

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. 20993/04
by Lucjan STEMPNIEWICZ
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 May 2004,

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 applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Lucjan Stempniewicz, is a Polish national who was born in 1938 and is currently serving his sentence in Kłodzko Prison. He was represented before the Court by Ms B. Słupska-Uczkiewicz, a lawyer practising in Wrocław. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

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

The applicant has been detained in Kłodzko Prison continuously since 24 March 2004.

2. The conditions of the applicant's detention

The applicant submitted that on an unspecified date he had been detained together with four other prisoners in a cell which measured 25 m². The cell in question was not ventilated and the furniture inside was shabby. The cell was overcrowded to the point that the applicant had to lie in his bed almost all day. He had only one hour of outdoor exercise per day and a shower once a week. The applicant also maintained that the quality of food served in prison was very bad, the bed linen was washed only infrequently and water cuts occurred frequently.

In his recent letters to the Court, the applicant made general statements that living conditions and medical care in Kłodzko Prison were bad. He claimed that his cell was overcrowded and that he had no choice but to lie in bed all day long.

The Government furnished the Court with a detailed record of the applicant's detention in Kłodzko Prison. They submitted that the space per person in the applicant's cells ranged from 2.2 to 2.9 m² over a total period of thirteen months, whereas for the remaining time, the applicant had more than 3 m² of space. More recently, the Government submitted that on an unspecified date, presumably in November 2009, the applicant had been placed in a cell in which the statutory minimum standard of 3 m² per person was respected.

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

Between 2004 and 2007 the applicant lodged several complaints with the penitentiary authorities regarding various aspects of his detention. He did not complain to the penitentiary authorities in connection with the living conditions as regards the more recent period of his detention in Kłodzko Prison. The applicant did not bring a civil action in tort to seek compensation for the infringement of his personal rights.

COMPLAINT

The applicant alleged a breach of Article 3 of the Convention in that he had been detained in overcrowded cells and that the State had failed to secure to him throughout his entire detention adequate living conditions, in particular the statutory minimum cell space of 3 m^2 per person, as required by national law.

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

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 as of 26 November 2009 the applicant had been detained in a cell in which the statutory minimum space of 3 m^2 per person had been respected. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed

and the applicant 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 application for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

B. The applicant's position

The applicant 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 complaints. (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).

It appears that in the present case the situation giving rise to the alleged violation of Article 3 ended, at the latest, on 26 November 2009 when the applicant was placed in a cell in which the statutory minimum space of 3 m^2 per person was respected. That being so and having regard to the fact that the applicant still has 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, he should, before having his Convention claim examined by the Court, be required to seek redress at domestic level.

In the light of the fact that the applicant continues to claim that his living conditions are below the required standards, it must be noted that 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 a domestic 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 application 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 application inadmissible.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President