

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

FOURTH SECTION

CASE OF OJCZYK v. POLAND

(Application no. 66850/12)

JUDGMENT

STRASBOURG

17 May 2016

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



In the case of Ojczyk v. Poland,

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

Vincent A. De Gaetano, *President,*
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 26 April 2016,

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

PROCEDURE

1. The case originated in an application (no. 66850/12) 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 Michał Ojczyk ("the applicant"), on 3 October 2012.

2. The Polish Government ("the Government") were represented by their Agent, Mrs Justyna Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant alleged that the conditions of his detention amounted to inhuman and degrading treatment. On 4 October 2013 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee, submitting that the applicant's complaint was inadmissible on the grounds of non-exhaustion of domestic remedies. Having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Michał Ojczyk, is a Polish national who was born in 1977 and is currently in detention in Łódź Remand Centre in Poland.

A. Conditions of the applicant's detention

6. The parties' statements relating to the conditions of the applicant's detention from 17 July 2008 to 8 January 2010 are to a large extent contradictory.

7. The applicant submitted that he had been detained in Łódź Remand Centre from 17 August 2005 to 26 April 2010.

8. In their observations, the Government submitted that the applicant had been detained in the remand centre from 17 August 2005 to 17 July 2008 and that from 17 July 2008 to 13 August 2009 he had been detained in Łódź Prison. From 13 August 2009 to 8 January 2010 the applicant had been at liberty on a temporary release, while from 8 January to 26 April 2010 he had again been detained in Łódź Remand Centre.

1. Łódź Remand Centre

(a) Uncontested facts

9. From 17 August 2005 to 17 July 2008 and from 8 January to 26 April 2010 the applicant was detained in Łódź Remand Centre.

10. The applicant submitted that for seven months during his detention between 17 August 2005 and 26 April 2010 he had been held in overcrowded cells, where the space per person had been below the Polish statutory minimum of 3 sq. m.

11. Official statistics published by the Prison Service (*Służba Więzienna*) show that during the applicant's detention from 17 August 2005 to 7 August 2007, overcrowding at Łódź Remand Centre ranged from 20.1% to 35.3%. The figure shows the degree by which the number of prisoners exceeds the maximum allowed capacity of a particular detention facility, which, in turn, is calculated on the basis of the standard of 3 sq. m of cell space per prisoner provided for in Polish law. Overall capacity at Łódź Remand Centre was exceeded on average by 26.8% in that period.

12. From 8 August 2007 to 7 July 2008 the size of the applicant's cells varied between 4.76 and 11.69 sq. m and the occupancy rate fluctuated between two and six people.

13. Official statistics published by the Prison Service show that during the applicant's detention in Łódź Remand Centre from 8 January to 26 April 2010 there was no overcrowding.

14. The applicant was detained with a person infected with the hepatitis C virus for three weeks in August 2005.

15. From January to April 2007 the applicant was held in a cell with an HIV-positive person.

16. He alleged that the cells had been badly ventilated. The applicant made no other submissions as to the conditions of his detention in the subsequent period.

17. It appears that the applicant had one hot shower per week and one hour of outdoor exercise per day.

(b) Facts in dispute

(i) The Government's submissions

18. The Government submitted that the applicant had failed to inform the Court that from 17 July 2008 to 13 August 2009 he had been detained in Łódź Prison, not in Łódź Remand Centre, and that from 13 August 2009 to 8 January 2010 he had been at liberty.

(ii) The applicant's submissions

19. The applicant submitted that he had been detained in Łódź Remand Centre from 17 August 2005 to 26 April 2010. He argued that that was confirmed by the Łódź Court of Appeal (*Sąd Apelacyjny*) in the written grounds of its judgment of 17 September 2010 (see paragraph 24 below).

2. Łódź Prison

20. Official statistics published by the Prison Service show that during the applicant's second period of detention, overcrowding at Łódź Prison had ranged from highs of 18.5% in July 2008 and 19.4% in August 2008 to a low of 2.5% in June and August 2009. The overall capacity of Łódź Prison from 17 July 2008 to 13 August 2009 was exceeded on average by 10.4%.

21. The Government did not contest the fact that the applicant had been held in overcrowded cells in Łódź Prison.

B. Civil proceedings against the State Treasury

1. Uncontested facts

22. On 25 May 2008 the applicant brought a civil action for infringement of his personal rights on account of the inadequate living conditions in Łódź Remand Centre (between November 2004 and June 2011). The applicant argued that he had been detained in overcrowded cells with space that was below the minimum statutory standard. He claimed 290,000 Polish zlotys (PLN – 37,500 euros (EUR)) in compensation.

