

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. 31888/06
by Ryszard JUREK
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 24 July 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 applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ryszard Jurek, is a Polish national who was born in 1958 and lives in Rupniów, Poland. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The applicant's arrest and detention

On 20 June 2005 at 9.25 p.m. the applicant was arrested by the police in his hometown, Dobczyce. He was taken to Myślenice and from there, upon the order of a prosecutor, to a jail (*izba zatrzymań*) in Cracow.

On 22 June 2005 at 5 p.m. the prosecutor lodged with the court his application to remand the applicant in custody for three months. The applicant was placed under the authority of a court (*przekazany do dyspozycji sądu*).

On 23 June 2005 at about 2 p.m. the applicant was brought before a judge of the Myślenice District Court (*Sąd Rejonowy*) who decided to remand him in custody.

Subsequently, the applicant's pre-trial detention was extended by numerous court decisions.

On 9 June 2006 the applicant filed with the Cracow Regional Court a claim for compensation for unlawful detention between 20 and 23 June 2005.

On 1 December 2006 the Cracow Regional Court dismissed the applicant's claim.

The applicant did not appeal against that judgment.

2. Criminal proceedings against the applicant

On 22 June 2005 the applicant was charged with the rape of a certain M.R., a minor daughter of his partner.

On 19 October 2005 he was, in addition, charged with sexual abuse of M.R. and her minor sister S.R. and with psychological abuse of both M.R. and S.R.

On 30 September 2005 the Myślenice District Court assigned a lawyer under the legal-aid scheme to represent the applicant in the criminal proceedings. On 31 October 2005 the applicant was indicted on charges of sexual abuse and rape of M.R., sexual abuse of S.R. and psychological abuse of both M.R. and S.R.

On 15 December 2005 the Myślenice District Court convicted him as charged and sentenced him to four and a half years' imprisonment.

The applicant's lawyer appealed, arguing that the court had erred in its assessment of the facts.

On 8 June 2006 the Cracow Regional Court upheld the first-instance judgment in the relevant part.

The applicant did not lodge a cassation appeal. However, he asked the Prosecutor General (*Prokurator Generalny*) to do so on his behalf.

By a letter of 27 December 2006 the Prosecutor General informed the applicant that he had not found any grounds to lodge a cassation appeal in the applicant's case.

3. Period of the applicant's detention

From 20 June 2005 until 19 December 2009 the applicant was in continuous detention. On the latter date he was released.

4. Conditions of the applicant's detention and monitoring of his correspondence

From 23 June 2005 until 24 August 2006 the applicant was detained in Wadowice Prison.

The applicant submitted that he had been held in dark and overcrowded cells without any access to hot water. On one occasion he shared a six square-metre cell with three or four other detainees.

The Government did not provide details as to the size and occupancy rate in the applicant's cells during his initial detention. They submitted, however, that from 12 June until 24 August 2006 the applicant had been placed in cells in which the space per prisoner ranged from 2.26 to 3 m². It was also noted that the sanitary conditions in the applicant's cells had occasionally been below the standard required by the sanitary inspectorate. Lastly, the Government submitted that the applicant had been afforded adequate medical care in Wadowice Prison.

From 24 August 2006 until 30 November 2007 the applicant was detained in Nowy Sącz Prison.

He submitted that he had been held in an overcrowded cell without any access to hot water. He shared a 27 m² cell with eleven inmates. The medical care provided to prisoners was inadequate. In this connection the applicant submitted that he suffered from ulcers and that his eye sight had deteriorated in prison because of the overall poor conditions and inadequate medical care and the fact that he was not taking the medicine which he had been prescribed when he was at liberty.

The applicant also submitted that the prison management had confiscated his tape player for no reason. As a result he could not continue his audio English lessons.

The Government submitted that in Nowy Sącz Prison the applicant had been placed in cells in which the space per prisoner for the most part ranged from 2.2 to 2.8 m². For a total of three weeks the statutory minimum standard of 3 m² had been respected in the applicant's cells. Moreover, the Government submitted that during his stay in Nowy Sącz the applicant had been examined by doctors on over thirty occasions, which proved that the medical care provided in prison had been sufficient.

On 30 November 2007 the applicant was committed to Tarnów Mościce Prison.

In the applicant's submission, the living and sanitary conditions in the prison were inadequate. The cells were overcrowded and dirty.

From 29 February until 12 March 2008 the applicant was detained in cell no. 6 in wing I. The cell in question was designed for five prisoners but instead was shared by ten prisoners. There was not enough room at the table and many inmates had their meals standing up or sitting on a stool. In the applicant's wing there were no toilets inside the cells. Instead, there were four toilet cubicles and four urinals accessible from the corridor. They were shared by over 160 prisoners.

The applicant also submitted that the medical care in Tarnów Mościce Prison was insufficient. There was a practice of mixing healthy and ill prisoners and medical treatment offered in the event of sickness was inadequate. Many prisoners suffered from sepsis. The applicant submitted that his 35-year old cellmate had died on 11 March 2008 of that disease and that afterwards, the applicant and his fellow inmates had been administered preventive drugs.

