

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

FOURTH SECTION

DECISION

Application no. 44838/09
by Jan OSIKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 11 October 2011 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 30 June 2009,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

PROCEDURE

The applicant, Mr Jan Osika, is a Polish national who was born in 1973 and lives in Siedliska. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

On 20 July 2011 the President of the Fourth Section of the Court decided to communicate the applicant's complaint under Article 3 of the Convention concerning the conditions of his detention.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

THE LAW

On 14 September 2011 the Court received the following declaration from the Government:

> "I, Jakub Wołąsiewicz, Agent of the Government, declare that the Government of Poland offer to pay to Mr Jan Osika, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 5,000 (five thousand Polish zlotys), to cover any and all pecuniary and non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant. The payment is intended to provide the applicant with redress for the systemic violation of Article 3 of the Convention on account of the conditions of his 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.).
>
> This sum will be payable within three months from the date of notification of the decision 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 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."

On 2 August 2011 the Court received the following declaration signed by the applicant:

> "I, Jan Osika, note that the Government of Poland are prepared to pay me, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 5,000 (five thousand Polish zlotys), to cover any and all pecuniary and non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to me. I further note that the payment constitutes redress for the systemic violation of Article 3 of the Convention on account of the conditions of my 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.).
>
> This sum will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> I accept the proposal and waive any further claims against Poland in respect of the facts giving rise to this application. I declare that this constitutes a final resolution of the case."

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention). In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President