

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

FOURTH SECTION

DECISION

Application no. 61254/09
Andrzej TURZYŃSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 17 April 2012 as a Chamber composed of:

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 5 November 2009,

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, Mr Andrzej Turzyński, is a Polish national who was born in 1959 and lives in Gdańsk. He was represented before the Court by Ms B. Słupska-Uczkiewicz and Ms M. Gąsiorowska, lawyers practising in Wrocław and Warsaw respectively. 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 medical condition

2. In 1998 the applicant was diagnosed with multiple sclerosis (*stwardnienie rozsiane*). He is in a wheelchair; both of his legs and his left arm are paralysed. The applicant also suffers from urinary incontinence and wears incontinence pads. He is slowly losing his eyesight, is affected with palsy and also experiences cramps.

2. The applicant's detention and medical assistance provided in the remand centre

(a) The applicant's submissions

3. On unspecified dates in 2002 the applicant was convicted of fraud in two separate sets of criminal proceedings. He was sentenced to two prison terms of two years each. His actual detention, however, was postponed because of his poor health.

4. On 5 November 2008 the applicant was arrested by the police. On the same day he was transported to Gdańsk Remand Centre where he started serving his combined four-year prison sentence.

5. He was committed to Gdańsk Remand Centre, where he alternated between the neurology ward of the remand centre's hospital wing and a general prison wing. From 5 November 2008 until 15 January 2009 and from 30 April until 10 September 2009 the applicant was detained in the hospital wing. In the remaining time he was imprisoned in the remand centre's general wing. He shared his cell with three healthy inmates. The cell in question was adapted to special needs detainees in that it had a wider door and a special handle had been installed on the wall next to the toilet. The representatives of the Ombudsman inspected the applicant's cell and confirmed that it was adapted to the needs of disabled persons.

6. The applicant was usually scheduled to see the remand centre's in-house general practitioner once every fortnight. In his opinion, the medical check-ups should have been more frequent and run by a neurologist.

7. The remand centre's nurse administered the applicant's medicine once or twice a day. The applicant claimed that the pharmacological treatment prescribed was insufficient to stop his health from deteriorating. In his opinion, the only way to slow down the development of his disease and to avoid complete body paralysis was to have regular and specialised physiotherapy.

8. The applicant received a daily supply of incontinence pads from the prison nurse. He changed them with the assistance of his fellow inmates. He had to pay for this help with cigarettes and other goods. The applicant submitted that he was in an inferior position *vis-à-vis* his cellmates because he depended on their assistance for his hygiene and daily routines. He also felt humiliated in front of them because he had no privacy when having his incontinence pads changed and he often smelt of urine. The latter led to his being mocked, and caused increased tension and disputes among his cellmates.

9. The applicant also submitted that, in order to attend his physiotherapy sessions, he had had to be carried in his wheelchair across the external yard by fellow prisoners. On those occasions he had only worn his pyjamas and had often been cold. In addition, on several occasions, he had been dropped and his wheelchair had been badly damaged. For those reasons the applicant decided not to continue his physiotherapy.

10. On 12 October 2010 the applicant was conditionally released from detention.

(b) the Government's submissions

11. On an unspecified date in 2008 the applicant filed an application for adjournment of the execution of his prison sentence with the Kościerzyna District Court. On 20 November 2008 the court dismissed his application. It found that the applicant could serve his sentence and be treated in prison hospital. The court relied on the supplementary expert opinion of 20 October 2008 (see paragraph 20 below) and the information submitted by the Chief Medical Officer of the Gdańsk Regional Inspectorate of the Prison Service. According to the latter, the neurological ward of the Gdańsk Remand Centre ensured constant medical care to prisoners suffering from chronic neurological conditions. It disposed of well-equipped physiotherapy room and each disabled prisoner was provided with specialised assistance in his daily routine.

12. The Government submitted that the applicant had had regular neurological consultations (on 23 December 2009, 23 March and 4 May 2010). The applicant had been signed up for regular physiotherapy sessions which he had frequently refused to attend, and for that reason his allegations that he had his fingers and toes massaged only on a few occasions were groundless. The applicant's fellow inmates, who had been carefully chosen, assisted him voluntarily in his daily routine. This was not the result of the lack of personnel but of the applicant's refusal to cooperate with the nurses. The applicant was of the opinion that they were able to satisfy his needs. In Gdańsk Remand Centre there was also a prisoner whose job was to help the disabled inmates in the presence of the medical staff. However, the applicant rejected the assistance of this person. The Government maintained that the applicant had never complained about his inmates. On the contrary,

on 12 March 2009 he said that "the inmates help willingly". Further, on 11 June 2010 the applicant refused to be transferred to the neurological ward where he was to be provided with constant medical care and nursing. The applicant stated that the conditions in his cell were good and that he had cooperative inmates.

