

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

FOURTH SECTION

DECISION

Application no. 15081/06
by Jacek GARBACZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 8 March 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 25 February 2006,

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

Having deliberated, decides as follows:

PROCEDURE

The application was lodged by Mr Jacek Garbacz, a Polish national who was born in 1970 and is currently detained in Grasse Remand Centre in France. He was represented before the Court by Ms K. Burska, a lawyer practising in Kobierzyce. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

On 30 August 2007 the President of the Fourth Section decided to communicate the applicant's complaint under Article 3 of the Convention, in so far as it concerned the conditions of his detention in Wrocław Remand Centre and Wrocław, Kłodzko and Wołów Prisons from 17 January 2002 until 8 December 2008.

THE LAW

On 14 December 2010 the Court received the following declaration from the Government:

> "I, Jakub Wołąsiewicz, Agent of the Government, declare that the Government of Poland offer to pay, to Mr Jacek Garbacz with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 20,000 (twenty thousand Polish zlotys), 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 by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. 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."

On 14 January 2011 the Court received the following declaration signed by the applicant's lawyer:

> "I, Krystyna Burska, note that the Government of Poland are prepared to pay to Mr Jacek Garbacz, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 20,000 (twenty thousand Polish zlotys), plus any tax that may be chargeable to the applicant. I further note that the payment constitutes 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 by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. 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.

> Having consulted my client, I would inform you that he accepts the proposal and waives any further claims against Poland in respect of the facts giving rise to this application. He declares that this constitutes a 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 (Article 37 § 1 *in fine* of the Convention). 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.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President