23. On 28 April 2010 the Łódź Regional Court (*Sąd Okręgowy*) dismissed the applicant's action. The court found that the applicant had been detained in overcrowded cells from 17 August 2005 to 26 April 2010. Nevertheless, the applicant had failed to prove that those conditions of detention had had any adverse effects on his health. The applicant appealed. The State Treasury, represented during the proceedings by a professional lawyer, did not submit any objections neither to the period nor to the indications of the prison facilities in which the applicant had been held.

24. On 17 September 2010 the Łódź Court of Appeal (*Sąd Apelacyjny*) amended the above judgment, granted the applicant PLN 6,000 (EUR 1,500) in compensation and dismissed the remainder of his appeal.

The court held that the award was adequate redress for the period in which the applicant had been detained in permanently overcrowded cells. The court found that the applicant had been held in overcrowded cells for most of the time of his detention. The domestic court exempted the applicant from paying the costs of the proceedings but ordered him to reimburse part of the legal fees paid by the respondent, a sum of PLN 1,000 (EUR 250).

25. In a letter dated 15 February 2011, the applicant's legal aid lawyer issued an opinion that there were no legal grounds to lodge a cassation appeal.

2. Facts in dispute

(a) The Government's submissions

26. The Government submitted that the applicant had been served with the opinion by his legal aid lawyer on 15 February 2011 and again by the Łódź Court of Appeal on 27 September 2012. The Government attached to their observations a postal slip confirming the February date for the posting of the opinion to the applicant at Łódź Remand Centre.

(b) The applicant's submissions

27. The applicant submitted that the legal opinion dated 15 February 2011 had not been served on him as he had been on a temporary release between 8 February 2011 and 22 February 2012. The applicant submitted a certificate to the Court issued by Łódź Remand Centre confirming the above dates.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. A detailed description of the relevant domestic law and practice concerning general rules governing the 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 *Orchowski v. Poland* (no. 17885/04, §§ 75-85, 22 October 2009), and *Norbert Sikorski v. Poland* (no. 17599/05 §§ 45-88, 22 October 2009). Subsequent developments are described in *Łatak v. Poland* (no. 52070/08 (dec), §§ 25-54, 12 October 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained that overcrowding and the conditions of his detention in Łódź Remand Centre, where he had been held from 17 August 2005 to 26 April 2010, amounted to inhuman and degrading treatment, contrary to Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Non-exhaustion of domestic remedies

30. The Government submitted that the applicant had indicated in his application to the Court that he had been held in overcrowded cells in Łódź Remand Centre from 17 August 2005 to 26 April 2010. However, it could be seen in documents available to the Government that from 17 July 2008 to 13 August 2009 the applicant had been detained in Łódź Prison. The Government argued that the applicant's civil action for infringement of his personal rights on account of inadequate living conditions had been brought only against Łódź Remand Centre and concerned the period from 17 August 2005 to 17 July 2008. Therefore, the applicant had failed to lodge a civil action against Łódź Prison on account of his conditions of detention there from 17 July 2008 to 13 August 2009 and in Łódź Remand Centre from 8 January to 26 April 2010.

31. The Government referred to a copy of a letter from the Central Board of the Prison Service of 19 November 2013, confirming that the applicant had been held in Łódź Remand Centre from 14 August 2005 to 17 July 2008 and from 8 January to 26 April 2010, and that he had been detained in Łódź Prison from 17 July 2008 to 13 August 2009.

32. In view of the foregoing, the Government invited the Court to reject the application for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

33. The applicant disagreed and maintained that the Łódź Court of Appeal had confirmed in the written grounds of its judgment of 17 September 2010 that he had been detained in Łódź Remand Centre from 17 August 2005 to 26 April 2010 and had awarded compensation to him.

34. The Court observes that during the civil proceedings the State Treasury, acting on behalf of the Łódź Remand Centre, was represented by a professional lawyer. Moreover, the applicant indicated the alleged period of his detention in that Centre as follows: from 17 August 2005 to 26 April 2010 (see paragraph 23 above). However, it has not been shown that during

the civil proceedings the defendant State Treasury contested the applicant's submissions as to the period of his detention in Łódź Remand Centre.

35. The Court is of the opinion that in so far as in his civil case the applicant submitted that he had been detained in Łódź Remand Centre from 17 August 2005 to 26 April 2010, the entire period of which the applicant subsequently complained in his application to the Court, and that in the domestic proceedings the State Treasury failed to raise any objections or evidence to contradict his submissions of fact, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

2. Six-month time limit

36. The Government stressed that the legal aid lawyer had informed the applicant about the refusal to lodge a cassation appeal in the letter of 15 February 2011, which had been posted on the same day to Łódź Remand Centre. The Government submitted a certificate of posting bearing a stamp with that date. Therefore the six-month period had started running on 15 February 2011 and not on 27 September 2012, as the applicant had indicated in his application form, while the applicant had lodged his application with the Court on 3 October 2012. The Government invited the Court to dismiss the application as lodged outwith the six-month time-limit, pursuant to Article 35 § 1 of the Convention.

