

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

FOURTH SECTION

DECISION

Application no. 48558/08
Bogdan WOJDA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 3 April 2012 as a Committee composed of:

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 September 2008,

Having regard to the declaration submitted by the respondent Government on 8 November 2011 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Bogdan Wojda, is a Polish national who was born in 1958 and lives in Młochów. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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

From 1995 onwards the applicant has been detained in various penitentiary facilities.

On 27 June 1999 he was committed to Płock Prison where he remained until 3 October 2005, except for the period of three months from May to August 2002 when he was detained in Sztum Prison.

On 3 October 2005 he was transferred to Łowicz Prison. Apparently in August 2011 the applicant was released.

2. Conditions of the applicant's detention

The applicant submitted that throughout his detention in Płock Prison and in Łowicz Prison he had been held in overcrowded cells and moreover, that in Płock Prison he had been detained together with smokers, despite himself being a non-smoker.

From the documents presented by the applicant in support of his allegations, it can be seen that from December 1999 to August 2002 he had been held in overcrowded cells for the period of at least 588 days. The applicant further corroborated his statements by submitting the judgment of the Płock Regional Court handed down on 2 July 2007, which confirmed that the applicant had been held in overcrowded cells in the period from August 2002 to October 2005, the date of his transfer to Łowicz Prison.

The judgment given by the Łódź Court of Appeal on 20 August 2010 further confirmed that in Łowicz Prison the applicant had been held in overcrowded cells until July 2007. Additional documents submitted by the applicant also reveal that in the period from July 2007 until December 2009 he had been almost constantly held in overcrowded cells, for the total period of 742 days.

In his letter to the Court of 24 February 2011 the applicant stated that he was currently held in cells where the statutory requirement of 3 m^2 per prisoner was respected.

3. Civil actions concerning the conditions of the applicant's detention

(a) First civil action against Płock Prison (case no. I C 4/06)

On 27 December 2005 the applicant brought a civil action in tort against Płock Prison to seek compensation for the infringement of his personal rights on account of the inadequate conditions of his detention, in particular his detention together with detainees who smoked.

On 2 July 2007 the Płock Regional Court dismissed his action and ordered him to pay the costs of the proceedings in the amount of 2,400 Polish zlotys [PLN] (at that time approximately 640 euros [EUR]). The court observed that upon his arrival in the defendant prison, the applicant had declared himself to be a non-smoker. The court further observed that the applicant had never complained to the prison authorities about being placed in one cell with smokers. As the court noted, although in Płock Prison there had been no cells specifically designated for non-smokers, the applicant could have easily been placed in a cell with other non-smokers had he only made his wish known to the prison authorities. Moreover, the court took note of an expert medical opinion, according to which the applicant's health had not deteriorated as a result of being held together with smokers. The court considered that by not filing any complaints or requests to be transferred to a non-smoking cell, the applicant had tacitly consented to being held together with detainees who smoked. Therefore, it refused to award him any compensation.

The applicant did not appeal against the first-instance judgment.

(b) Second civil action against Płock Prison (case nos. I C 2744/06 and VI ACa 1352/07)

On 7 March 2006 the applicant brought another civil action in tort against Płock Prison to seek compensation for the deterioration of his health and for infringement of his personal rights on account of the inadequate conditions of his detention in the period from August 2002 onwards.

On 2 July 2007 the Płock Regional Court dismissed his action. The court acknowledged that the overall living conditions in the defendant prison had been less than satisfactory and confirmed that the cells in which the applicant had been held in the relevant period had been overcrowded, usually by one extra inmate. The court considered that the placing of the applicant in overcrowded cells had not been unlawful. Moreover, it held that the applicant had failed to demonstrate that he had suffered any harm on account of the inadequate conditions of his detention. Consequently, it refused to award him any damages or compensation.

On 9 April 2008 the Warszawa Court of Appeal dismissed the applicant's appeal, essentially restating the reasoning invoked by the lower court.

