

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

FOURTH SECTION

DECISION

Application no. 29754/11
Tomasz PACHNICZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 26 August 2014 as a Committee composed of:

George Nicolaou, *President,*
Zdravka Kalaydjieva,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 March 2011,

Having regard to the declaration submitted by the respondent Government on 11 February 2014 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:

FACTS AND PROCEDURE

The applicant, Mr Tomasz Pachnicz, is a Polish national, who was born in 1969. He is currently serving a prison sentence in Sztum Prison.

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

The applicant has been detained since 2001 in Gdańsk Remand Centre and Malbork Remand Centre, in particular:

- from 14 February 2001 to 10 December 2002, from 15 March 2004 to 6 April 2004, from 14 July to 23 December 2004 and from 24 May 2005 to 22 May 2006 in Gdańsk Remand Centre (*Areszt Śledczy w Gdańsku*);
- from 7 April 2004 to 14 July 2004 in Malbork Prison (*Zakład Karny w Malborku*).

On 16 May 2010 the applicant attempted to file a civil claim for compensation against the State Treasury for overcrowding and poor sanitary conditions in Gdańsk and Malbork Remand Centres. He also applied for exemption from paying the applicable court fees. He claimed PLN 100,000.

On 4 October 2010 the Gdańsk Regional Court partly allowed his request and exempted him from the obligation to pay the court fee over the amount of PLN 500. The court noted that the full court fee to be paid in respect of his claim under the applicable provisions of procedural law would amount to PLN 5,000. It noted that the applicant had been employed while detained between 2005 and 2008 and should have had sufficient savings, especially if he had considered that his personal rights had been infringed by overcrowding already from 2001 onwards. The court further relied on the fact that the applicant had the amount of PLN 1,301 on deposit at the Remand Centre to be paid to him after his release. The court concluded that he should be able to pay the court fee of PLN 500.

The applicant appealed, submitting that apart from the PLN 1,301 which he could not use before his release, he had no financial means at his disposal.

On 25 October 2010 the court upheld its first-instance decision. It essentially shared the views expressed by the court in the contested decision. It further referred to the applicant's income which he had obtained while he employed in prison: PLN 2,645 in 2005, PLN 1,955 in 2006, PLN 3,435 in 2007 and PLN 2,742 in 2008.

On 29 December 2010 the court ordered that the applicant's statement of claim should be returned to him. The applicant appealed, reiterating that he had no money and could not pay the court fee in the amount determined by the decision of 4 October 2010.

On 21 January 2011 the Gdańsk Court of Appeal dismissed his appeal.

COMPLAINTS

The applicant complained under Article 3 of the Convention that throughout his detention he had been held in overcrowded and unsanitary conditions.

He further complained under Article 6 of the Convention that his right of access to court had been breached as the court had wrongly refused to allow his request for exemption from the court fee in its entirety. After years of detention he had no money and had hereby been prevented from pursuing his civil claim necessary for the purposes of exhaustion of domestic remedies in respect of Article 3.

THE LAW

By a letter of 11 February 2014 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 violation of Article 3 of the Convention by failure to afford the applicant adequate conditions of his detention. Simultaneously, the Government declare that they are ready to pay the applicant the sum of PLN 18,000 which they consider to be reasonable in the light of the Court's case-law in similar cases (see, *inter alia*, *Piaseczny v. Poland,* application no. 46322/12, decision of 5 December 2013; *Jarosz v. Poland*, application no. 39508/09, decision of 9 October 2012) . 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 Convention. 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 Government 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 lists of cases, as referred to in Article 37 § 1 (c) of the Convention..."

By a letter of 10 March 2014, the applicant indicated that he was not satisfied with the amount mentioned in the 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, 18 September 2007).

The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of Article 3 of the Convention in the context of conditions of detention (see, for example, *Orchowski v. Poland*, no. 17885/04; *Norbert Sikorski v. Poland*, no. 17599/05 and *Łatak v. Poland* (dec.), no. 52070/08).

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 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 the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike this part of the case out of the list.

The applicant further complained under Article 6 of the Convention that his right of access to court had been breached as the court had wrongly refused to allow his request for exemption from the court fee in its entirety.

The relevant part of Article 6 § 1 provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal established by law. ..."

The Government argued that the domestic courts had examined the applicant's request for exemption from the court fees in a detailed manner. They had regard to the fact that at that time the applicant had had savings in the amount of 1,301 Polish zlotys (PLN), that he had been working in prison for certain periods between 2005 and 2008 and had received remuneration in the total amount of PLN 10,779. The courts noted that the applicant had not had any maintenance obligations towards third parties.

The Government were of the view that the amount of PLN 500 which the applicant had had to pay as a reduced court fee could not be regarded as disproportionate; all the more so as this amount represented 10% of the court fee of PLN 5,000 which he would have had to pay in respect of the total value of his claim under the applicable provisions of Polish law.

The Court has already repeatedly dealt with the question whether the requirement to pay substantial fees to civil courts in connection with claims could be regarded as a restriction of the right of access to a court. It held that the amount of the fees assessed in the light of the particular

circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction had been imposed, were factors which were material in determining whether or not a person had enjoyed his right of access and had "a ... hearing by [a] tribunal" (see, among many other authorities, *Kreuz v. Poland*, no. 28249/95, § 60, ECHR 2001-VI).

The Court held that applicants who deliberately inflate the value of their claims for compensation cannot be expected to be exempted entirely from the payment of court fees or from the requirement to contribute in a reasonable amount to the costs of taking the action (see *Kupiec v. Poland*, no. 16828/02, § 47, 3 February 2009, and also *Kuczera v. Poland*, no. 275/02, § 45, 14 September 2010).

The Court will now determine whether, in the light of the above-mentioned principles and in the particular circumstances of the present case, the required fee constituted a restriction that impaired the very essence of the applicant's right of access to a court.

The Court first of all notes that the refusal to exempt the applicant from the obligation to pay court fees in their entirety was given before the court of first instance. This prevented the applicant from pursuing his claim. It also takes due note of the fact that, at the time of filing the civil claim, the applicant had already been in prison for nine years.

However, it is noted that he was employed for certain periods during his detention between 2005 and 2008. The sum total of his income during this period amounted to PLN 10,779. This amount was taken into consideration by the appellate court which examined the applicant's appeal against the first-instance decision.

In the written grounds of its refusal to exempt the applicant from the obligation to pay court fees in the total amount of PLN 5,000, the first-instance court referred to the applicant's financial situation and examined it in detail.

It is further noted that the court allowed the applicant's request in part. The value of the claim, as indicated by the applicant in the particulars of the claim, amounted to PLN 100,000 [i.e., approximately 25,000 euros (EUR)]. The court fees which the domestic court required the applicant to pay amounted to PLN 5,000 [approx. EUR 1,250]. The Court considers that the value of the applicant's compensation claim was grossly exaggerated and was out of any proportion to the nature of the claim (see in this connection *Kupiec v. Poland*, cited above, § 47). Had the applicant claimed a more reasonable amount, commensurate with the case-law of the Polish civil courts in similar cases, the court fees required would have been much lower.

In summary, given the amount of the applicant's earnings prior to the time he lodged his statement of claim with the civil court as well as the fact that he had certain savings at that time, the Court considers that the amount of court fees required from the applicant in the present case cannot be

considered disproportionate (compare and contrast *Stankov v. Bulgaria*, no. 68490/01, §§ 43-67, 12 July 2007). Consequently, it cannot be held that the court fees required from the applicant for proceeding with his claim constituted a restriction which impaired the very essence of his right of access to a court.

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 Article 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President