

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

FOURTH SECTION

DECISION

PILOT-JUDGMENT PROCEDURE

AS TO THE ADMISSIBILITY OF

Application no. 5246/03
by Andrzej SIEDLECKI and 9 other applications
against Poland

The European Court of Human Rights (Fourth Section), sitting on 14 December 2010 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Ján Šikuta,
Mihai Poalelungi,
Nebojša Vučinić,
Vincent A. de Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 23 December 2002 and to the remaining 9 applications listed in the appendix to this decision,

Having regard to the final pilot judgments in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) delivered on 22 October 2009, in particular to the finding under Article 46 of the Convention that overcrowding in Polish prisons and remand centres revealed a structural problem,

Having regard to the decisions to declare the applications *Łatak v. Poland* (no. 52070/08) and *Łomiński v. Poland* (no. 33502/09) inadmissible for non-exhaustion of domestic remedies,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The main applicant, Mr Andrzej Siedlecki ("the applicant"), is a Polish national who was born in 1963 and lives in Płock. He was represented before the Court by Mr T. Włoczyk, a lawyer practising in Gliwice. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

The names and personal details of the remaining applicants ("the applicants") and the facts pertaining to their cases are presented in the attached statements setting out the particular circumstances of each case.

A. Particular 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 10 January 2001 the applicant was committed to Zabrze Prison. After that date he was continuously detained in several penitentiary facilities. On 27 July 2009 he was released.

2. Conditions of the applicant's detention

The parties gave partly differing accounts of the conditions of the applicant's detention.

The applicant maintained that throughout his detention he had been held in overcrowded cells in conditions below the basic standard of hygiene. He further stated that in the Zabrze Prison detainees had been allowed to smoke in the central corridor from where the smoke had penetrated into the cells.

The Government submitted that they could not confirm whether or not during his stay in the Zabrze Prison the applicant had been detained in cells with a surface area of at least 3 m² per person. They further stated that in all penitentiaries smoking had only been permitted in designated zones. The Government maintained that in the Zabrze Prison two smoking areas had been designated near the entrances to units and that the applicant had not been exposed to tobacco smoke during his detention in that establishment.

The Government did not comment on the conditions of the applicant's detention in the remaining detention establishments.

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

The applicant lodged several complaints with the penitentiary authorities regarding the conditions of his detention. He did not bring a civil action in tort to seek compensation for the infringement of his personal rights.

B. Relevant domestic law and practice

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 conditions of their 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 Court's decision in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

COMPLAINTS

In all the cases the applicants in essence alleged a breach of Article 3 of the Convention in that they had been detained in overcrowded cells and that the State had failed to secure to them adequate living conditions throughout their entire detention. In particular, the applicants complained that the authorities did not secure to them the statutory minimum cell space of 3 m^2 per person, as required by the national law.

THE LAW

A. The Government's objection on exhaustion of domestic remedies

Article 35 § 1 of the Convention reads, in so far as relevant, as follows:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

The Government submitted that some applicants had already been released at various dates and those still in detention had been moved to cells in which they had been secured at least the statutory minimum standard space of 3 m^2 per person shortly after the delivery of the *Orchowski* and *Norbert Sikorski* pilot judgments. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer

existed and the applicants should bring a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code in order to seek compensation for the past violation.

In that regard they relied, in particular, on the *Orchowski* judgment, reiterating that the Court, having regard to the principle of subsidiarity, had held that in cases where the alleged violation of Article 3 no longer continued and could not be eliminated with retrospective effect, the only means of redress for the applicant was pecuniary compensation.

In view of the foregoing, the Government invited the Court to reject the applications for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

B. The applicants' position

The applicants in general disagreed with the above arguments and maintained that the remedy suggested by the Government could not be considered "effective" for the purposes of Article 35 § 1 of the Convention.

C. The Court's conclusion

The Court has already examined a similar objection based on exhaustion of domestic remedies raised by the Government in the above-mentioned cases of *Łatak v. Poland* and *Łomiński v. Poland* and considered their arguments not only in the context of those two particular applicants but also in respect of other actual or potential applicants with similar cases. (see *Łatak v. Poland* no. 52070/08 and *Łomiński v. Poland* no. 33502/09 (dec.), 12 October 2010, §§ 71-85 and §§ 62-76 respectively).

In so doing, the Court had regard to the fact that on the date of the adoption of its decisions there were 271 cases pending before it where the applicants had raised complaints similar in substance, alleging a violation of Article 3 in that at various times and for various periods they had been adversely affected by the same structural problem, having been detained in overcrowded, insanitary cells (ibid. § 84 and § 75 respectively).

Having found that a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code could be considered an "effective remedy" for the purposes of Article 35 § 1 of the Convention as from 17 March 2010 and having regard to the 3-year limitation period for lodging such an action, the Court held that essentially in all cases in which in June 2008 the alleged violation had either been remedied by placing the applicant in Convention-compliant conditions or had ended *ipso facto* because the applicant had been released, the applicants concerned should bring a civil action for the infringement of personal rights and compensation (ibid. § 85 and § 76 respectively).

In all the present cases the situations giving rise to the alleged violation of Article 3 ended at various dates after June 2008. All the applicants were either released or – which was not contested before the Court – placed in prison cells in which the statutory minimum size requirement of 3 m^2 per person was respected. That being so and having regard to the fact that they still have adequate time to prepare and lodge with the Polish civil courts an action under Article 24 taken in conjunction with Article 448 of the Civil Code, they should, before having their Convention claim examined by the Court, be required to seek redress at domestic level.

In any event, as from 6 December 2009, the date on which Article 110 § 2 (f) of the Code of Execution of Criminal Sentences entered into force, a detainee placed in conditions where the area per person is less than the statutory minimum may lodge a complaint with the court and contest a decision of the prison administration to reduce his cell space (see *Łatak* and *Łomiński* cited above, §§ 42-43 and 86-87 and §§ 34-35 and 77-78 respectively).

It follows that the applications must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Declares the applications inadmissible.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President

ANNEX

List of applications

1.	5246/03	Siedlecki v. Poland
2.	7446/03	Ewiak v. Poland
3.	39877/03	Śmietana v. Poland
4.	5882/05	Staruch v. Poland
5.	7441/05	Gerter v. Poland
6.	10874/05	Szubski v. Poland
7.	5346/06	Dulęba v. Poland
8.	37130/06	Gongor v. Poland
9.	44/07	Kuźmicz v. Poland
10.	38858/07	Józefowski v. Poland