13. In spite of the applicant's allegations that he needed constant assistance, he managed to keep his cell tidy and was twice rewarded for that. His incontinence pads, sheets and underwear were changed adequately according to his needs.

14. The medical wards of the remand centres in Poland were well equipped for treating patients with multiple sclerosis. They offered the same level of treatment as received by patients in public hospitals. As indicated by the Chief Medical Officer of the Gdańsk Regional Inspectorate of the Prison Service, patients treated outside the prison system did not receive the same high level of constant medical care as patients with MS in Polish prisons. For this reason, the applicant's claim that the pharmacological treatment had been insufficient to stop his health from deteriorating was groundless.

3. Medical reports

(a) The applicant's submissions

15. In a report dated 29 May 2005 court-appointed experts in neurology and forensic medicine at the Gdańsk Medical Academy categorically stated that the applicant was not, at the time of the report, or in the future, fit to be held in detention.

16. In a report of 18 September 2006 the same medical experts submitted that the applicant's advanced multiple sclerosis posed an absolute obstacle to his detention. The experts noted that it was inevitable that the applicant's health would get worse, although they would expect him to experience short periods in which his illness could be expected to be more stable. The experts concluded that the applicant's detention in a prison hospital could be taken into consideration but only under the condition that the prison authorities would provide him with specialist neurological care, regular physiotherapy and nursing adequate to the degree of his illness.

17. On 28 May 2007 the same medical experts drafted a supplementary report in which they stressed that the applicant's detention should be considered only if he were assigned to the hospital wing, received specialised neurological care, constant physiotherapeutic care, nursing and almost permanent assistance by a person who would be able to help him with his daily routine (prior to his imprisonment, the applicant was assisted by his wife). The above-mentioned conditions had to be strictly complied with to avoid a risk to the applicant's health.

(b) The Government's submissions

18. The Government submitted that in December 2005 a criminal case against the applicant was filed with the Kościerzyna District Court. The victims in this case informed the authorities that in September 2005 the applicant had arrived alone in a car at their plot of land.

19. The Government maintained that the medical experts who had prepared the reports in 2006 and 2007 had not been provided with the witnesses' accounts who had seen the applicant walking in September 2005.

20. On 20 October 2008 the same medical experts concluded in their supplementary report that the applicant could serve his sentence in Gdańsk Remand Centre. The conditions ensured by the neurological ward of that remand centre were compatible with the applicant's needs. The supplementary report was drafted to clarify the 2007 opinion. The experts stated that the applicant's condition was characterised by periods of deterioration (lasting a few days) and of remissions (lasting a few months or even years). If the applicant were to be detained in Gdańsk Remand Centre, he needed to be provided with some help in his daily routine (bath), neurological consultations, hospitalisation in the neurological ward of the Remand Centre if necessary and one-hour physiotherapy five times a week. It was no longer required that the applicant be provided with permanent assistance in all basic daily routines. The experts also stated that there was a risk that the applicant had exaggerated the seriousness of his condition which could not be excluded by means of medical examination. They noticed the improvement in his condition, which probably enabled the applicant to move in and out of his wheelchair independently and observed that the degree of paralysis of his legs and left arm was less pronounced than claimed by the applicant previously. The experts took into consideration the facts established in the proceedings before the Kościerzyna District Court that the applicant could move on his own and drive a car.

4. The applicant's complaints to the domestic authorities

21. On unspecified dates the applicant and his wife applied for temporary release (*przerwa w karze*). Those requests were dismissed because the relevant penitentiary court considered, on the basis of the medical reports, that the medical care which was being provided to the applicant in the Gdańsk Remand Centre was adequate and sufficient.

22. In addition, the applicant and his wife submitted numerous complaints to the Ombudsman, the Helsinki Foundation of Human Rights, the Regional Inspectorate of the Prison Service (*Okręgowy Inspektorat Służby Więziennej*) and other domestic authorities. In his letter of 28 April 2009 and numerous subsequent communications the Ombudsman

informed the applicant's wife that her allegations concerning inadequate medical care provided to her husband had been ill-founded.

