

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

FOURTH SECTION

DECISION

Application no. 3682/06
Czesław WOJTKUN
against Poland

The European Court of Human Rights (Fourth Section), sitting on 12 February 2013 as a Committee composed of:

George Nicolaou, *President,*
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 December 2005,

Having regard to the declaration submitted by the respondent Government on 6 December 2012 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 Czesław Wojtkun, is a Polish national, who was born in 1949 and lives in Łódź. He was represented before the Court by Ms M. Janik, a lawyer practising in Łódź.

The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, succeeded by Ms J. Chrzanowska, 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.

On 8 April 2002 the Warsaw Regional Military Court (*Wojskowy Sąd Okręgowy*) convicted the applicant, a professional soldier, of espionage for a foreign state and sentenced him to four years' imprisonment.

The applicant served his sentence between 17 March 2003 and 3 November 2005 in different prisons.

Between 17 March 2003 and 30 October 2003 as well as between 5 May 2004 and 18 May 2005 he was detained in the Łódź District Centre. He was placed in a single cell upon his request.

Between 30 October and18 November 2003 the applicant was detained in the Dębica Prison in a single cell size of over 4.3 square metres.

Between 18 November and 1 December 2003 the applicant was detained in the Piotrków Trybunalski Prison. The Government submitted that the cells in which he had been detained had not been overcrowded. The applicant does not appear to contest it.

Between 1 December 2003 and 4 May 2004 as well as between 18 May and 3 November 2005 the applicant was detained in the Sieradz Prison. The applicant submitted that he had been detained in a cell of 5.5 square metres together with another detainee. The Government did not contest this.

On 15 July 2005 the Warsaw District Military Court (*Wojskowy Sąd Garnizonowy*) dismissed the applicant's request for conditional release. This decision was upheld on 1 September 2005 by the Warsaw Regional Military Court.

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 their conditions of detention are 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 decision given by the Court in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

COMPLAINTS

1. The applicant complained in substance under Article 3 of the Convention about his conditions of detention, in particular about overcrowding in the Sieradz Prison.

2. He further complained about the decision by military courts of 15 July 2005, upheld on 1 September 2005, concerning conditional release from prison.

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 6 December 2012 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:

"Bearing in mind that the conditions of the applicants' detention which are incompatible with respect for human dignity fall under the scope of Article 3 of the Convention (...*Orchowski v. Poland* (no. 17885/04) on 22 October 2009), the Government hereby wish to express – by way of the unilateral declaration – their acknowledgement of the violation of Article 3 of the Convention by failure to afford the applicant adequate conditions of his detention. Simultaneously, the Government declare that they are ready to pay 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 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 (...) "

The applicant requested the Court to reject the Government's unilateral declarations and to continue the examination of the case.

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 or part thereof 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, Norbert Sikorski* and the leading follow-up decision in the case of *Łatak* (all cited above)).

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 this part 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 this part of the application (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

B. Complaint under Article 6 § 1 of the Convention

The applicant further complained under Article 6 § 1 of the Convention about unfairness of the decisions of the military courts issued on 15 July and 1 September 2005. However, the Court notes that the applicant's complaint was introduced on 1 November 2008. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the complaint 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 so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

George Nicolaou
President