37. The applicant submitted that he could not have been and, in fact, had not been served with his legal-aid lawyer's opinion, posted on 15 February 2011 to Łódź Remand Centre, as he had been released from prison on 8 February 2011. The applicant stated that he had subsequently been detained on 22 February 2012 and served with the opinion on 27 September 2012. The applicant submitted a certificate issued by Łódź Remand Centre on 28 March 2014 confirming his statements**.**

38. The Court notes that the applicant was released on 8 February 2011. It was neither argued nor shown that the legal opinion of 15 February 2011 addressed to the Łódź Remand Centre had been forwarded to the applicant. Given that the applicant lodged his application with the Court on 3 October 2012 and that he had been served with the opinion about a lack of grounds to lodge a cassation appeal on 27 September 2012, it could not therefore be said that the application was introduced out of time. The Government's objection should be dismissed.

3. Abuse of right of individual petition

39. The Government alleged that the applicant had intentionally concealed the fact that he had been on a temporary release for five months from 13 August 2009 to 8 January 2010 and detained in Łódź Prison from 17 July 2008 to 13 August 2009 because his civil claim had only been

brought against Łódź Remand Centre. Therefore the Government was of the opinion that the applicant had abused his right of individual application before the Court.

40. The Court reiterates that under this provision an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on statements of untruth (see *Akdivar and Others v. Turkey* [GC], 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Rehak v. Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005; *Kérétchachvili v. Georgia* (dec.), no. 5667/12, 2 May 2006; *Miroļubovs and Others v. Latvia*, no. 798/05, § 63, 15 September 2009; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006; *Predescu v. Romania*, no. 21447/03, §§ 25-26, 2 December 2008; and *Kowal v. Poland* (dec.), no. 2912/11, 18 September 2012).

41. Turning to the circumstances of the instant case, the Court notes that the applicant brought a civil action against the State Treasury on account of his detention in overcrowded cells between November 2004 and June 2011 (see paragraph 24 above). Secondly, the domestic courts confirmed that the applicant had been held in overcrowded cells from 17 August 2005 to 26 April 2010 in Łódź Remand Centre and the State Treasury, represented by a professional lawyer, did not contest that (see paragraph 23 above). Therefore, the applicant's submissions were based on factual statements established by domestic courts and not contested during civil proceedings.

42. The Court sees no exceptional circumstances which dispensed the Government from the obligation to raise their preliminary objection before the domestic courts (see, for similar reasoning, *Aydın v. Turkey*, 25 September 1997, § 60, *Reports* 1997-VI).

43. Accordingly, the Government's objection in this regard must also be dismissed.

44. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 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

(a) The applicant

45. The applicant maintained that the overcrowding and insanitary conditions which had been present during his long years of incarceration had had an adverse effect on his physical health and had caused him humiliation and suffering. The applicant submitted that the conditions of his detention had fallen short of standards compatible with Article 3 of the Convention. In particular, he complained that he had been detained in overcrowded cells. Moreover, the applicant had been held in cells with people with hepatitis C and HIV.

(b) The Government

46. The Government did not make any submissions as to the merits of the application.

2. The Court's assessment

47. A restatement of the general principles concerning the examination of conditions of detention under Article 3 may be found in the Court's judgment in *Orchowski* (cited above, §§ 119-131) and in *Norbert Sikorski* (also cited above, §§ 126-141).

48. The Court has held on many occasions that cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), because in such instances the respondent Government alone have access to information capable of corroborating or refuting those allegations. It follows that, after the Court has given notice of the applicant's complaint to the Government, the burden is on the latter to collect and produce relevant documents. A failure on their part to submit convincing evidence on material conditions of detention may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (*Olszewski v. Poland*, no. 21880/03, § 94, 2 April 2013).

49. The Court notes that according to the official statistics published by the Polish Prison Service the overall capacity of Łódź Remand Centre from 17 August 2005 to 7 August 2007 was exceeded on average by 26.8% and that the level of overcrowding ranged from 20.1% to 35.3% (see paragraph 11 above). At the same time, the statistics revealed no overcrowding in Łódź Remand Centre from 8 January to 26 April 2010 (see paragraph 13 above). As to the applicant's detention in Łódź Prison from 17 July 2008 to 13 August 2009, the Court notes that the official statistics of the Polish Prison Service show that Łódź Prison also suffered overcrowding

as its maximum capacity was exceeded by between 2.3% and 19.4% (see paragraph 20 above).