(c) First civil action against Łowicz Prison (case no. I ACa 407/10)

On 25 July 2006 the applicant brought a civil action in tort against Łowicz Prison, seeking compensation for the infringement of his personal rights on account of the inadequate conditions of his detention in that prison.

On 8 November 2007 the Łódź Regional Court dismissed his action. His appeal against that judgment was dismissed by the Łódź Court of Appeal on

22 April 2008. On 17 March 2010 the Supreme Court (*Sąd Najwyższy*) quashed the judgment of the Łódź Court of Appeal and remitted the case.

On 20 August 2010 the Łódź Court of Appeal awarded the applicant PLN 10,000 (approximately EUR 2,500) by way of compensation in respect of the period of about eighteen months from the end of 2005 to July 2007. The court found that in the relevant period the applicant had been held with 14-15 other detainees in a cell of 33.82 m^2 designed to fit 11 prisoners. The domestic court moreover considered that from July 2007 onwards the applicant's cell had no longer been overcrowded. It awarded the applicant PLN 10,000 by way of compensation, holding this amount to be in line with the jurisprudence of the European Court of Human Rights in similar cases.

(d) Second civil action against Łowicz Prison (case no. I C 151/10)

On an unspecified date, the applicant instituted another civil proceedings against Łowicz Prison, seeking compensation for the infringement of his personal rights on account of the inadequate conditions of his detention in that prison in the period from October 2007 to 12 May 2009.

In its judgment of 25 January 2011 the Łowicz District Court (*Sąd Rejonowy*) examined the applicant's claim under Articles 23 and 24 of the Civil Code in conjunction with Article 448 of that code. The domestic court held that from January to July 2009 the applicant had been detained together with 16 inmates in a cell designed to fit ten people. It was further observed that the practice of placing prisoners in overcrowded cells, which had been based on a legal provision valid at that time, namely on Article 248 of the Code of Execution of Criminal Sentences, should have been applied only in extraordinary circumstances and for a limited time. The domestic court held that the applicant's personal rights had been breached on account of his detention in overcrowded cells. It was further observed that the sanitary conditions in the defendant prison were adequate. Consequently, the court awarded the applicant PLN 5,000 (approximately EUR 1,200) for the suffering he had experienced due to overcrowding in Łowicz Prison and dismissed the remainder of the claim.

It appears that no appeal was lodged.

B. Relevant domestic law and practice

A detailed description of the relevant domestic law and practice concerning general rules governing the conditions of detention in Poland and domestic remedies available to detainees alleging that 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) adopted on 12 October 2010 (see §§ 25-54).

COMPLAINT

The applicant alleged a breach of Article 3 of the Convention in that in Płock Prison and in Łowicz Prison 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 prison authorities had not secured to him the statutory minimum cell space of 3 m² per person, as required by the national law.

THE LAW

A. Conditions of detention

The applicant complained about the conditions of his detention. He relied on Article 3 of the Convention which provides as follows:

Article 3

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

By letter dated 8 November 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

"...The Government hereby wish to express – by way of the unilateral declaration – their acknowledgement of the systemic violation of Article 3 of the Convention on account of the conditions of the applicant's 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.)

Consequently, the Government are prepared to pay to the applicant the sum of PLN 8,500 (eight thousand five hundred Polish zlotys) which they consider to be reasonable in the light of the Court's case law. The sum referred to above, which is to cover any pecuniary and non-pecuniary damage, as well as costs and expenses, will be free from any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention for the Protection of 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 the 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 Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention (...) "

In a letter of 15 January 2012 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of Article 3 on account of overcrowding and inadequate detention conditions (see, for example, the pilot judgments in the cases of *Orchowski v. Poland*, no. 17885/04, ECHR 2009-... (extracts) and *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009 and the leading follow-up decision in the case of *Łatak v. Poland* (dec.), no. 52070/08, 12 October 2010).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 3 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 accordance with Article 37 § 1 (c) of the Convention.

Fatoş Aracı Deputy Registrar	Päivi Hirvelä President