

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

FOURTH SECTION

DECISION

Application no. 7220/12
Krzysztof GRABARCZYK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 4 March 2014 as a Committee composed of:

Päivi Hirvelä, President,
Nona Tsotsoria,
Faris Vehabović, judges,

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 January 2012,

Having regard to the declaration submitted by the respondent Government on 13 December 2013 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Krzysztof Grabarczyk, is a Polish national, who was born in 1974 and is currently detained in Łódź Prison.

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

The part of the application concerning conditions of detention had been communicated to the Government.

COMPLAINT

The applicant complained under Article 3 of the Convention that while in Łowicz Prison he had been detained in overcrowded cells together with cells for smokers which also had been overcrowded.

THE LAW

The applicant complained about conditions of his detention. He relied on Article 3 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 10 December 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "... The Government hereby wish to express – by way of the unilateral declaration – their acknowledgement that the conditions of the applicant's detention violated Article 3 of the Convention.
>
> Consequently, the Government declare that they offer to pay the applicant the amount of PLN 12,500 (twelve thousand and five hundred Polish zlotys), which they consider to be reasonable in the light of the Court's case-law. The sum referred to above is to cover any pecuniary and non-pecuniary damage as well as costs and expenses of proceedings before the Court 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.)
>
> The above-mentioned sum will be payable within three months from the date of notification of the decision taken 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 Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention ..."

By a letter of 7 January 2014, the applicant indicated that that the sum mentioned in the Government's declaration was unacceptably low.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03).

The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the conditions of detention (see, for example, *Orchowski v. Poland,* no. 17885/04*; Norbert Sikorski v. Poland,* no. 17599/05 and *Łatak v. Poland* (dec.*),* no. 52070/08).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein*;*

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President