

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

FOURTH SECTION

DECISION

Application no. 56941/11
Malgorzata STEFANIAK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 19 April 2016 as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Gabriele Kucsko-Stadlmayer, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 18 August 2011,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Małgorzata Stefaniak, is a Polish national who was born in 1964 and lives in Koszalin. She is represented before the Court by Mr A. Bodnar and Ms I. Pacho, lawyers working for the Helsinki Foundation for Human Rights in Warsaw. In 2015 Mr A. Bodnar was appointed to the post of Ombudsman and no longer represents the applicant.

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.

1. Hearing aid

4. Since 2003 the applicant has been serving various prison sentences. The end of her current sentence falls in 2030.

5. The Government maintained that during her imprisonment in various prisons the applicant had been given constant medical care. The applicant had been treated for various illnesses and had received specialist treatment, specifically gynaecological, dental and psychiatric care.

6. The applicant submitted that the medical attention she had received had not been adequate. For instance she had refused a gallbladder removal as the prison hospital had offered her only standard surgery, not a laparoscopic operation. She had also reported problems with her spine and was undergoing constant psychiatric treatment.

7. On 1 September 2010 the applicant consulted a laryngologist who, for the first time, diagnosed a hearing impairment and recommended the use of a hearing aid. On 28 September 2010 an audiogram was carried out, on the basis of which a doctor confirmed, on 30 September 2010, that the applicant was suffering from hearing loss.

8. Her first request to be provided with a hearing aid had been dismissed by the prison authorities in December 2010 as it had not been absolutely necessary in her condition. In particular, the prison authorities did not find it established that her hearing impairment had been such as to cause her difficulties in her everyday life in prison.

9. On 31 January 2011, while detained in the Bydgoszcz prison, the applicant made a new request for a hearing aid. On 21 February 2011 the director of the prison hospital at the Bydgoszcz prison informed her that it had not been possible for the authorities to fund a device.

10. On 7 April 2011 the Koszalin medical prison service issued a certificate referring to the audiogram of 28 September 2010 and to the consultation with the laryngologist. The doctor stated that the applicant was suffering from a hearing impairment and recommended the use of a hearing aid, paid for either by the applicant or by the prison medical services.

11. On 31 August 2011 a doctor from a private practice issued a certificate on the basis of the audiogram of 28 September 2010 without examining the applicant. She certified a 60% hearing loss, justifying the need for a hearing aid.

12. On 8 September 2011 a second audiogram was carried out. The applicant was of the view that it proved deterioration of her hearing but the Government submitted that her condition had remained the same.

13. During that period the applicant underwent a re-education program to ease her spinal condition and various basic and more specialised medical examinations. Those included scans or X-rays of the spine, abdomen, breasts, and chest, as well as further audiograms.

14. The applicant submitted that she had requested a hearing aid on numerous subsequent occasions, but to no avail. The prison authorities referred to lack of funds.

15. On 15 April 2013 the applicant received a medical certificate confirming her various medical conditions, referring in particular to her spine, ovaries, kidneys and hearing. The certificate concluded that the applicant should continue receiving re-education treatment for her spine and recommended fitting her with a hearing aid.

16. On 14 March 2014 the applicant was transferred to the Chojnice Remand Centre. On 16 June 2014 she consulted a specialist doctor who recommended that the applicant be provided with a hearing aid.

17. On 23 July 2014 the authorities provided the applicant with a hearing aid. The entire cost of 877 Polish zlotys (PLN) was covered by the Chojnice Remand Centre.

18. On 31 November 2014 the director of the Chojnice Remand Centre explained in a letter that its limited financial resources had not allowed the purchase a different model of hearing aid, as requested by the applicant. The model given to her was of a type also used by other detainees, who had never complained about it. The Director referred to the provisions of domestic law, which allow the authorities to partly or entirely cover the cost of medical equipment such as hearing aids.

2. Leave from prison

19. During her detention the applicant frequently requested leave from prison for various purposes. She was granted leave in 2004 and 2008 for medical purposes.

20. On 19 April 2011 the Penitentiary Division of the Koszalin Regional Court dismissed the applicant's request for temporary leave on health grounds. The court found that the applicant had obtained prison leave in 2008 for the purpose of having an operation. During the leave she had committed further offences and had undergone surgery on the very last day of her leave. She had also failed to return from the leave on time. The court sought a medical expert opinion which stated that the applicant could be treated in prison for her spinal condition. The court concluded that the applicant's medical condition was not incompatible with detention and that she was receiving appropriate medical care from the prison health services. On 20 July 2011 the Szczecin Court of Appeal upheld the decision and refused her leave from prison.

