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

FOURTH SECTION

DECISION

PILOT-JUDGMENT PROCEDURE

AS TO THE ADMISSIBILITY OF

Application no. 37130/06
by Franciszek GONGOR
against Poland

The European Court of Human Rights (Fourth Section), sitting on 14 December 2010 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Ján Šikuta,
Mihai Poalelungi,
Nebojša Vučinić,
Vincent A. de Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 31 August 2006,

Having regard to the final pilot judgments in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) delivered on 22 October 2009, in particular to the finding under Article 46 of the Convention that overcrowding in Polish prisons and remand centres revealed a structural problem,

Having regard to the decisions to declare the applications *Łatak v. Poland* (no. 52070/08) and *Łomiński v. Poland* (no. 33502/09) inadmissible for non-exhaustion of domestic remedies,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Franciszek Gongor, is a Polish national who was born in 1959 and is currently serving a prison sentence in Wronki Prison. He was represented before the Court by Ms E. Draga-Buchta, a lawyer practising in Katowice.

A. Particular circumstances of the case

1. The period of the applicant's detention

The applicant has been detained continuously since 15 May 2003.

On 15 May 2003 he was committed to Gliwice Remand Centre, where he remained for 10 months. On 4 March 2004 he was transferred to Zabrze Remand Centre, where he was held until 17 January 2005. It appears that, subsequently, the applicant was transferred to Bytom and Łódź Prison Hospitals for medical treatment. From 29 June 2005 until 3 March 2006 the applicant was again held in Zabrze Remand Centre.On 3 March 2006 he was transferred to Wrocław Prison where he received dental treatment. On an unspecified date he was once more transferred to the Zabrze Remand Centre.

On an unspecified date, presumably in October 2009, the applicant was committed to Wronki Prison.

2. The conditions of the applicant's detention

The applicant provided a detailed description of the conditions of his detention only in respect of Zabrze Remand Centre. He submitted, however, that the overall conditions in Gliwice Remand Centre, Wrocław Prison and, more recently, Wronki Prison, were similar.

The applicant claimed that the cells in Zabrze Remand Centre were overcrowded and not ventilated. The opportunities for ensuring personal hygiene were scarce. There was a sink with cold water inside the cell. The toilet annex was insufficiently separated. As a result, there was a constant foul odour in the air. Even though a shower was allowed once a week, most detainees did not have a chance to wash. The bathroom was equipped with

8 shower cabins and it was used for 10 minutes by 20 inmates at a time. As a result, only those who were placed high in the prison hierarchy got to take a shower. To make things worse, there were frequent water cuts. The water pressure was often too low or there was either only cold or hot water in the shower.

There was no social or cultural programme for detainees. The entertainment room was small and equipped with a broken TV-set and a table to play tennis but no rackets. The detainees had no access to current newspapers and limited access to the law library.

The conditions described led to frustration and tension among the prisoners.

Furthermore, the applicant maintained that the quality of food offered to the detainees was sub-standard. The meals were always served cold and their main ingredient was canned meat, full of chemical preservatives. As a consequence, many detainees, including the applicant, suffered from digestive problems.

The applicant also submitted that the medical care provided within the penitentiary system was insufficient. It was very difficult to obtain an appointment with a doctor. In this respect the applicant submitted that he had had to wait 9 months before he could be examined by an in-house ophthalmologist, one year before he could be admitted to the Wroclaw Prison Hospital, and 7 months before he could be examined by a doctor in the Łódź Prison Hospital. Moreover, a general practitioner was present in the applicant's ward only once a week.

In his letter of 5 October 2009 the applicant informed the Registry that he had been committed to Wronki Prison. He made a general statement that living conditions and medical care in that establishment were bad. He claimed that his cell was overcrowded, dirty and infested with bugs.

The Government essentially acknowledged that the applicant had been placed in overcrowded cells in Wrocław Prison and in Zabrze and Gliwice Remand Centres. They submitted, however, that in Wronki Prison the applicant was detained in a cell in which the statutory minimum standard of 3 m² per person was respected.

3. Complaints to the penitentiary authorities

The applicant lodged numerous complaints with the penitentiary authorities about the medical care provided within the penitentiary system and about the overall conditions in the Zabrze Remand Centre.

In a letter of 10 April 2006 the Head of the Zabrze Remand Centre's Registry stated that during the first period of the applicant's detention, from 4 March 2004 to 17 January 2005, the population rate was 116%, whereas during the second period from 29 June 2005 to 3 March 2006 it peaked at 130%. He added that the current population level had reached 142.6 % and was rising.

On 11 April 2006 the Deputy Head of the Zabrze Remand Centre's Quarter Ward stated in his memorandum that the meals served to the detainees were of sufficient nutritional value and quality. Their temperature was measured at the time of distribution and was sustained thanks to the thermos containers used. The order of the cells in which the food was distributed was changed everyday.

On 13 April 2006 the Head of the Zabrze Remand Centre's Penitentiary Ward submitted that at least twice a week various socio-cultural activities were proposed to the detainees. The entertainment room was equipped with a TV-set, tennis table, and board games although the capacity of the room was limited to 10-15 persons. Consequently, the 150 detainees held in the ward could have access to it only on a rotation basis. Moreover, various national radio programmes were broadcast 12 hours per day *via* the prison radio station. The administration bought four issues of a daily newspaper to be distributed among all the wards.

In a memorandum of 14 April 2006 the Zabrze Remand Centre's doctor stated that the applicant received systematic medical care. He was often examined by a general practitioner, as well as by specialists in urology, dermatology, neurology, ophthalmology, and psychiatry.

On 11 August 2006 the Wrocław Regional Court *(Sąd Okręgowy)*, acting as a penitentiary court, examined the applicant's complaint about the conditions in the Zabrze Remand Centre, in particular overcrowding, lack of socio-cultural activities, poor diet and overall conditions of detention. The court acknowledged the problem of overcrowding resulting from the rapid rise in the facility's population level. It was pointed out that the centre's administration had complied with the applicable domestic law and had made efforts to deal with the problem, for example by turning an entertainment room into cells. The court further noted that the cells were properly equipped and that the detainees were supplied with necessary hygiene products. The applicant's cell was ventilated and cleaned regularly. The meals served were of sufficient nutritional value and quality. The detainees had access to the library. They could subscribe to daily newspapers or magazines. Finally, they could listen to the radio. The court held that the applicant's complaint was manifestly ill-founded.

The applicant did not lodge similar complaints with the penitentiary authorities in connection with the more recent period of his detention and with the living conditions in the other prisons and remand centres.

4. Civil action for compensation

The applicant filed a civil action in tort to seek compensation for the infringement of his personal rights on account of the living conditions in Zabrze Remand Centre.

On 10 August 2003 the Zabrze District Court dismissed the applicant's civil claim. The applicant did not appeal.

Moreover, the applicant did not bring a similar civil action in relation to the remaining period of his detention.

B. Relevant domestic law and practice

(See *Siedlecki and 9 other applications v. Poland*, no. 5246/03).

COMPLAINTS

(See *Siedlecki and 9 other applications v. Poland*, no. 5246/03).

THE LAW

(See *Siedlecki and 9 other applications v. Poland*, no. 5246/03).

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President