

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

FOURTH SECTION

DECISION

Application no. 7784/04
by Henryk TOMCZYK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 8 March 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. de Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 February 2004,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Henryk Tomczyk, is a Polish national who was born in 1950 and lives in Szczekociny. He was represented before the Court by Mr W. Sobolewski, a lawyer practising in Olsztyn. 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 applicant's pre-trial detention and criminal proceedings against him

On 9 February 2003 the Dąbrowa Górnicza District Court detained the applicant on remand on suspicion of burglary. When ordering his detention, the court considered that there was a risk that the applicant might obstruct the proceedings, given the severity of the sentence he faced. The decision was upheld by the Katowice Regional Court on 19 March 2003.

On 9 December 2003 the prosecutor lodged a bill of indictment with the Dąbrowa Górnicza District Court.

The applicant's detention was extended on the following dates: 24 April, 22 July, 29 October 2003 and 29 January and 15 July 2004. The domestic courts repeatedly relied on the reasonable suspicion that the applicant had committed the offence in question and on the gravity of the charges. The courts considered that the applicant had been charged with a crime for which he was liable to a sentence of imprisonment of up to, according to some decisions, 8 years and, according to others, 10 years. In the courts' opinions, the circumstances of the case indicated that there was a reasonable risk that he might obstruct the proceedings. The courts also based their decisions on a fear of collusion, resulting from the fact that the applicant had acted in co-operation with other persons. Regard was had to the number of suspects and the need to obtain further evidence. In its ruling of 31 July 2003 the Dąbrowa District Court stated that the applicant had no permanent place of residence; however, the decision to extend his detention was not based on that fact.

On 23 December 2004 the Dąbrowa Górnicza District Court delivered a judgment in the case, finding the applicant guilty as charged and sentencing him to 2 years and 6 months' imprisonment.

On the same date the District Court released the applicant from custody.

On 10 June 2005 the Katowice Regional Court quashed the first-instance judgment and remitted the case for retrial.

On 15 June 2007 the Dąbrowa Górnicza District Court convicted the applicant on one charge and acquitted him of two charges and sentenced the applicant to 1 year and 6 months' imprisonment.

The applicant appealed.

On 21 December 2007 the Katowice Regional Court quashed the first-instance judgment, acquitting the applicant of some charges and discontinuing the proceedings because the remaining charges had become statute-barred.

It appears that the prosecutor filed a cassation appeal in the case. The parties did not furnish any information about the subsequent course of the proceedings. The outcome, however, remained the same.

On 7 April 2008 the Katowice Regional Court awarded the applicant PLN 16,100 for non-pecuniary damage for manifestly unlawful pre-trial detention.

2. Proceedings under the 2004 Act

On 5 January 2005 the Katowice Regional Court dismissed the applicant's complaint under the 2004 Act about the unreasonable length of the criminal proceedings against him.

On 21 June 2006 the Katowice Regional Court dismissed the applicant's second complaint about the excessive length of the criminal proceedings, having found no undue delays attributable to the trial court. The court noted that the applicant's first complaint under the 2004 Act had been dismissed on 5 January 2005 and examined solely the conduct of the proceedings after that date.

In 2007 the applicant filed a third complaint under the 2004 Act. The complaint was dismissed on 4 July 2007 by the Katowice Regional Court, which stated, *inter alia,* that since the dismissal of the applicant's previous complaint about the length of the proceedings the trial court had been conducting the case in a proper manner and had not been responsible for any undue delays.

3. Conditions of the applicant's detention

(a) Period of the applicant's detention

The applicant was detained in Sosnowiec Remand Centre in the following periods: from 9 February until 13 August 2003, 1 October 2003 until 30 July 2004, 3 November until 30 December 2004 and from 7 October 2005 until 7 April 2007.

(b) Description of the applicant's detention conditions

The applicant was detained in cells, in which the space per prisoner ranged from 2.8 to 8.5 sq metres.

