

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

FOURTH SECTION

DECISION

Application no. 35089/09
by Waldemar WYSOCZAŃSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 6 December 2011 as a Committee composed of:

David Thór Björgvinsson, *President,*
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 June 2009,

Having regard to the declaration submitted by the respondent Government on 25 July 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 Waldemar Wysoczański, is a Polish national who was born in 1976 and is currently detained in Czarne 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 applicant, may be summarised as follows.

1. The period of the applicant's detention

On 5 June 2006 the applicant was committed to Jelenia Góra Remand Centre. In June 2009 he was transferred to another penitentiary facility. On November 2009 the applicant was transferred back to Jelenia Góra Remand Centre. In August 2011 the applicant was transferred to Czarne Prison where he is currently detained.

2. Conditions of the applicant's detention

The applicant maintained that throughout his detention in Jelenia Góra Remand Centre he has been held in overcrowded cells in which the statutory minimum standard of 3 m² per person was not respected.

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

The applicant brought a civil action to seek 30,000 Polish zlotys in compensation for the infringement of his personal rights.

On 22 January 2009 the Jelenia Góra District Court (*Sąd Rejonowy*) dismissed the applicant's action. The court established that at the relevant time the applicant was detained in overcrowded cells. It argued, however, that he had suffered only insignificantly minor damage as a result of overcrowding in Jelenia Góra Remand Centre and therefore the requirements of Articles 23 and 24 of the Civil Code in conjunction with Article 448 of the Civil Code were not satisfied. It went on to say that the applicant was not discriminated against as all detainees remained in comparable conditions.

The applicant appealed.

On 30 April 2009 the Jelenia Góra Regional Court (*Sąd Okręgowy*) upheld the first-instance court judgment.

On an unspecified date the applicant brought another civil action against the State Treasury *statio fisci* Jelenia Góra Remand Centre to seek compensation for the infringement of his personal rights on account of his detention in overcrowded cells.

On 30 June 2009 the Jelenia Góra Regional Court rejected the applicant's claim stating that it was essentially the same as the one that had already been examined by the domestic courts and that the judgment of 30 April 2009 was final.

The applicant's interlocutory appeal against this decision was dismissed on formal grounds.

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) on 12 October 2010 (see §§ 25-54).

COMPLAINT

The applicant complains under Article 3 of the Convention of overcrowding in Jelenia Góra Remand Centre.

THE LAW

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 21 July 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 10,500 (ten 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 (...) "

In a letter of 5 October 2011 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 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 accordance with Article 37 § 1 (c) of the Convention.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President