

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. 18199/06
by Józef SZYC
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 31 March 2006,

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 Józef Szyc, is a Polish citizen who was born in 1950 and is currently detained in Biała Podlaska Prison. 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. Period of the applicant's detention

On 21 November 1990 the applicant was imprisoned in Biała Podlaska Prison. Subsequently, he was many times transferred between prisons in Włodawa, Biała Podlaska, Siedlce, Kamińsk and Chełm.

On 23 July 2009 the applicant was released from Chełm Prison as he had been granted a leave on compassionate grounds.

On 20 July 2010 the applicant resumed serving his prison sentence. He is currently detained in Biała Podlaska Prison.

2. Conditions of the applicant's detention

The applicant submitted that practically all prisons in which he had been detained from 1999 or 2000 onwards had been overcrowded. By way of an example, he submitted that in June 2008 he had been detained in a prison cell with a living space of approx. 1 m² per inmate. He moreover asserted that on one occasion, for a period of one week, he was forced to sleep on a mattress on the cell floor. The overcrowding had resulted in tension and conflict among the detainees as well as in the progressive deterioration of the prison's sanitary conditions.

The applicant further submitted that from November 1995 and over the next 13 years, he had been detained together with smokers, despite his being a non-smoker. The cells in which he had been detained had no proper ventilation.

As regards the applicant's detention in Włodawa Prison, the Government pointed out that prior to 2 January 1999 the prison authorities had not been storing information as to the exact number of prisoners detained in each cell on specific dates. They further submitted that, to their general knowledge, the problem of overcrowding had not existed in Włodawa Prison prior to 1999. The Government acknowledged that from January 1999 until May 2003 the applicant had been temporarily placed in cells with a living space ranging from 2.5 m^2 to 3.49 m^2 per prisoner. The total time in which

the applicant was imprisoned in cells of less than 3 m² per prisoner amounted to at least 145 days.

The Government explained that during his entire stay in Włodawa Prison the applicant had been detained only in non-smoking cells.

As for the applicant's detention in prisons in Chełm and in Siedlce, the Government acknowledged that both these penitentiary centres had been permanently overcrowded at the relevant time. The applicant had been imprisoned in cells of less than 3 m² per prisoner for an overall period of 835 days. On one occasion, due to lack of space, the applicant was required to sleep on a double mattress on the cell floor for nine days. During an unspecified time the applicant was detained together with smokers, but he never complained to the authorities about this fact.

In Biała Podlaska Prison the applicant was incarcerated in cells with a living space ranging from 2 m^2 to 4.1 m^2 per prisoner. The total period during which he was detained in cells of less than 3 m² per prisoner amounted to 744 days. The Government explained that in Biała Podlaska Prison the applicant had been serving his sentence in a semi-open ward where cells remained open during daytime. Moreover, from November 2006 to August 2007 he had been allowed to take a bath on a daily basis. Lastly, they submitted that, on three occasions, the applicant had been granted a temporary, accompanied release from prison. He was also granted leave to attend his father's funeral without being accompanied by a prison officer.

More recently, the applicant submitted that the living conditions in Biała Podlaska Prison were inadequate and that he was detained together with four other inmates in cell no. 139 which was designed for three persons.

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

The applicant informed the Court that on unspecified dates in 2003 and 2004 he brought several civil actions against prisons in Włodawa, Siedlce and Chełm for the infringement of his personal rights. He briefly informed the Court that his claims had been unsuccessful but failed to provide details about the exact course or the outcome of any of the proceedings.

The Government submitted that the applicant's civil action against Włodawa Prison had been dismissed by a decision of the first-instance court against which the applicant did not appeal. Three other civil actions which the applicant had attempted to institute before the Siedlce Regional Court (*Sąd Okręgowy*) were all rejected for failure to comply with the prescribed procedural requirements.

The Government further submitted that the applicant had instituted another civil action before the Lublin Regional Court (*Sąd Okręgowy*). These proceedings were currently pending. The applicant did not contest the foregoing statements.

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).

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 adequate living conditions throughout his entire detention. In particular, he complained that the authorities did not secure to him the statutory minimum cell space of 3 m^2 per person, as required by domestic 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 the applicant was released on 23 July 2009. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed and he 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.

The Government did not make any submissions in connection with the second period of the applicant's detention, from 20 July 2010 onwards.

B. The applicant's position

The applicant in general disagreed with the above arguments. However, he did not deny that he had been released on 23 July 2009.

C. The Court's conclusion

The Court already examined a similar objection 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 individual applications 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 the present case, the applicant lodged a civil claim against the State Treasury to seek compensation for the infringement of his personal rights but failed to inform the Court about the outcome of the proceedings. Having no information to the contrary, the Court assumes that the above proceedings are still pending.

Moreover, 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 this complaint 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