After numerous complaints to the prison management, in March 2008 the applicant was transferred to wing IV.

From 27 May until 23 June 2008 the applicant was detained in Nowy Wiśnicz Prison.

The applicant submitted that his cell in Nowy Wiśnicz Prison had been occupied by five prisoners, including the applicant, even though its designated maximum capacity was for three persons.

From 23 June until 22 July 2008 the applicant was detained in Cracow Remand Centre.

The applicant submitted that he had initially been committed to cell no. 315, which was a single cell. He shared it with another inmate. On 30 June 2005 he was placed in cell no. 343 which was designed for two people. The applicant shared it with four other prisoners.

From 22 July 2008 until 19 December 2009 the applicant was detained in the therapeutic wing of Rzeszów Prison.

The applicant submitted that in Rzeszów Prison he had been assigned to cell no. 239, which he shared with three other prisoners.

5. The applicant's actions concerning the conditions of his detention

The applicant lodged numerous complaints with State authorities about various aspects of his detention. They were to no avail.

By a letter of 31 March 2006 the Director of the Cracow Regional Inspectorate of the Prison Service (*Okręgowy Inspektorat Służby Więziennej*) informed the applicant that his allegations that the staff of the Wadowice Prison had monitored the contents of the letters by his family, the Ombudsman and State authorities, had been found to be without merit. It was noted that the letters in question had admittedly been opened and monitored, but only by the authorities responsible for overseeing the applicant's pre-trial detention. It was emphasised that such a procedure was in compliance with the domestic law and was necessary to ensure the proper conduct of the criminal proceedings pending against the applicant.

By a letter of 26 July 2007 the Director of the Cracow Regional Inspectorate of the Prison Service informed the applicant that his complaint about the allegedly inadequate medical care in Nowy Sącz Prison had been considered ill-founded.

The applicant also complained to the management of Tarnów Mościce Prison. He also wrote to the Minister of Health and Sanitary Inspectorate to complain of the overall poor sanitary conditions in prison. It appears that on an unspecified date a Sanitary Inspector fined Tarnów Mościce Prison and ordered the renovation of the toilets.

The applicant did not bring a civil action in tort to seek compensation for the alleged infringement of his personal rights.

COMPLAINTS

The applicant complained under Article 3 of the Convention that he had been treated in a degrading manner by police officers who had interrogated him in 2005.

He also complained under Articles 3 and 8 of the Convention of inadequate conditions in Wadowice, Nowy Sącz and Tarnów Mościce Prisons and Rzeszów Prisons and in Cracow Remand Centre.

Furthermore, the applicant complained under Article 5 §§ 2, 3 and 5 of the Convention that he had not been informed about the charge against him on arrest, that he had been detained for 66 hours before being brought before a judge, and that the authorities had not awarded him any compensation for his unlawful detention between 20 and 23 June 2005.

The applicant also complained under Article 6 §§ 1 and 3 of the Convention about the unfairness of the proceedings and numerous procedural shortcomings on the part of the first-instance court.

Finally, the applicant complained under Article 8 of the Convention of censorship and withholding of letters sent to him by his family, the Ombudsman and domestic courts.

B. Relevant domestic law and practice

A detailed description of the relevant domestic law and practice concerning general rules governing the conditions of detention in Poland and domestic remedies available to detainees alleging that conditions of their detention were inadequate are set out in the Court's pilot judgments given in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) on 22 October 2009 (see §§ 75-85 and §§ 45-88 respectively). More recent developments are described in the Court's decision in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

THE LAW

I. THE ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF OVERCROWDING AND INADEQUATE CONDITIONS OF THE APPLICANT'S DETENTION

A. The Government's objection on exhaustion of domestic remedies

Article 35 § 1 of the Convention reads, in so far as relevant, as follows:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

The Government submitted that as of 26 November 2009 the applicant had been detained in a cell in which the statutory minimum space of 3 m^2 per person had been respected and that on 19 December 2009 he had been released from prison. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed and the applicant should bring a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code in order to seek compensation for the past violation.

In that regard they relied, in particular, on the *Orchowski* judgment, reiterating that the Court, having regard to the principle of subsidiarity, had held that in cases where the alleged violation of Article 3 no longer continued and could not be eliminated with retrospective effect, the only means of redress for the applicant was pecuniary compensation.

In view of the foregoing, the Government invited the Court to reject the application for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

B. The applicant's position

The applicant in general disagreed with the above arguments and maintained that the remedy suggested by the Government could not be considered "effective" for the purposes of Article 35 § 1 of the Convention.

C. The Court's conclusion

The Court has already examined a similar objection based on exhaustion of domestic remedies raised by the Government in the above-mentioned cases of *Łatak v. Poland* and *Łomiński v. Poland* and considered their arguments not only in the context of those two particular applicants but also in respect of other actual or potential applicants with similar complaints. (see *Łatak v. Poland* no. 52070/08 and *Łomiński v. Poland* no. 33502/09 (dec.), 12 October 2010, §§ 71-85 and §§ 62-76 respectively).