23. By a letter dated 9 June 2009 the Head of the Gdańsk Regional Inspectorate of the Prison Service informed the applicant's wife that her numerous complaints that her husband was receiving inadequate medical care in prison had been considered ill-founded. It was noted that the applicant had twice been detained in the remand centre's hospital where he had received adequate medical care. The applicant was signed up for regular physiotherapy sessions, which he had frequently refused to attend. It was acknowledged that the applicant required another person's assistance with his daily routine. It was noted, however, that such assistance was being provided voluntarily by the applicant's fellow inmates. Lastly, the applicant's incontinence pads, sheets and underwear were changed adequately according to his needs.

24. By a letter dated 12 August 2009 the same authority once more informed the applicant's wife that her complaints had been considered ill-founded. It was noted that the applicant's health had been stable for three years and that he was being detained in the hospital wing where he was receiving adequate medical care. It was submitted that, following the recommendations of the physiotherapy specialist, the applicant was exercising five times per week.

25. By a letter dated 30 October 2009 the Head of the Gdańsk Regional Inspectorate of the Prison Service dismissed the complaints of the applicant's wife. It was noted that the applicant was being detained in a cell adapted to his special needs and that he had refused to attend his physiotherapy sessions, which had been taking place away from his cell. Further, he was assisted in his daily routine by his inmates and prison nurses.

26. By a letter dated 8 January 2010 the same authority informed the applicant that he was being regularly assisted by a nurse.

B. Relevant domestic law and practice

27. The provisions pertaining to medical care in detention facilities and general conditions of detention, and the relevant domestic law and practice are set out in the Court's judgments in the cases of *Kaprykowski v. Poland*, no. 23052/05, §§ 36-39, 3 February 2009; *Sławomir Musiał v. Poland*, no. 28300/06, §§ 48-61, 20 January 2009; and *Orchowski v. Poland*, no. 17885/04, §§ 74-85, 13 October 2009.

COMPLAINT

28. The applicant complained under Article 3 of the Convention that he had been detained in breach of medical requirements for the particular conditions of his health, without specialised neurological care, constant physiotherapy, adequate nursing and permanent assistance by another person. The lack of those particular arrangements resulted in the applicant's increased mental and physical suffering, humiliation and the rapid deterioration of his health.

THE LAW

A. The Government's submissions

29. The Government argued that the applicant had not exhausted domestic remedies with regard to his complaint under Article 3 of the Convention. He failed to bring a civil action for compensation under Articles 23 and 24 read in conjunction with Article 448 of the Civil Code whereby persons deprived of their liberty who had suffered a violation of their personal rights as a result of the conditions of their detention may bring a civil action against the State Treasury.

30. The Government maintained that the possibility to have recourse to the above-mentioned remedy was well-established in the practice of the Polish courts. They referred to a judgment delivered by the Warsaw Court of Appeal on 18 March 2008 in the case of MM (no. I ACa 587/07). The Court of Appeal reversed the lower court's judgment and awarded the plaintiff, a mentally ill detainee, 50,000 Polish zlotys on account of a failure to diagnose his mental illness (schizophrenia) by doctors of three detention centres and the resulting lack of adequate psychiatric treatment in detention.

31. With regard to the merits, the Government observed that the applicant suffered from a serious illness. However, there were strong indications that he had exaggerated the seriousness of his condition. The Government argued that the authorities had ensured adequate medical care and nursing to the applicant and that he had been detained in suitable conditions. The hospital wings of the remand centres in Poland were well equipped for treating patients with MS and offered the same level of care and treatment as received by patients in public hospitals. For that reason the applicant's claim that his pharmacological treatment had been insufficient was groundless. The applicant's cell was adapted to the special needs of disabled prisoners. In conclusion, the applicant's complaint under Article 3 of the Convention was inadmissible as manifestly ill-founded.

B. The applicant's submissions

32. The applicant rejected the Government's objection and averred that he had exhausted domestic remedies by having filed numerous complaints with the Ombudsman and the Regional Inspector of the Prison Service. In those circumstances and having regard to the subject of his application, a civil action for compensation referred to by the Government could not be considered as an effective remedy.

33. As regards the merits, the applicant argued that he had been detained in conditions which had been incompatible with his state of health. The specific medical recommendations in respect of the applicant's treatment and care had not been respected during his incarceration. During that period the applicant had spent eight and a half months in the hospital wing. He benefited from twenty sessions of physiotherapy lasting each fifteen minutes. In respect of the period spent in the general prison wing, the applicant averred that he had received no assistance from the prison staff and had had to pay his fellow inmates for their assistance in his daily routines. The medical care provided in detention had been superficial and limited to distribution of medication.

