inspektorat Służby Więziennej*).

18. On 22 May 2007 the Inspectorate acknowledged that the applicant had been occasionally held in overcrowded cells and it apologised for this situation, but refused to remedy the situation, finding that the problem affected Poland's entire penitentiary system.

D. Proceedings for a temporary release from prison

19. On an unspecified date the applicant filed a request for a temporary release from prison (*przerwa*), arguing that the release was necessary in order to allow him to participate in person in two sets of court proceedings which he had instituted.

20. On 17 July 2006 the Katowice Regional Court (*Sąd Okręgowy*) refused to grant the release. The court considered that neither the reasons invoked by the applicant nor his family situation nor the state of his health warranted such release. The applicant, who attended the sitting, was also advised that he had a right to lodge, within seven days, an interlocutory appeal against that decision.

21. On 19 July 2006 the applicant requested to be served with a copy of the decision, which was served on him on 1 August 2006.

22. On 11 August 2006 the Katowice Regional Court refused to entertain the applicant's appeal, filed on 7 August 2006, finding that it had been lodged out of time.

23. On 6 September 2006 the Katowice Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's interlocutory appeal against the Regional Court's refusal. It held that the time-limit for filing an appeal against the Katowice Regional Court's decision, delivered on 17 July 2006, had expired seven days after the day of its delivery.

E. Proceedings for a release on probation (*warunkowe przedterminowe zwolnienie*)

24. On 17 July 2006 the applicant requested the Katowice Regional Court to release him on probation.

25. On 9 January 2007 the court granted the applicant's request. The court observed that the applicant's overall behaviour in detention had been correct, that he could be given a relatively positive socio-criminological forecast and that his resocialisation process could be continued at liberty.

26. Following an appeal by the prosecutor, on 7 February 2007 the Katowice Court of Appeal amended the Regional Court's decision and refused to release the applicant on probation. The Court of Appeal did not share the Regional Court's findings and considered that the applicant's socio-criminological forecast was a negative one. It stressed that the applicant had been an unrepentant, habitual offender who had often been subjected to disciplinary penalties while in detention. Lastly, the court observed that the applicant had not shown any interest in following an individualised resocialisation programme and that he had no specified plans for the future.

F. Proceedings concerning the aggregate sentence

27. On the applicant's request, filed on 20 March 2006, on 26 June 2006 the Katowice District Court issued an aggregate sentence composed of the applicant's previous convictions (*wyrok łączny*).

28. On 27 October 2006 the Katowice Regional Court upheld the first-instance court's judgment.

29. The applicant applied for a legal-aid lawyer for the purposes of a cassation appeal. Simultaneously, he drafted his own cassation appeal and lodged it with the Katowice Regional Court.

30. On 1 December 2006 the Katowice Regional Court appointed a legal-aid lawyer for the purposes of the cassation proceedings. By a letter of 5 January 2007 the lawyer informed the Katowice Regional Court that he had not found any grounds to lodge the cassation appeal. By a letter of 9 January 2007 the Katowice Regional Court informed the applicant of the legal-aid lawyer's refusal. Furthermore, the applicant was instructed that he could appoint a lawyer of his choice and that the time-limit of thirty days for lodging a cassation appeal by that lawyer would start to run on the date of service of that letter. The court's letter was served on the applicant on 11 January 2007. The applicant did not appoint a lawyer of his choice.

31. On 8 March 2007 the Katowice Regional Court refused to accept the applicant's cassation appeal as it had not been prepared by a lawyer as required by law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. A detailed description of the relevant domestic law and practice concerning general rules governing conditions of detention in Poland and domestic remedies available to detainees alleging that conditions of their

detention are inadequate are set out in the Court's pilot judgments given in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) on 22 October 2009 (see §§ 75–85 and §§ 45-88 respectively). More recent developments are described in the Court's decision given in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25–54).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained that, contrary to Article 3 of the Convention, the conditions of his detention in Mysłowice Remand Centre, namely, the overcrowding, amounted to inhuman and degrading treatment. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

34. The Government raised a preliminary objection, arguing that the applicant had not exhausted the domestic remedies available to him, in that he had not paid a basic court fee which resulted in the rejection of his appeal against the first instance judgment.

35 In view of the foregoing, the Government invited the Court to reject the application pursuant to Article 35 § 4 of the Convention due to the applicant's failure to exhaust available domestic remedies.

36. The applicant did not comment on this objection.

37. First, the Court observes that, in principle, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see *Orchowski v. Poland*, no. 17885/04, § 109, 22 October 2009).

38. The Court has already examined a similar objection based on exhaustion of domestic remedies raised by the Government in the above-mentioned case of *Łatak v. Poland* and considered their arguments not only in the context of that particular applicant but also in respect of other actual or potential applicants with similar complaints (see *Łatak v. Poland*, cited above, §§ 71-85).

The Court found that a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code could be considered an "effective remedy" for the purposes of Article 35 § 1 of the Convention as from 17 March 2010 (ibid. § 85).

39. In the present case the Court notes that the situation giving rise to the alleged violation of Article 3 ended on 30 July 2007 when the applicant was released from Mysłowice Remand Centre. Furthermore, he had lodged a civil action concerning the conditions of detention on 27 February 2006, the first-instance judgment was delivered on 15 May 2006 and the applicant's appeal was rejected on 22 June 2006. Finally, he lodged his complaint regarding poor prison conditions with the Court on 28 August 2006. Therefore, the Court considers that since the civil action under Articles 24 and 448 of the Civil Code was not, at the relevant time, an effective remedy and the applicant was not required to avail himself of the remedy in question, the fact that he did use it but made a procedural mistake on appeal is irrelevant for the purposes of exhaustion of domestic remedies.

