

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

FOURTH SECTION

DECISION

Application no. 3826/04
by Ireneusz ZDAN
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 21 January 2004,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ireneusz Zdan, is a Polish national who was born in 1972 and lives in Rydułtowy. He was represented before the Court by Mr Z. Cichoń, a lawyer practising in Cracow. 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. Period of the applicant's detention

The applicant was detained in Racibórz Prison in the following periods: from 28 April until 9 June 1998; 21 May 2002 until 28 October 2004; and 17 November 2004 until 29 May 2007.

2. Conditions of the applicant's detention

In Racibórz Prison the applicant was consecutively detained in thirteen different cells. It appears that for several months the space per prisoner in the applicant's cells ranged from 1.8 - 2.5 sq m and was slightly inferior to 3 sq m during the remainder of the applicant's detention there.

The applicant had a daily one-hour outdoor exercise and one shower per week.

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

The applicant filed several unsuccessful complaints about his detention conditions with the Central Board of the Prison Service (*Centralny Zarząd Służby Więziennej*) and the Ombudsman. He did not bring a related civil action in tort for the infringement of his personal rights.

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 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).

COMPLAINT

The applicant complained under Article 3 of the Convention that the living and sanitary conditions in Racibórz Prison had amounted to inhuman and degrading treatment.

THE LAW

A. Complaint under Article 3 related to his detention from 28 April until 9 June 1998

The applicant complained of a breach of Article 3 on account of overcrowding and inadequate living and sanitary conditions in Racibórz Prison from 28 April until 9 June 1998.

The Court notes that the applicant lodged the instant application with the Court on 21 January 2004. 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.

B. Complaint under Article 3 related to his detention from 21 May 2002 until 28 October 2004 and 17 November 2004 until 29 May 2007

The applicant also filed a similar complaint in relation to his detention in the same prison from 21 May 2002 until 28 October 2004 and 17 November 2004 until 29 May 2007.

On 6 December 2010 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 Ireneusz Zdan with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 15,600 (fifteen thousand six 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.).
>
> 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 8 February 2011 the Court received the following declaration signed by the applicant's lawyer:

> "I, Zbigniew Cichoń, note that the Government of Poland are prepared to pay to Mr Ireneusz Zdan, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, PLN 15,600 (fifteen thousand six 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.).
>
> 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.

For these reasons, the Court unanimously

Takes note of the terms of the friendly settlement reached in respect of part 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

Nicolas Bratza
President