21. In September 2011 the applicant again applied for leave from prison in order to take up employment. The penitentiary courts refused the

application on 31 January 2012. The Government submitted that the medical opinion prepared in this set of proceedings had demonstrated a generally good state of health and the fact that she had been continuously receiving medical attention in prison.

3. Prison conditions

22. The applicant complained to the prison authorities on many occasions about the conditions of her detention, in particular the allegedly inadequate treatment of her chronic back pain. On each occasion the complaints were dismissed by the authorities as manifestly ill-founded.

23. The applicant lodged civil claims for compensation against some prisons by way of complaint about the prevailing conditions, for instance the type of cells to which she was assigned, the attitude of the prison guards towards her, etc. There is no evidence that any of those claims referred to the delay before the authorities provided her with a hearing aid.

B. Relevant domestic law

24. The provisions pertaining to medical care in detention facilities, and the relevant domestic law and practice are set out in the Court's judgments in the cases of *Sławomir Musiał v. Poland* (no. 28300/06, §§ 48-61, 20 January 2009); *Kaprykowski v. Poland* (no. 23052/05, §§ 36-39, 3 February 2009); and the decision in *Ostrowski v Poland* (dec.), no. 26945/07, 1 September 2015.

COMPLAINTS

25. The applicant complained under various Articles of the Convention about the authorities' failure to provide her with a hearing aid free of charge. She also complained about the outcome and unfairness of the proceedings concerning her request for leave from prison.

THE LAW

A. Article 3 of the Convention

26. The applicant complained, in the light of the authorities' failure to provide her with a hearing aid, free of charge and promptly, that her detention amounted to inhuman treatment. The complaint falls to be examined under Article 3 of the Convention which provides as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. The parties' submissions

27. The Government disputed this argument, arguing that the applicant's medical care while in prison had been adequate. She had been treated every time the need arose and had had access to specialist medical care including prison hospitals. They maintained that there had been no clear indication that providing a hearing aid free of charge had been absolutely necessary in her case. The nature of her hearing impairment was such that the doctors needed to first treat its cause and only later assess the need for the prosthesis. The medical certificates of 7 April 2011 and 15 April 2013 recommended the hearing aid but did not consider it absolutely necessary. The applicant failed to inform the prison authorities what problems she had encountered while in prison and to what extent her loss of hearing had negatively influenced her serving her sentence.

28. Moreover, on 23 July 2014 the applicant had been fitted with a hearing aid free of charge. Her situation had thus been better than that of individuals covered by the national insurance scheme, as the cost of their hearing aids would be reimbursed only in part and would be subject to many conditions. In particular it was only available to people in employment. The hearing aid offered to the applicant had been adapted to her needs and her complaint that she was not provided with a more advanced version was therefore manifestly ill-founded.

29. In general the Government concluded that the State had fulfilled their positive obligations and had provided her with adequate medical care throughout her detention.

30. The applicant argued that the medical attention she had received in various detention facilities had not been adequate, taking into account her special needs. Moreover, the staff of the prison had displayed a negative attitude to her amounting to ill-treatment. Her situation had reflected a general problem in the organisation of the health service in Polish prisons which was characterised by an insufficient number of trained staff and a lack of funds for medical services.

31. The applicant submitted that the lack of a hearing aid had not made her detention impossible but had amounted to degrading punishment and had diminished her human dignity. People suffering hearing loss who do not use hearing aids tend to be isolated socially and to experience various practical and psychological difficulties. In consequence, the quality of her life in prison had diminished noticeably and she had consulted psychologists and psychiatrists on numerous occasions. She felt humiliated and debased.

2. The Court's assessment

32. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see, among many other authorities, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001–III; and *Engel v. Hungary*, no. 46857/06, § 26, 20 May 2010).

33. The Court reiterates that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat (see, among others, *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no.30210/96, § 94, ECHR 2000-XI; *Sławomir Musiał*, cited above, § 86; and *Kaprykowski*, cited above, § 69). There are three particular elements to be considered in relation to the compatibility of an applicant's health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Sakkopoulos v. Greece*, no. 61828/00, § 39, 15 January 2004; and *Melnik v. Ukraine*, no. 72286/01, § 94, 28 March 2006). The authorities must also ensure that - where necessitated by the nature of a medical condition – supervision is regular and systematic and involves a comprehensive therapeutic strategy that seeks, to the extent possible, to cure the detainee's diseases or to avoid aggravating them, rather than to address them on a symptomatic basis (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 114, 29 November 2007; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006; *Mikalauskas v. Malta*, no. 4458/10, § 63, 23 July 2013; *Pozaić v. Croatia*, no. 5901/13, § 53,

4 December 2014; and *Kushnir v. Ukraine,* no. 42184/09, § 135, 11 December 2014).

34. Turning to the circumstances of the instant case, the Court first of all notes that the crux of the present application is the question of whether the failure to provide the applicant promptly with a hearing aid amounted to inhuman or degrading treatment.