40. Accordingly the Court dismisses the Government's preliminary objection as to the non-exhaustion of domestic remedies.

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

B. Merits

1. The parties' submissions

42. The applicant submitted that living conditions during his detention in Mysłowice Remand Centre had not been adequate. In particular, he complained that he had been detained in overcrowded cells with less than the statutory minimum cell space of 3 square meters per person.

43. The Government did not submit any observations concerning the merits of the case.

2. The Court's assessment

44. The Court observes that in the present case the compensation proceedings instituted by the applicant revealed that, at times, he had been afforded below 3 m^2 of personal space. The Court also refers to the official general statistics which confirm that at the relevant time the overcrowding rate in Mysłowice Remand Centre ranged from 23 to 67 % (see paragraph 10 above).

45. The Government did not make any submissions in this connection.

46. The Court has already found in its two pilot judgments in the cases of *Orchowski v. Poland* and *Norbert Sikorski v. Poland* that, for many years, namely from 2000 until at least mid-2008, the 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*, cited above, §§ 155–156).

47. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005).

In its previous cases where applicants had at their disposal less than 3 m² of personal space, the Court found that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 of the Convention (see, among many others, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50–51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47–49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005).

48. Having regard to its case-law on the subject and the facts of the present case, the Court notes that the applicant spent some two years in total in cells in which he was exposed to the conditions described above, which in the Court's view amounted to degrading treatment contrary to Article 3 of the Convention.

There has accordingly been a violation of Article 3 of the Convention on account of the conditions in which the applicant had been detained in Mysłowice Remand Centre.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

49. The applicant complained without invoking any Article of the Convention that, during his detention in solitary confinement from 19 May 2006 to 8 August 2006, he had been unfairly punished twice: by a prohibition on purchasing tobacco products and by a prohibition on purchasing food products. He further complained that he had been unfairly deprived of the opportunity to make telephone calls during his detention in solitary confinement and the remand centre's authorities had not allowed his common-law wife and his father to see him during their respective visits on 5 and 8 May 2006. He also argued that his correspondence of 6 September 2006 with a *pro bono* university legal counselling service had been censored. The applicant further complained that an unspecified written complaint, which he had filed with the penitentiary judge on 25 April 2006 and which had been dismissed on 29 August 2006, had not been dealt with within a "reasonable time".

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

50. The applicant also complained that he had not been allowed to appear in person at the hearing before the civil court in the proceedings, which he had instituted against Mysłowice Remand Centre, and that the proceedings had generally been conducted in an unfair manner. The applicant did not appeal against the first instance judgment.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

51. The applicant further complained that the proceedings which he had instituted with a view to receiving an aggregate sentence composed of his previous convictions (*wyrok łączny*) have been conducted in an unfair manner and that it had not been possible for him to "defend" himself in those proceedings or to have the proceedings re-opened once they were terminated. He also complained that the domestic court unfairly refused to grant him a temporary release from prison (*przerwa*).

These complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

52. Lastly, the applicant complained that he was unfairly refused the right to be released on probation.

The Court notes that the proceedings for the applicant's release on probation did not involve the determination of his criminal charge, it having already been determined by the applicant's final conviction. Therefore, the Court concludes that the criminal limb of Article 6 § 1 does not come into play (see *Enea v. Italy* [GC], no. 74912/01, § 97).

53. As regards the civil limb of Article 6, it should be recalled that although, in the past, the jurisprudence of the Court and of the Commission customarily held that complaints relating to the examination of requests for release from prison or to issues regarding the modalities of execution of penalty of imprisonment fall outside the scope of Article 6 § 1, there has recently been a certain change of its jurisprudence with regard to procedures instituted in the penitentiary context (see *Boulois v. Luxembourg* [GC], no. 37575/04, §§ 82–105, ECHR 2012).

54. The Court does not, however, deem it necessary to ascertain whether the proceedings instituted by the applicant with a view to being released on probation concerned a "dispute" over a "right", within the meaning of Article 6 § 1, and whether this putative right was "civil" in nature, for the following reasons.

55. Even assuming the applicability of Article 6 § 1 of the Convention to the proceedings complained of by the applicant, the Court notes that, in the present case, the applicant had his request for release examined by domestic courts at two levels of jurisdiction. The courts dismissed the applicant's request by well-reasoned and convincing decisions which do not disclose any appearance of arbitrariness or any unfairness on their part (see paragraphs 25 and 26 above). Having regard to the above

circumstances, the Court concludes that the applicant was not deprived of his "right to a fair (...) hearing", required by Article 6 § 1 of the Convention.

It follows that the complaint about the unfairness of the proceedings for release on probation is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed PLN 10,000 in respect of pecuniary and non-pecuniary damage.

58. The Government contested this claim.

59. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 2,400 under that head.

B. Costs and expenses

60. The applicant did not make any claim in respect of costs and expenses.

C. Default interest

61. 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 under Article 3 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the amount of EUR 2,400 (two thousand four hundred 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.

Done in English, and notified in writing on 7 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	George Nicolaou
Deputy Registrar	President