50. The Court therefore finds it established that during the applicant's detention from 17 August 2005 to 13 August 2009, Łódź Remand Centre and Łódź Prison faced a serious overcrowding problem. The Court also considers it justified to draw a negative inference from the Government's failure to provide the necessary information about the occupancy of the applicant's cells in the period from 17 August 2005 to 7 August 2007, from 17 July 2008 to 13 August 2009 and from 8 January to 26 April 2010, and to conclude that the applicant himself was affected by the general and systemic problem of overcrowding. Even though the actual living space available to the applicant in his cells during that period is unknown, the Court accepts that it was less than 3 sq. m per person. It is undisputed that in Łódź Remand Centre (from 8 August 2007 to 7 July 2008) the applicant was placed in cells with an individual area below 3 sq. m (see paras. 11 and 12 above). Nevertheless, the Government proved that from 13 August 2009 to 8 January 2010 the applicant was at liberty. Therefore, the Court concludes that the applicant was held in overcrowded cells from 17 August 2005 to 13 August 2009 (four years) in Łódź Prison and Łódź Remand Centre.

51. In *Orchowski* (cited above) the Court had regard to a judgment of 26 May 2008, in which the Constitutional Court found that a person could not be afforded humane treatment in a prison cell measuring less than 3 sq. m per person and that overcrowding of such a serious nature as had existed in Poland could in itself be qualified as inhuman and degrading treatment (ibid., §§ 85 and 123). The Court, mindful of the principle of subsidiarity, held that the Constitutional Court's above-mentioned ruling could constitute a basic criterion in the Court's assessment of whether overcrowding in Polish detention facilities breached the requirements of Article 3 of the Convention. In consequence, the Court further considered that all situations in which a detainee was deprived of the minimum of 3 sq. m of living space inside his or her cell would be regarded as creating a strong indication that Article 3 of the Convention had been violated (ibid.).

52. Lastly, it was undisputed that for three weeks in August 2005 the applicant had been detained with a person with hepatitis C and that from January to April 2007 he was held in a cell with an HIV-positive person (see paras. 14 and 15 above).

53. Having regard to the circumstances of the case and their cumulative effect on the applicant, the Court considers that the distress and hardship endured by him exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 (compare with *Orchowski*, cited above, § 134 and 135).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 12,250 euros (EUR) in respect of pecuniary and non-pecuniary damage.

57. The Government submitted that the sum of EUR 12,250 was groundless, excessive and unsubstantiated under the circumstances of the case, particularly taking into account the fact that the applicant had been granted compensation of EUR 1,500 (PLN 6,000) by the Łódź Court of Appeal (judgment of 17 September 2010).

58. As to the pecuniary damage allegedly sustained, although not specified by the applicant, the Court reiterates that, in any event, there must be a clear causal connection between the damage claimed to have been suffered by the applicant and the violation of the Convention (see *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, §§ 16-20, Series A no. 285-C; *Berktay v. Turkey*, no. 22493/93, § 215, 1 March 2001; and *Khudobin v. Russia*, no. 59696/00, § 142, ECHR 2006-XII).

59. The Court, having regard to its findings concerning the applicant's complaint under Article 3 of the Convention, considers that no causal link has been established between the damage alleged and the violation it has found (see *Sławomir Musiał v. Poland*, no. 28300/06, §§ 109-110, 20 January 2009, and *Kalashnikov v. Russia*, no. 47095/99, § 139, ECHR 2002-VI). It therefore dismisses the applicant's claim in respect of pecuniary damage.

60. On the other hand, the Court considers that the applicant suffered damage of a non-pecuniary nature as a result of his detention in conditions contrary to Article 3 of the Convention (see paragraphs 11, 12 and 20 above), which is not sufficiently redressed by the finding of a violation of his rights under the Convention. Making an assessment on an equitable basis, as required by Article 41 of the Convention, and taking into account the fact that the applicant was granted compensation of EUR 1,500 (PLN 6,000) by the Łódź Court of Appeal (judgment of 17 September 2010), the Court awards the applicant EUR 6,000 under this head.

B. Costs and expenses

61. The applicant also claimed EUR 250 for the costs and expenses incurred before the domestic courts.

62. The Government did not respond to this claim.

63. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 250 for costs and expenses in the domestic proceedings.

C. Default interest

64. 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 application admissible;

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 following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 250 (two hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 17 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Vincent A. De Gaetano
President