

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

FOURTH SECTION

DECISION

Application no. 55167/07
Zbigniew MICIUK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 6 March 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 19 November 2007,

Having regard to the declaration submitted by the respondent Government on 29 November 2011 requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Zbigniew Miciuk, is a Polish national who was born in 1953 and is currently detained in Szczecin Remand Centre. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

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

1. The period of the applicant's detention

On 28 February 2003 the applicant was committed to Szczecin Remand Centre. On 2 July 2003 he was transferred to Goleniów Prison where he remained until his release on 4 June 2009. On an unspecified date in 2011 the applicant was again committed to Szczecin Remand Centre.

2. Conditions of the applicant's detention

The applicant submitted that during the entire period of his detention until his release on 4 June 2009 he had been held in overcrowded cells in conditions which did not comply with the basic standards of hygiene. He further submits that he was detained with smokers.

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

On 2 January 2005 the applicant brought a civil action against the State Treasury *statio fisci* Goleniów Prison seeking 150,000 Polish zlotys (PLN) in compensation for the infringement of his personal rights.

On 17 January 2008 the Szczecin Regional Court (*Sąd Okręgowy*) dismissed the applicant's action. The court established that at the relevant time the applicant was detained in cells in which the statutory minimum standard of 3 m² per person was not respected. It held however that detaining the applicant in conditions below the minimum standard established by Article 110 § 2 of the Code of Execution of Criminal Sentences was not unlawful, as it was regulated by Article 248 § 1 of this Code. The court also observed that the applicant was guaranteed an appropriate health care including consultations with specialists. As to the applicant's complaint that he was detained with smokers the court noted that upon his admission to the penitentiary facility he agreed to be detained in cells for smoking detainees.

The applicant appealed.

On 18 December 2008 the Szczecin Court of Appeal (*Sąd Apelacyjny*) upheld the first-instance court judgment.

4. Length of criminal proceedings against the applicant

On an unspecified date in 2002 the applicant was charged with making an unlawful threat.

On an unspecified date the Szczecin District Court (*Sąd Rejonowy)* convicted the applicant as charged and sentenced him to 6 months' imprisonment.

On 2 July 2008 the Szczecin Regional Court upheld the first-instance court judgment.

On 24 October 2008 the applicant lodged with the Szczecin Regional Court a complaint under section 5 of the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*Ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki*) ("the 2004 Act").

On 19 November 2008 the Szczecin Regional Court rejected the applicant's complaint as introduced out of time that is after the proceedings complained of had already ended.

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) adopted on 12 October 2010 (see §§ 25-54).

COMPLAINTS

1. The applicant complained in substance under Article 3 of the Convention of overcrowding and inadequate living conditions of his detention until 4 June 2009.

2. Invoking in substance Article 6 of the Convention, the applicant complained about the excessive length of the criminal proceedings against him.

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 29 November 2011 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 17,500 (seventeen thousand five hundred Polish zlotys) which they consider to be reasonable in the light of the Court's case law. The sum referred to above, which is to cover any pecuniary and non-pecuniary damage, as well as costs and expenses, will be free from 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 for the Protection of Human Rights. In the event of failure to pay this sum within the three-month period, the Government undertake to pay simple interest on it, from the 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 (...) "

The applicant did not comment on the Government's unilateral declaration.

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 – 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. 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 criminal proceedings against him. The Court notes that the applicant's complaint under the 2004 Act was rejected on formal grounds. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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