

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

FOURTH SECTION

DECISION

Application no. 16366/09
by Paweł DOBRZYŃSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 17 May 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the applicant's request to re-open his application and to restore it to the list,

Having deliberated in private on 17 May 2011,

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

THE FACTS

The applicant, Mr Paweł Dobrzyński, is a Polish national who was born in 1963 and is currently detained in Lubsko Remand Centre.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The period of the applicant's detention

From an unspecified date in March 2005 to 30 May 2007 the applicant was detained in turns in Zielona Góra Remand Centre and in Koziegłowy Prison. During this period, he was detained in Koziegłowy Prison:

- from 17 August 2005 to 14 October 2005,
- from 23 November 2005 to 21 December 2005,
- from 10 March 2006 to 29 March 2006,
- from 7 June 2006 to 23 June 2006 and
- from 3 April 2007 to 30 May 2007.

On 30 May 2007 he was transferred to Głogów Prison.

On 4 December 2008 he was transferred to Wołów Prison and subsequently, on 18 February 2009, to Krzywaniec Prison.

On 16 July 2009 the applicant was released.

On 12 April 2010 he was once again detained in Zielona Góra Remand Centre.

On 28 April 2010 he was transferred to Krzywaniec Prison.

On an unspecified date in January or February 2011 he was transferred to the external ward of Lubsko Remand Centre where he is currently detained.

2. Conditions of the applicant's detention

The applicant submitted that during his detention in Koziegłowy Prison, in Zielona Góra Remand Centre and in Głogów Prison, in the period from May 2005 to December 2008, he had been held in overcrowded cells.

3. The applicant's actions concerning the conditions of his detention

(a) Civil action against Koziegłowy Prison (case no. I C 1855/08)

On 10 September 2008 the applicant brought a civil action in tort against Koziegłowy Prison, seeking compensation for the infringement of his personal rights on account of the inadequate conditions of his detention.

On 27 November 2009 the Poznań Nowe Miasto District Court (*Sąd Rejonowy*) dismissed the action and ordered that the applicant bear the costs of the proceedings in the amount of PLN 1,217 (approx. EUR 300). The court confirmed that the cells in which the applicant had been held had been constantly overcrowded. In the light of the court's findings, the living space per prisoner, available to the applicant during the relevant time, had ranged from 2.03 m^2 to 2.31 m^2. The court also noted that the applicant had been held in open and half-open wards (*oddział półotwarty i otwarty)*. It considered that the applicant had not sufficiently demonstrated that his personal rights had been violated on account of his detention in overcrowded cells. Consequently, it refused to award him any compensation.

On 3 February 2010 the District Court rejected the applicant's appeal on the ground that it had been lodged out of time. On 29 March 2010 it also rejected on formal grounds the applicant's interlocutory appeal, filed against the rejection of his appeal. It appears that the applicant did not appeal against this latter decision.

(b) Civil action against Głogów Prison (case no. I C 110/09)

On 31 March 2009 the applicant brought a civil action against Głogów Prison, seeking compensation for the infringement of his personal rights on account of the inadequate conditions of his detention.

On 9 June 2009 the Głogów District Court exempted the applicant from court fees in excess of PLN 200 (approx. EUR 50). The applicant's appeal was dismissed by the same court on 13 July 2009.

On 21 September 2009 the Głogów District Court returned the particulars of claim (*zwrócił pozew*) on account of the applicant's failure to pay the reduced court fee.

It appears that the applicant did not appeal against this decision.

(c) Complaints to the Regional Inspectorate of the Prison Service

On 17 November 2008 the Regional Inspectorate of the Prison Service (*Okręgowy Inspektorat Służby Więziennej*) dismissed the applicant's complaint filed on 29 September 2008, on 30 September 2008, on 5 October 2008, on 13 October 2008 and on 25 October 2008. The Inspectorate acknowledged that detainees of Głogów Prison had at times been held in overcrowded cells, but observed that this phenomenon concerned the majority of Polish penitentiary facilities. It moreover remarked that the penitentiary judge had been at all times informed about the overcrowding. Consequently, the Inspectorate refused to remedy the situation complained of by the applicant.

(d) Civil action against Zielona Góra Remand Centre (case nos. I ACa 928/10 and I C 13/07)

On 15 January 2007 the applicant brought a civil action in tort against Zielona Góra Remand Centre seeking compensation for the infringement of his personal rights on account of the inadequate conditions of his detention in the period from March 2005 onwards.

On 7 September 2010 the Zielona Góra Regional Court (*Sąd Okręgowy*) dismissed his claim. The court confirmed that in the period from 2000 to 2007 the applicant had been many times held in overcrowded cells, but it was not able to confirm the exact periods during which this had occurred. The court observed that the defendant remand centre had duly informed the penitentiary judge each time it had placed detainees in overcrowded cells.

The court considered that the authorities of Zielona Góra Remand Centre had not been at fault for placing detainees in overcrowded cells, as this

phenomenon had been independent of their will. It held that the cell overcrowding had been inevitable, as the remand centre had not been in the position to refuse to detain new detainees in case where the maximum capacity of its cells had been reached. The court further observed that the overall conditions of the applicant's detention in Zielona Góra Remand Centre had been satisfactory and that the cells in which the applicant had been held had been adequately equipped and well-lit. Consequently, the court concluded that Zielona Góra Remand Centre had not infringed the applicant's personal rights and for this reason it refused to award him any compensation.

