

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

FOURTH SECTION

DECISION

Application no. 33187/05
by Zbigniew KARMAZYN
against Poland

The European Court of Human Rights (Fourth Section), sitting on 24 May 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 1 September 2005,

Having regard to the declaration submitted by the respondent Government on 15 February 2011 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 Zbigniew Karmazyn, is a Polish national who was born in 1959 and lives in Almere. The Polish Government ("the Government") were represented by their Agent, Mr Jakub 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 conditions of the applicant's detention in Strzelin Prison

The applicant was detained in Strzelin Prison from 3 April to 27 October 2003 and from 21 July 2004 to 13 October 2007.

The applicant submitted that all the cells, to which he was assigned, were overcrowded to the point that he had less than the statutory minimum standard of 3 m² of personal space.

The applicant claims that there was no place for him to sleep, to have his meals or to store food, which had to be kept in plastic bags. There were 6 beds in the cell and two mattresses spread on the floor. There was no private space. The cell was not properly ventilated.

On an unspecified date, while imprisoned, the applicant broke his leg. He had to wear a plaster cast, but he was not transported to a medical ward and had to sleep on the top level of a bunk-bed, without a ladder or any other facility to climb up to or get down from the bed. In order to get to the prison yard for a one-hour walk he had to go down the stairs from the fifth floor.

2. Civil proceedings for compensation against the State Treasury

On 10 January 2006 the applicant lodged a civil action in tort, seeking 100,000 Polish zlotys (PLN) in compensation for the suffering which he claimed to have experienced in Strzelin Prison due to overcrowding and poor sanitary conditions.

On 12 December 2007 the Zielona Góra Regional Court (*Sąd Okręgowy*) dismissed the applicant's claim.

On 29 April 2008 the Poznań Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's appeal.

3. Censorship of the applicant's correspondence

On 3 August 2005 the applicant received a letter from his lawyer, concerning the civil proceedings for compensation against the State Treasury. It appears that the envelope had been opened because the letter bore the following stamp: "Strzelin Prison, 2005-08-03" *(Zakład Karny w Strzelinie, dnia 2005-08-03).*

B. Relevant domestic law and practice

1. Conditions of detention

A detailed description of the relevant domestic law and practice concerning general rules governing conditions of detention in Poland and

domestic remedies available to detainees alleging that their conditions of detention are 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 decision given by the Court in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

2. Censorship of prisoners' correspondence

The relevant domestic law and practice concerning the censorship of prisoners' correspondence are set out in the Court's judgments in the cases of *Mocny v. Poland* (dec.), no. 47672/09, 30 November 2010 and *Kliza v. Poland,* no. 8363/04, §§ 29-34, 6 September 2007.

COMPLAINTS

1. The applicant complained in substance under Article 3 of the Convention about his conditions of detention in Strzelin Prison.

2. He further complained, invoking Article 8 of the Convention, about the monitoring of his correspondence.

3. Lastly, invoking Articles 10 and 17 of the Convention the applicant alleged that he has been persecuted for having sent his complaints to the Strasbourg Court.

THE LAW

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

The applicant complained about the conditions of his detention in Strzelin Prison. He relied in substance on Article 3 of the Convention which, in so far as relevant, provides as follows:

Article 3

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

He further complained, invoking Article 8 of the Convention, about the monitoring of his correspondence.

This provision, in so far as relevant, provides as follows:

Article 8

"1. Everyone has the right to respect for ... his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

By letter dated 15 February 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues 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 fact that the applicant's conditions of 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.), were not compatible with Article 3 of the Convention. Furthermore, the Government would like to express their acknowledgement of the fact that the censorship of the applicant's correspondence was not compatible with requirements of Article 8 of the Convention.

In these circumstances and having particular regard to the violation of Article 3 of the Convention in respect of the applicant's conditions of detention, the Court's pilot judgment in the case Orchowski v. Poland (no. 17885/04) as well as domestic jurisprudence submitted to this case, the Government declare that they offer to pay the applicant the amount of 10,000 PLN (ten thousand Polish zlotys), which they consider to be reasonable in the present circumstances of the case.

The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It 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 the rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points. "

In a letter of 4 April 2011 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 or part thereof 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 or part thereof 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, its practice concerning complaints about the conditions of detention (see, for example, *Orchowski v. Poland, Norbert Sikorski v. Poland* and *Łatak v. Poland (dec.)*, cited above).

It has also addressed, in numerous cases, its practice concerning complaints under Article 8 of the Convention about the monitoring of prisoners' correspondence (see, for example, among many other authorities, *Matwiejczuk v. Poland*, no. 37641/97, 2 December 2003, *Pisk-Piskowski v. Poland*, no. 92/03, 14 June 2005, *Michta v. Poland*, no. 13425/02, 4 May 2006, *Kliza v. Poland,* cited above, *Friedensberg v. Poland*, no. 44025/08, 27 April 2010 and *Mocny v. Poland* (dec.), cited above).

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 this part 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. Remaining complaints

The applicant further invoked Articles 10 and 17 of the Convention, alleging that he has been persecuted for having sent his complaints to the Strasbourg Court.

The Court notes, however, that the applicant has failed to substantiate his allegations.

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.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Articles 3 and 8 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 complaints in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Lawrence Early
Registrar

Nicolas Bratza
President