

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

FOURTH SECTION

DECISION

Application no. 60599/11
Mirosław GUGAŁA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 5 July 2012 as a Committee composed of:

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 1 September 2011,

Having regard to the declaration submitted by the respondent Government on 16 April 2012 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 Mirosław Gugała, is a Polish national who was born in 1965 and is currently detained in Radom Remand Centre. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

The applicant complained under Article 3 of the Convention about conditions of his detention in Włocławek Prison, in particular about overcrowding.

He further invoked Articles 6 and 13 of the Convention and in substance complained about the length of civil proceedings against the State Treasury and Włocławek Prison which commenced on 17 September 2009 and ended on 26 January 2011.

THE LAW

A. Conditions of detention

The applicant complained about the conditions of his detention. He relied on Article 3 of the Convention which provides as follows:

Article 3

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

By letter dated 16 April 2012 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 of the systemic violation of Article 3 of the Convention on account of the conditions of the applicant's 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.)

Consequently the Government are prepared to pay to the applicant the sum of PLN 24,100 (twenty four thousand one hundred Polish zlotys) which they consider to be reasonable in the light of the Court's case law. The sum referred to above includes PLN 19,000 with respect to all pecuniary and non-pecuniary damage and costs and expenses in the proceedings before the court as well as PLN 5,100 with respect of the costs and expenses of the domestic proceedings which the applicant owes to the State Treasury on account of the judgments of the Włocławek Regional Court of 19 May 2010 (case no. IC 172/09) and the Gdańsk Court of Appeal of 26 January 2011 (case no. I ACa 1305/10), delivered in the proceedings in which the applicant sought redress for a violation of his rights guaranteed under the Convention (PLN 2,400 for the costs of the first instance proceedings and PLN 2,700 for the costs of the second instance proceedings). This 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 for the Protection of 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.

> 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 (...) "

In a letter of 11 May 2012 the applicant expressed the view 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 violation of Article 3 on account of overcrowding and inadequate detention conditions (see, for example, the pilot judgments in the cases of *Orchowski v. Poland*, no. 17885/04, ECHR 2009-... (extracts) and *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009 and the leading follow-up decision in the case of *Łatak v. Poland* (dec.), no. 52070/08, 12 October 2010).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, 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 this part of the application (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

B. Complaint under Article 6 § 1 of the Convention

The applicant further complained in substance under Article 6 § 1 of the Convention about the excessive length of the civil proceedings against the State Treasury and Włocławek Prison. The Court notes that, as it appears, the applicant failed to lodge a complaint under the 2004 Act about the length of the impugned proceedings. In any event, the proceedings lasted approximately one year and four months at two levels of jurisdiction and such length cannot be deemed excessive. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the complaint 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 so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

Päivi Hirvelä
President