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

FOURTH SECTION

DECISION

Application no. 32447/10
Zbigniew ŁUKASZEWICZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 31 May 2016 as a Committee composed of:

Iulia Motoc, *President,*
Krzysztof Wojtyczek,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 10 May 2010,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Zbigniew Łukaszewicz, is a Polish national, who was born in 1977 and is detained in Białystok.

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

A. The circumstances of the case

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

4. On 18 December 1995 the Białystok Regional Court convicted the applicant of murder and sentenced him to twelve years' imprisonment. He served this sentence from 1996 until 2004 when he was released on probation.

5. The applicant was again arrested on 7 May 2008 having been searched under a European Arrest Warrant. He was indicted on charges of battery and, simultaneously, he was placed in Białystok Prison to continue serving the prison sentence ordered in 1995.

6. The applicant remained in Białystok Prison between 7 May 2008 and 4 February 2009. During this period he received twenty-five visits from his family – his mother, wife and son, born in 2006.

7. On 4 February 2009 the applicant was transferred to Kamińsk Prison. On the next day the applicant requested that the prison authorities transfer him back to a prison located closer to his home. The request was granted on 10 February 2009 by the governor of Kamińsk Prison and was to be executed in a one year's time. However, in May 2009 the applicant asked for the transfer to be reversed for personal reasons.

8. Subsequently, the applicant repeated his requests to be transferred to a prison closer to his home. On 5 August 2010 and 4 February and 20 December 2011 the governor of Kamińsk Prison refused his requests. The refusals were based on the fact that both Barczewo and Białystok prisons were overcrowded.

9. On 15 June 2010 the director of the Regional Prison Inspectorate replied to his complaints and dismissed them. The director stated that it was not possible to transfer the applicant as other prisons were overcrowded.

10. The applicant also complained to the Ombudsman and the Helsinki Foundation for Human Rights in Warsaw.

11. On 27 August 2012 the applicant was released.

12. On 25 December 2010 the applicant instituted divorce proceedings before the Białystok Regional Court. In his application he indicated that for two years he had not had much contact with his wife who had found a new partner. At the hearing of 28 April 2011 the applicant submitted that his wife had moved abroad to the United Kingdom and since 2007 she had been seeing another man. On 9 June 2011 the Białystok Regional Court granted the applicant's divorce. The court further limited the parental authority of the applicant and his former wife over their child, G, who had been placed in foster care with the applicant's mother.

B. Relevant domestic law

13. Article 100 of the Code of Execution of Criminal Sentences (*Kodeks karny wykonawczy* – "the Code") provided:

> "A convicted person shall serve his or her sentence, is so far as it is possible, in the prison facility which is located nearest to his or her place of residence. A transfer of a convicted person to another facility may take place only for justified reasons."

COMPLAINT

14. The applicant complained under Article 8 of the Convention that he had been placed in a prison located far from his home which had resulted in a breach of his right to respect for his family life. Due to the distance and costs of travelling he had no longer been able to receive visits from his mother, brother, wife and young child.

THE LAW

15. The applicant complained about a breach of his private and family life which should be examined under Article 8 of the Convention. This Article, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and 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."

16. The Government firstly submitted that the applicant had failed to exhaust the domestic remedies available to him as he could have sued the State for compensation. However, the Court considers that it is not necessary to examine this issue as the case is anyway inadmissible for the reasons stated below.

17. The Court notes that the applicant failed to comment on the admissibility or merits of his application. He also failed to address the arguments and evidence submitted by the Government.

18. The Court reiterates that placing a person who has been convicted in a particular prison may potentially raise an issue under Article 8 if its effects for the applicant's private and family life go beyond the "normal" hardships and restrictions inherent to the very concept of imprisonment (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 837, 25 July 2013). Furthermore, the right to respect for family life imposes upon states a positive obligation to assist prisoners in maintaining effective contact with their close family members (see *X. v. the United Kingdom*, no. 9054/80, Commission decision of 8 October 1982, DR 30, p. 115).

19. In the present case the applicant was detained in Kamińsk Prison for a period of three years and six months during which he did not have a single visit from his family. During his previous period of detention in Białystok Prison his wife and mother had visited him frequently (see paragraph 6 above).

20. The Government submitted that Kamińsk Prison had been located 290 km from his home town. According to them such a distance could not be seen as prohibitive for his family to visit him if had they so wished. The applicant did not address this argument but in his application form he stated that it had not been possible for his family to make such lengthy and costly trips.

21. In this context it should be noted that his first request to be transferred to Białystok Prison was allowed by the authorities and the date for his transport was scheduled for February 2010. It did not take place as the applicant withdrew his request and asked to remain in Kamińsk Prison in May 2009. The applicant failed to explain why at that time he had no longer wished to be transferred to Białystok in particular since in July 2010 he had made another request to the same end. Moreover, in December 2010 the applicant lodged an application for divorce and at that time he stated that for the two previous years he had had little contact with his wife as she had found a new partner. On an unspecified date prior to April 2011 the applicant's wife moved abroad.

22. In the light of the above the Court is unable to establish whether the lack of visits by the applicant's family after 2009 had been caused by the distance to the prison or the applicant's personal situation including the break-up of his marriage and his mother becoming the primary carer for his child. Moreover, the applicant failed to point to any particular difficulties his family would have faced if they had wished to visit him in Kamińsk Prison.

23. The Government maintained that the main grounds for the authorities' refusals to transfer the applicant had been the high occupancy rate in Białystok Prison, the closest to where the applicant's family had lived. According to the documents submitted by the Government the occupancy rate in this prison had varied between 97% and 107%. For example, in August 2010 when one of his requests had been dismissed, the prison in Białystok had had a 100% occupancy rate. On the subsequent dates when the authorities had refused his requests, Białystok prison had also been full with a 101% occupancy rate.

24. The Court has previously found that, for many years, specifically from 2000 until at least mid-2008, overcrowding in Polish prisons and remand centres had revealed a structural problem consisting of "a practice that [was] incompatible with the Convention" (see *Orchowski v. Poland*, no. 17885/04, § 147, 22 October 2009). Following this, the Polish authorities made efforts to handle the problem of overcrowding in prisons and by 2010 the overall capacity of penal establishments nationwide met the State's needs (see *Łatak v. Poland* (dec.), no. 52070/08, §§ 56-57, 12 October 2010).

25. The Court thus considers that it was reasonable for the authorities to justify their refusals to transfer the applicant in the light of the high occupancy rates of Białystok Prison with the aim of not exceeding the total capacity of that prison.

26. In those circumstances and in the absence of the applicant's submission on the admissibility and the merits of the application the Court considers that the applicant failed to sufficiently justify that the distance of 290 km between the prison in which he had been held and his home had been the main grounds for him no longer receiving visits from his family. Moreover, given the large margin of appreciation granted to the authorities in such matters, and in the light of the reasons provided by them for the refusals to transfer the applicant, the result of the instant case cannot be considered incompatible with the respect for the applicant's private and family live (compare and contrast, *Khodorkovskiy and Lebedev*, cited above, § 850).

27. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 June 2016.

Fatoş Aracı	Iulia Motoc
Deputy Registrar	President