During eleven months between February 2003 and July 2004 the space per person in the applicant's cells ranged from 2.5 to 2.9 sq metres. It appears that during approximately nine months between November 2004 and April 2007 the space per person in the applicant's cells oscillated around 2.5 sq metres and for another three months it was slightly inferior to 3 sq metres. During the remaining time of his detention in Sosnowiec Remand Centre the space per person in the applicant's cells was higher than the statutory minimum standard of 3 sq metres although the facility in general struggled with overcrowding.

During his detention in Sosnowiec Remand Centre the applicant had a daily one-hour outdoor exercise and one shower per week.

The Government submitted that the applicant's cells had been renovated and were clean.

(c) Medical care during the applicant's detention

The applicant suffers from asthma and tuberculosis. It appears that on an unspecified date before his detention he had been certified with a second-degree disability.

The Government submitted that in Sosnowiec Remand Centre the applicant had been under regular supervision of a pulmonologist and had had access to the remand centre's in-house doctor whenever it had been necessary. He also received pharmacological treatment as prescribed.

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

During his detention pending trial the applicant filed several unsuccessful complaints with the Regional Inspectorate of the Prison Service (*Okręgowy Inspektorat Służby Więziennej*) about different aspects of his detention conditions in Sosnowiec Remand Centre. He alleged, *inter alia*, that damp and mould resulting from overcrowding of the detention centre had led to deterioration of his health and had intensified his asthma attacks.

By a letter of 4 August 2003 the Ombudsman informed the applicant that his complaints about inadequate medical care in detention were unfounded

On 16 March 2005 the Regional Inspectorate of the Prison Service replied to the claim that, given the general overcrowding of penitentiary facilities in Poland, Sosnowiec Remand Centre had had the right to place the applicant in a cell securing to the detainees less than 3 sq metres per person.

On 8 October 2004 the applicant brought an action in tort against the State Treasury, seeking damages for the very bad conditions of his detention which put his life and health at risk. He submitted that in Sosnowiec Remand Centre he had been detained in badly ventilated, overcrowded, mould-infested and damp cells. His state of health had deteriorated, his asthma attacks had intensified and the intervention of a rescue service had been necessary on two occasions.

On 6 August 2005 the Sosnowiec District Court was served with an expert report on the sanitary conditions in Sosnowiec Remand Centre and, in particular, on the existence of mould there. The opinion confirmed the existence of mould and concluded that the walls of the centre had complied with the construction norms in 1982, when the centre had been built. However, the building had not complied with norms applicable after that date.

On 12 March 2007 the Sosnowiec District Court examined on the merits the applicant's claim related to his detention in Sosnowiec Remand Centre

from 9 February 2003 until 27 July 2004. The court dismissed the applicant's claim.

Upon the applicant's appeal, however, on 29 November 2007 the Katowice Regional Court reversed the judgment and awarded the applicant 1,000 PLN for non-pecuniary damage.

On an unspecified date in 2006 the applicant brought another civil action against the State Treasury and Sosnowiec Remand Centre. He sought damages for the alleged lack of adequate medical care during his detention from 7 October 2005 until 7 April 2007.

On 27 June 2008 the Katowice Regional Court dismissed the applicant's claim as ill-founded. On 21 August 2008 the same court rejected the appeal due to a procedural mistake.

B. Relevant domestic law and practice

1. Conditions of detention

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 cases of *Łatak v. Poland* (no. 52070/08) adopted on 12 October 2010 (see §§ 25-54) and *Łomiński v. Poland* (no. 33502/09) adopted on 12 October 2010 (see §§ 17-49).

2. Preventive measures, including pre-trial detention

The relevant domestic law and practice concerning the imposition of detention on remand (*aresztowanie tymczasowe*), the grounds for its extension, release from detention and rules governing other "preventive measures" (*środki zapobiegawcze*) are stated in the Court's judgments in the cases of *Gołek v. Poland*, no. 31330/02, §§ 27-33, 25 April 2006, and *Celejewski v. Poland*, no. 17584/04, §§ 22-23, 4 August 2006.

3. Remedies for unreasonable length of proceedings

The relevant domestic law and practice concerning remedies for excessive length of judicial proceedings, in particular the applicable provisions of the 2004 Act, are stated in the Court's decisions in the cases of *Charzyński v. Poland* no. 15212/03 (dec.), §§ 12-23, ECHR 2005-V and *Ratajczyk v. Poland* no. 11215/02 (dec.), ECHR 2005-VIII, and its judgment in the case of *Krasuski v. Poland*, no. 61444/00, §§ 34-46, ECHR 2005-V.

