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

FIRST SECTION

DECISION

Application no. 458/19
Ionel Cristian CIORNEI
against Poland

The European Court of Human Rights (First Section), sitting on 10 January 2023 as a Committee composed of:

Lətif Hüseynov*, President*,
Krzysztof Wojtyczek,
Erik Wennerström*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 458/19) 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") on 3 December 2018 by a Romanian national, Mr Ionel Cristian Ciornei ("the applicant"), who was born in 1980 and lives in Fortitude, and, having been granted legal aid, was represented before the Court by Mr A. Grigoriu, a lawyer practising in Bucharest;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint that his force-feeding in August 2018 was in breach of Article 3 of the Convention.

A. Facts of the case as presented by the applicant

2. The applicant was arrested in August 2017 on the basis of an Interpol notice issued by the Qatar authorities. In July 2018 the applicant was placed

in a programme to prevent suicides in prison on account of an incident in which he had cut his wrist in protest against his continued detention.

3. On 24 July 2018 the applicant began a hunger strike by refusing to eat, but he continued drinking water. On 17 August 2018 the Warsaw District Court ordered the force-feeding of the applicant on the ground that he had refused to eat since the beginning of the hunger strike and that the situation posed a threat to his life and health, especially as he had also begun to refuse to drink water. The decision was upheld on appeal by the Warsaw Regional Court on 30 October 2018.

4. Force-feeding was initiated on 18 August 2018, when the applicant, after being transferred to a prison hospital, was immobilised by four guards and a tube was inserted through his nostril to his stomach, into which a nurse injected a liquid mixture. The procedure was repeated twice on the same day and two more times the next day. On 20 August the applicant ended the hunger strike and the force-feeding was not repeated. On 4 October 2018 he was released from detention.

B. The applicant's complaint to the Court

5. The applicant complained under Article 3 of the Convention that he had been force-fed while on hunger strike in prison, without any real medical necessity having been established by the domestic authorities. This had caused him substantial mental and physical suffering: he had had convulsions and bleeding, had vomited and had had difficulty swallowing water and speaking. The applicant maintained that he continued to suffer mentally, experiencing panic attacks, feelings of suffocation and nightmares.

C. Information submitted by the Government following communication of the case

6. Following the communication of the application to the Government on 16 December 2019, the Government informed the Court of the following developments at the domestic level.

7. On 5 September 2019 the applicant appointed a lawyer to bring a compensation claim on his behalf for "undoubtedly unjustified detention and its direct effects", given that his extradition to Qatar had not been allowed (as established in a ruling of the Warsaw Court of Appeal on 4 October 2018). On 3 October 2019 the lawyer brought a claim for 1,500,000 Polish zlotys (PLN) in respect of pecuniary damage and PLN 600,000 in respect of non-pecuniary damage under Article 552 § 4 of the Code of Criminal Procedure. The applicant argued that he had suffered beyond reasonable doubt as a result of his unjustified detention in a foreign country and his treatment by the authorities, who had subjected him to force-feeding. The applicant asserted that he had endured psychological trauma owing to the force-feeding, the

effects of which he still suffered in the form of night terrors and panic attacks combined with sensations of being suffocated.

8. On 2 March 2020 the Warsaw Regional Court gave a judgment awarding the applicant a total of approximately PLN 244,000 in respect of both pecuniary and non-pecuniary damage. The court considered that the applicant's detention should not have been ordered and had therefore been undoubtedly unjustified. It noted that the order to perform the force-feeding had been issued in accordance with the law, given the threat to his life and health.

9. Both the applicant and the State Treasury lodged appeals against the judgment. The applicant reiterated, among other arguments, that he had been subjected to unlawful force-feeding which had entailed physical and psychological abuse, thus justifying his claim for a higher award of compensation for non-pecuniary damage.

10. On 9 September 2021 the Warsaw Court of Appeal partly upheld the judgment; it overturned the award in respect of pecuniary damage and increased the award in respect of non-pecuniary damage to PLN 210,000 (approximately 46,000 euros (EUR)). The court considered that more weight should have been given to the fact that the applicant was a foreigner and therefore isolated from his family and friends, did not speak the language and could not interact with the prison administration and other detainees in the same way as Polish prisoners. The court then concluded as follows:

> "While the decision to force-feed the applicant was in itself correct and was taken by the competent authority in response to his hunger strike, the execution of the procedure as described by the applicant undoubtedly gave rise to a sense of humiliation, as well as the exertion of physical and psychological force, which the first-instance court also omitted to address. Thus, the Court of Appeal, taking into account the above circumstances, decides to increase the amount awarded ..."

THE COURT'S ASSESSMENT

11. The Government raised a number of preliminary objections, in particular concerning abuse of the right of individual application. They argued that the applicant had failed to inform the Court about the civil action for compensation, including after the Government had been notified of the application (see paragraphs 6-10 above). Moreover, he had not informed the Court about the judgments given in the case. The Government concluded that the applicant had intentionally withheld relevant information from the Court, which constituted an abuse of the right of application.

12. The applicant maintained that the proceedings for compensation had not been relevant to the application submitted to the Court and had not concerned allegations of torture.

13. The Court reiterates that, in accordance with Rule 47 § 6 of the Rules of Court, applicants must keep the Court informed of all circumstances relevant to the application. It further reiterates that an application may be

rejected as abusive under Article 35 § 3 of the Convention if, among other reasons, it was knowingly based on untrue facts (see *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X).

14. Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see, for example, *Al-Nashif v. Bulgaria*, no. 50963/99, § 89, 20 June 2002; *Kerechashvili v. Georgia* (dec.), no. 5667/02, ECHR 2006-V; and *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007). The same applies where new, significant developments occur during the proceedings before the Court and where – despite being expressly required to do so by Rule 47 § 6 – the applicant fails to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts (see *Hadrabová and Others v. the Czech Republic* (dec.), nos. 42165/02 and 466/03, 25 September 2007, and *Predescu v. Romania*, no. 21447/03, §§ 25-27, 2 December 2008).

15. In the present case, the Court notes that the applicant's compensation claim concerned "undoubtfully unjustified" detention of the applicant and included allegations of abusive force-feeding, which led to serious consequences for his mental and physical state, thus justifying his claim in respect of non-pecuniary damage. The second-instance court found that the force-feeding, although legal, had involved the humiliation of the applicant, as well as the exertion of physical and psychological force, which justified awarding a higher amount, EUR 46,000, in respect of non-pecuniary damage (see paragraph 10 above).

16. The Court therefore finds that in the circumstances of the present case, the applicant, represented by legal counsel in the domestic proceedings and in the proceedings before the Court, has not furnished a plausible explanation for the failure to inform it about the fact that he had applied for compensation ten months after lodging the case with the Court and two months before the Court notified the Government of the case. The applicant also failed to inform the Court of the first-instance judgment of 2 March 2020 granting him compensation, and the Court learned about the claim and the award from the Government's observations submitted on 3 September 2020. The applicant also failed to inform the Court of his own motion of the second-instance judgment given on 9 September 2021.

17. Having regard to the importance of the information at issue for the proper determination of the present case, the Court finds that the applicant's conduct was contrary to the purpose of the right of individual petition as provided for in Article 34 of the Convention.

18. It follows that the application must be rejected as a whole as an abuse of the right of application pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 February 2023.

Liv Tigerstedt Deputy Registrar	Lətif Hüseynov President