34. The applicant's numerous complaints had not been followed by any control of the conditions of his detention and were thus unduly examined. The applicant contested the medical opinion of 2008 and maintained that it had been prepared without him having been interviewed or examined.

C. The Court's assessment

35. The Court notes that in the Government's submission the applicant failed to bring a civil action in order to seek compensation for the alleged infringement of his personal rights. However, even assuming that the applicant exhausted relevant domestic remedies, it finds that the application is in any event inadmissible for the reasons set out below.

36. The Court recalls 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, *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 v. Poland*,

no. 28300/06, § 86, 20 January 2009; and *Kaprykowski v. Poland*, no. 23052/05, § 69, 3 February 2009). There are three particular elements to be considered in relation to the compatibility of the 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 *Mouisel v. France*, cited above, §§ 40-42; *Melnik v. Ukraine*, no. 72286/01, § 94, 28 March 2006).

37. The Court notes that it is undisputed that the applicant suffers from multiple sclerosis and on that account he is in need of specialised medical treatment and nursing.

38. The Court will next examine whether the applicant was provided with adequate medical assistance and care in detention. It notes first that according to the medical opinions of 2006 and 2007 his detention was considered possible under the specific conditions and only if he were to be assigned to the hospital wing. The medical opinion of 20 October 2008, which appears to be the most relevant as it was prepared just days before his actual incarceration, stated that the applicant could serve his sentence in Gdańsk Remand Centre. This opinion noted certain improvement in the applicant's health and listed the conditions which had to be satisfied in the case of the applicant's detention (see paragraphs 20 above). It also stated, by contrast to earlier opinions, that the applicant needed assistance only in some of his everyday activities. Accordingly, the Court finds that there were no grounds to consider that the applicant's detention was excluded on medical grounds (compare and contrast, *Rokosz v. Poland*, no. 15952/09, §§ 39-40, 27 July 2010).

39. With regard to the adequacy of medical assistance, the Court notes that of the overall period of his incarceration which amounted to just over twenty-three months, the applicant was detained for eight and a half months in the neurology ward of the prison hospital. There he was ensured constant and specialist medical care as well as the necessary assistance. Further, it transpires from the documents produced by the Government, which were not contested by the applicant, that on 11 June 2010 he refused to be transferred to the neurology wing (see paragraph 12 *in fine* above). During the period of the applicant's detention in the general wing of the prison, he was regularly consulted by a general practitioner and occasionally by a neurologist. He also received pharmacological treatment. It further appears that the applicant was provided with a possibility to attend physiotherapy sessions. On a number of occasions he refused to participate in them, claiming that he had to be carried to another building across a yard by his fellow prisoners. However, the Court notes that the applicant appears not to have raised this issue in his complaints to the prison authorities and, secondly, it does not seem to be an insurmountable obstacle in terms of access to physiotherapy. On the evidence before it, the Court does not find

any indication that the medical care provided to the applicant was deficient or below the standard level of health care available to the population generally (see, *Nitecki v. Poland* (dec.), no. 65653/01, 21 March 2002; *Kaprykowski*, cited above, § 75; and *Michajlov v. Austria* (dec.), no. 13796/09, 27 March 2012, § 35).

40. As regards the issue of nursing and assistance of another person to the applicant, the Court observes that his cell in the general prison wing was adapted to the needs of disabled persons as confirmed by the representatives of the Ombudsman (see paragraph 5 above). Furthermore, the prison provided the applicant with the assistance of a nurse and when he refused to cooperate with the nurses he was voluntarily assisted in his daily routine by his inmates who were specifically chosen for that role (compare and contrast, *Kaprykowski*, cited above, § 74 *in fine*). In addition, the applicant's hygienic materials and sheets were regularly changed. In view of the foregoing, the Court is satisfied that the applicant's specific nursing needs were duly taken care of.

41. Furthermore, the Court considers that the applicant has not substantiated, in particular by medical reports, his assertion that the alleged deficiencies in his medical care and nursing resulted in his increased mental and physical suffering as well as led to the deterioration of his health. The Court lastly notes that the applicant filed numerous complaints with the Ombudsman and the Regional Inspectorate of the Prison Service about the alleged shortcomings in his medical care. However, all those grievances were examined and found to be without merit.

42. In conclusion, the Court finds that the applicant was provided with adequate medical care in detention which took into account the specific demands of his illness. It follows that the complaint under Article 3 of the Convention 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.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President