On 1 December 2010 the Poznań Court of Appeal dismissed the applicant's appeal, essentially restating the reasons invoked by the lower court.

4. Length of criminal proceedings against the applicant (case no. IV K-S 9/09)

On an unspecified date in April 2005 the applicant was charged with fraud.

On 7 May 2009 the applicant filed a complaint under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki* – "the 2004 Act"). He complained that the criminal proceedings pending before the Łobez District Court in case no. II K 359/07 had been excessively long. He also sought compensation.

On 26 June 2009 the Szczecin Regional Court rejected the applicant's complaint on formal grounds. The court observed that this was already the third complaint of that kind filed by the applicant in the course of the impugned proceedings and that the previous two complaints had been rejected on 30 September 2008 and 19 November 2008, respectively. The court noted that in its decisions to reject the applicant's previous two complaints, it had already indicated and explained to the applicant the nature of the shortcomings.

The court found that, as with the previous complaints, the applicant's third complaint under the 2004 Act had been insufficiently substantiated because the applicant had not stated the reasons why, in his view, the impugned proceedings had been excessively long. It found that a mere reference to the overall duration of the proceedings could not suffice to conclude that their length had been excessive. Therefore, the court rejected the applicant's complaint without first requesting him to remedy its shortcomings.

On 1 September 2010 the Łobez District Court acquitted the applicant. It appears that this judgment subsequently became final.

5. Length of civil proceedings against Zielona Góra Remand Centre (case nos. I AS 2/10, I AS 14/10)

On 29 December 2009 the applicant filed a complaint under the 2004 Act, complaining that the civil proceedings instituted by him against Zielona Góra Remand Centre had been excessively long. He also sought compensation.

On 15 January 2010 the Poznań Court of Appeal rejected his complaint on formal grounds. The court noted that on 17 December 2009 it had already rejected a prior, identical complaint filed by the applicant under the 2004 Act and that it had already explained to him the shortcomings of his complaint. It recalled that according to the established jurisprudence of the Supreme Court, a mere reference to the overall duration of the proceedings could not suffice to conclude that their length had been excessive. As the applicant's new complaint, filed on 29 December 2009, had been identical to the previous one, the court rejected it.

On 19 April 2010 the applicant filed another complaint under the 2004 Act, its contents being identical to those of his previous complaints. On 5 May 2010 the Poznań Court of Appeal rejected his complaint on formal grounds, restating the reasons invoked in its previous decisions given in respect of the applicant's earlier complaints.

B. Relevant domestic law and practice

1. Conditions of detention

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 the 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).

2. Length of proceedings

The relevant domestic law and practice concerning remedies for the excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are set out in the Court's decisions in the cases of *Charzyński v. Poland* (dec.), no. 15212/03, §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* (dec.), no. 11215/02, ECHR 2005-VIII, and its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

COMPLAINTS

1. The applicant alleges a breach of Article 3 of the Convention in that throughout his detention in Koziegłowy Prison, in Zielona Góra Remand Centre and in Głogów Prison, in the period from May 2005 to December 2008, he was detained in overcrowded cells and that the State failed to secure to him adequate living conditions throughout his entire detention. In particular, he complains that the penitentiary authorities did not secure to him the statutory minimum cell space of 3 m^2 per person, as required by the national law.

2. He moreover complains that the length of the criminal proceedings against him before the Łobez District Court and the length of the civil proceedings instituted by him against Zielona Góra Remand Centre had been excessive.

THE LAW

A. Restoration of the application to the list

The Court notes that the present application was declared inadmissible on 14 December 2010 by a Single Judge formation for non-exhaustion of domestic remedies. The applicant subsequently informed the Court that the civil proceedings instituted by him had, in fact, ended by the time the inadmissibility decision was taken. In support of his statements he provided the Court with a copy of the final judgment handed down in his civil case by the domestic courts. In these circumstances, the Court considers that the application should be re-opened and restored to the list.

B. Alleged violation of Article 3 of the Convention

The applicant complained under Article 3 alleging that the conditions of his detention had been inadequate. Article 3 provides:

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

The Court finds that it cannot, on the basis of the case file, determine the admissibility and the merits of the complaint. It is therefore necessary to give notice of this part of the application to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court.

C. Alleged violation of Article 6 of the Convention

The applicant complained under Article 6 § 1 of the Convention that the length of the criminal proceedings conducted against him before the Łobez District Court and the length of the civil proceedings instituted by him against Zielona Góra Remand Centre had been excessively long. Article 6 § 1 provides, in so far as relevant:

> In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Court finds that it cannot, on the basis of the case file, determine the admissibility and the merits of the complaint. It is therefore necessary to give notice of this part of the application to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court.

For these reasons, the Court unanimously

1. *Decides* to re-open the application and to restore it to the list;

2. *Decides* to adjourn the examination of the application.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President