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

FOURTH SECTION

# DECISION

Application no. 38211/13
Andrzej DYKBAN
against Poland

The European Court of Human Rights (Fourth Section), sitting on 2 June 2015 as a Committee composed of:

Päivi Hirvelä, *President,*
Faris Vehabović,
Yonko Grozev, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 9 May 2013,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

## PROCEDURE

The applicant, Mr Andrzej Dykban, is a Polish national, who was born in 1966 and is currently detained in Wronki Prison.

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

The applicant complained under Article 3 of the Convention about overcrowding and inadequate living conditions during his detention in Wronki Prison for approximately 5 years and 4 months.

## THE LAW

On 2 March 2015 the Court received the following declaration signed by the applicant:

"I, Andrzej Dykban, note that the Government of Poland are prepared to pay me, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 28,000 (twenty-eight thousand Polish zlotys) to cover any and all pecuniary and non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to me.

I further note that the payment constitutes redress for the systemic violation of Article 3 of the Convention on account of the conditions of my detention, in particular overcrowding, as identified by the Court in the pilot judgment given in the case of *Orchowski v. Poland* (no. 17885/04) on 22 October 2009 (see paragraphs 135 and 147 et seq.).

This sum will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. 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.

I accept the proposal and waive any further claims against Poland in respect of the facts giving rise to this application. I declare that this constitutes a final resolution of the case."

On 2 April 2015 the Court received the following declaration from the Government:

"I, Justyna Chrzanowska, Agent of the Government, declare that the Government of Poland offer to pay to Andrzej Dykban, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 28,000 (twenty-eight thousand Polish zlotys) to cover any and all pecuniary and non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant.

The payment is intended to provide the applicant with redress for the systemic violation of Article 3 of the Convention on account of the conditions of his detention, in particular overcrowding, as identified by the Court in the pilot judgment given in the case of *Orchowski v. Poland* (no. 17885/04) on 22 October 2009 (see paragraphs 135 and 147 et seq.).

This sum will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. 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 period plus three percentage points. The payment will constitute the final resolution of the case."

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

*Decides* to strike the application out of its list of cases in accordance with Article 39 of the Convention.

Done in English and notified in writing on 25 June 2015.

Fatoş Aracı
Deputy Registrar

Päivi Hirvelä
President