4. Monitoring of detainees' correspondence

The legal provisions concerning monitoring of detainees' correspondence applicable at the material time and questions of practice are set out in paragraphs 65-66 of the judgment delivered by the Court on 4 May 2006 in *Michta v. Poland ,* no. 13425/02.

COMPLAINTS

The applicant complained under Article 3 of the Convention that the living and sanitary conditions in Sosnowiec Remand Centre and the lack of adequate medical care during his detention had amounted to inhuman and degrading treatment.

The applicant also complained under Article 5 § 3 of the Convention that the length of his detention pending trial in the criminal proceedings had been unreasonable.

He also complained under Article 6 § 1 of the Convention of the unreasonable length of the criminal proceedings against him.

Lastly, the applicant complained under Article 8 of the Convention that his correspondence had been censored by the remand centre's authorities.

THE LAW

A. Complaints under Articles 3, 5 § 3 and 6 § 1 of the Convention

The applicant complained of a breach of Article 3 on account of overcrowding and inadequate living and sanitary conditions and insufficient medical care in Sosnowiec Remand Centre from 9 February until 13 August 2003; 1 October 2003 until 30 July 2004; 3 November until 30 December 2004 and 7 October 2005 until 7 April 2007. He also complained under Article 5 § 3 of the Convention of the unreasonable length of his pre-trial detention, which had lasted one year and eleven months and under Article 6 § 1 of the Convention about the unreasonable length of criminal proceedings against him which had lasted four years in four jurisdictions.

On 17 January 2011 the Court received the following declaration from the Government:

> "I, Jakub Wołąsiewicz, Agent of the Government, declare that the Government of Poland offer to pay, to Mr Henryk Tomczyk with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 18,500 (eighteen thousand five hundred Polish zlotys), plus any tax that

may be chargeable to the applicant. The payment is intended to provide the applicant with redress for the systemic violation of Article 3 of the Convention on account of the conditions of his detention, in particular overcrowding, as identified by the Court in the pilot judgment given in the case of *Orchowski v. Poland* (no. 17885/04) on 22 October 2009 (see paragraphs 135 and 147 et seq.) and for the breach of Articles 5 § 3 and 6 § 1 of the Convention on account of the excessive length of his detention and the criminal proceedings against him respectively and to cover any costs and expenses that may be chargeable to the applicant.

This sum will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. 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 payment will constitute the final resolution of the case."

On 26 January 2011 the Court received the following declaration signed by the applicant's lawyer:

"I, Wojciech Sobolewski, note that the Government of Poland are prepared to pay to Mr Henryk Tomczyk, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 18,500 (eighteen thousand five hundred Polish zlotys), plus any tax that may be chargeable to the applicant. I further note that the payment constitutes redress for the systemic violation of Article 3 of the Convention on account of the conditions of his detention, in particular overcrowding, as identified by the Court in the pilot judgment given in the case of *Orchowski v. Poland* (no. 17885/04) on 22 October 2009 (see paragraphs 135 and 147 et seq.) and for the breach of Articles 5 § 3 and 6 § 1 of the Convention on account of the excessive length of his detention and the criminal proceedings against him respectively and to cover any costs and expenses that may be chargeable to the applicant.

This sum will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Having consulted my client, I would inform you that he accepts the proposal and waives any further claims against Poland in respect of the facts giving rise to this application. He declares that this constitutes a final resolution of the case."

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention). In view of the above, it is appropriate to strike this part of the case out of the list.

B. Complaint under Article 8 of the Convention

The applicant also complained in general terms that his correspondence had been withheld and censored by the remand centre's authorities. The applicant did not furnish any copies of envelopes or any other documents or information to substantiate his complaint.

None of the letters sent by the applicant to the Court appears to have been opened or censored by the authorities. 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 friendly settlement reached in respect of the complaints under Articles 3, 5 § 3 and 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in so far as it relates to the above complaints in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President