35. It is not contested that the applicant was first diagnosed with a hearing deficiency in September 2010 and that she received the hearing aid in July 2014. The parties differ as to the assessment of whether or not her hearing deteriorated during this period and whether the impairment was such as to render a hearing aid urgent and absolutely necessary.

36. In this connection the Court notes that the medical certificates of 7 April 2011 and 15 April 2013 stated, as submitted by the Government, that a hearing aid had been recommended, but they had not indicated its absolute necessity or urgency. The authorities were aware of her hearing deficiency and the main reason for the refusals to cover for the costs of her hearing aid had been budgetary limitations of the prisons in which she had been serving her sentence.

37. The Government explained that it had been possible for the applicant to cover the costs of her hearing aid in part, however, she insisted on being provided with it on the total expense of the prison. According to the domestic law the national insurance scheme does not provide hearing aids to the population free of charge (see paragraph 28 above). It provides only for a partial reimbursement subject to further conditions. Therefore according to the Government the applicant as a prisoner was in a better position that the general public as regards access to hearing aid devices.

38. The applicant explained the difficulties that people with hearing deficiency face on the everyday basis (see paragraph 31 above). The Court agrees that partial deafness is a serious condition which could have made the applicant's life in prison more difficult. The Court understands that people with hearing deficiency may have adjustment problems and function less well, both in and outside prison. When imprisoned they may be more vulnerable and their situation should attract the particular attention of the authorities.

39. The applicant referred in general terms to feeling humiliated and debased as a result of her hearing problems. However, she did not specify if, during the period of time that she was awaiting the hearing aid, she had been subjected to any instances of ill-treatment linked to her partial deafness. In so far as she intended to claim that she was being humiliated or ill-treated by other detainees, such allegations have neither been supported by any evidence brought before the Court, nor by reference to any actual incidents; nor has it been shown that they have ever been brought to the attention of the domestic authorities.

40. Likewise, there is no evidence of any incident involving prison guards, medical staff or other authorities in which she had been persecuted or debased because of her condition. On the basis of the evidence before it, the Court is unable to conclude that the delay in providing her with a hearing aid at the public's expense could be perceived as humiliating or debasing treatment of the applicant.

A prisoner with special needs is more vulnerable to the hardships of detention in view of his or her health problems, and the applicant must have felt excluded due to her hearing difficulties. However, the applicant failed to submit sufficient evidence to demonstrate that the conditions of her imprisonment, in the context of her hearing impairment, had reached the threshold of severity required to constitute degrading treatment. For those reasons the Court holds that the treatment of the applicant in the circumstances of the present case was not contrary to Article 3 of the Convention (see *Vladimir Vasilyev* v. Russia, § 55, no. 28370/05, 10 January 2012; *V.D.* v. Romania, no. 7078/02, § 92, 16 February 2010 and *Slyusarev* v. Russia, no. 60333/00, § 43, 20 April 2010 and *Ostrowski* (dec.), cited above, § 76).

41. In so far as the applicant's complaint about refusal of prison leave in 2011 and 2012 may be examined under Article 3 of the Convention, the Court notes that she failed to substantiate that at the material time her state of health had been incompatible with detention. It was not disputed by the parties that the applicant had been treated for various medical conditions and suffered, in particular, from back pain. She has seen doctors with many different specialisations on numerous occasions. The prison authorities, having access to medical documentation and expert opinions, considered that all the ailments of which she had complained could be treated in prison. There is no evidence that this assessment had been arbitrary or incorrect. The Court is therefore satisfied that the authorities examined the compatibility of the applicant's condition with her ongoing detention.

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

B. Other alleged violations of the Convention

43. The applicant complained before the prison courts in 2011 that the proceedings concerning her application for leave from prison had been unfair. She contested the experts' testimonies and other errors allegedly committed by the courts.

44. However, 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 (see *Ostrowski* (dec.), cited above, §§ 84-94).

45. It follows that this part of 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 12 May 2016.

Marialena Tsirli Registrar	András Sajó President