In so doing, the Court had regard to the fact that on the date of the adoption of its decisions there were 271 cases pending before it where the applicants had raised complaints similar in substance, alleging a violation of Article 3 in that at various times and for various periods they had been adversely affected by the same structural problem, having been detained in overcrowded, insanitary cells (ibid. § 84 and § 75 respectively).

Having found that a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code could be considered an "effective remedy" for the purposes of Article 35 § 1 of the Convention as from 17 March 2010 and having regard to the 3-year limitation period for lodging such an action, the Court held that essentially in all cases in which in June 2008 the alleged violation had either been remedied by placing the applicant in Convention-compliant conditions or had ended *ipso facto* because the applicant had been released, the applicants concerned should bring a civil action for the infringement of personal rights and compensation (ibid. § 85 and § 76 respectively).

In the present case the situation giving rise to the alleged violation of Article 3 ended on 19 December 2009 when the applicant was released. That being so, and having regard to the fact that the applicant still has adequate time to prepare and lodge with the Polish civil courts an action under Article 24 taken in conjunction with Article 448 of the Civil Code, he should, before having his Convention claim examined by the Court, be required to seek redress at domestic level.

In any event, as from 6 December 2009, the date on which Article 110 § 2 (f) of the Code of Execution of Criminal Sentences entered into force, a detainee placed in conditions where the area per person was less than the statutory minimum may lodge a complaint with a domestic court and contest a decision of the prison administration to reduce his cell space (see *Łatak* and *Łomiński* cited above, §§ 42-43 and 86-87 and §§ 34-35 and 77-78 respectively).

It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

II. REMAINING COMPLAINTS

A. Complaint under Article 3 of the Convention about the alleged ill-treatment by police

The applicant complained under Article 3 of the Convention that he had been treated in a degrading manner by police officers when he was interrogated in 2005. He did not provide any details about the alleged events or about any proceedings brought by him to complain about his ill-treatment.

It follows that this complaint must be rejected under Article 35 §§ 1, 3 and 4 of the Convention, primarily for non-exhaustion of domestic remedies and, additionally, as unsubstantiated.

B. Complaints under Article 5 §§ 1, 2, 3 and 5 of the Convention

The applicant also complained: under Article 5 § 1 of the Convention that his arrest and initial detention between 20 and 23 June 2005 had been unlawful; under Article 5 § 2 that he had not been informed about the charge against him on arrest; under Article 5 § 3 that he had been detained for 66 hours before being brought before a judge; and under Article 5 § 5 that the authorities had not awarded him any compensation for his unlawful detention.

Firstly, it must be noted that the events giving rise to the above complaints took place between 20 and 23 June 2005, which is thirteen months before the applicant lodged his application with the Court. Secondly, the Court observes that the applicant's complaints go to Article 5 §§ 1, 2 and 3 of the Convention, whereas the action for compensation for unjustified detention under Article 552 § 4 of the Code of Criminal Procedure, which was brought by the applicant in 2006, concerns Article 5 § 5 alone (see *Nowicka v. Poland* (dec.). no. 30218/96, 16 October 2001). Moreover, it is not a remedy whereby an arrested

or detained person can challenge the legal or factual grounds for arrest or detention (see *G.K. v. Poland* (dec.), no. 38816/97, 12 November 2002).

Consequently, the applicant's complaints under Article 5 §§ 1, 2 and 3 of the Convention have been introduced out of time.

As to the applicant's complaint under Article 5 § 5 of the Convention the Court notes that the applicant did not appeal against the decision of the Cracow Regional Court of 1 December 2006.

It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Complaints under Article 6 §§ 1 and 3 of the Convention

Moreover the applicant complained about the outcome and unfairness of the criminal proceedings, and numerous errors committed by the first-instance court.

Even assuming that a cassation appeal had no prospects of success, it must be noted that the applicant, who was assisted and represented by a lawyer, lodged his appeal on the sole ground that the first-instance court had erred in its assessment of the facts. He did not allege that procedural shortcomings had affected the fairness of his trial. Furthermore, the Court observes that the complaints are clearly of a fourth-instance nature and the material submitted to the Court does not disclose any arbitrariness on the part of the domestic courts or any interference with the applicant's Convention rights.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

D. Complaint under Article 8 of the Convention

Lastly, the applicant complained under Article 8 of the Convention about censorship and the withholding of letters sent from his family, the Ombudsman and domestic courts.

The Court notes that, as far as the complaints are related to the correspondence with the applicant's family, they are inadmissible as manifestly ill-founded. The interference complained of was "in accordance with the law", pursued one or more of the legitimate aims referred to in paragraph 2 of that Article and was "necessary in a democratic society" in order to achieve them. Moreover, the complaints about the interference with the applicant's correspondence with the Ombudsman and domestic courts are unsubstantiated given that the applicant has failed to provide any *prima facie* evidence to that effect. Lastly, the Court notes that the applicant did not allege that his correspondence with the Court had

been monitored and, in fact, none of the letters sent by the applicant to the Court bears traces of such monitoring.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı	Nicolas Bratza
Deputy Registrar	President