

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38774/05
by Paweł ZELCER
against Poland

The European Court of Human Rights (Fourth Section), sitting on 5 July 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 5 October 2005,

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

The applicant, Mr Paweł Zelcer, is a Polish national who was born in 1958. He is currently detained in Strzelce Opolskie Prison.

The applicant, who had been granted legal aid, was represented before the Court by Ms M. Łuczkiewicz, a lawyer practising in Częstochowa. 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

1. The applicant's detention

(a) Period of the applicant's detention

In 1991 the applicant began serving a sentence of 25 years' imprisonment.

On an unspecified date he was incarcerated in Łęczyca Prison.

On a further unspecified date he was transferred to Płock Prison.

On an unspecified date in 2004 the applicant was transferred to Kluczbork Prison where he remained until September 2006.

In September 2006 the applicant was transferred to Zabrze Prison.

On a later unspecified date he was moved to Łowicz Prison.

In July 2007 the applicant was transferred to Piotrków Trybunalski Prison.

On an unspecified date in January 2009 the applicant was moved to Żytkowice Prison.

On a further unspecified date in October 2009 he was moved to Strzelce Opolskie Prison where he is currently detained.

(b) Conditions of the applicant's detention

The applicant asserted that practically all of the detention centres in which he had been detained were overcrowded. In particular, he complained about the conditions of detention in Łęczyca Prison where he had been allegedly placed in a prison cell of 40 m² together with some twenty other inmates. He claimed that the prison buildings had been old, dilapidated and had not been renovated for many years. He further submitted that the overcrowding had resulted in tension and conflicts among the detainees.

In Płock Prison he was detained together with fourteen other inmates in a cell designed for eight prisoners. The cell was in fact a day room adapted for that use. It was dirty, infested with cockroaches and lacked basic furniture such as tables, stools and cupboards.

As regards Kluczbork Prison, the applicant claimed that he had been placed in a five-person cell together with six other inmates, one of whom had been HIV-positive and another had a contagious skin disease.

In respect of his detention in Łowicz Prison, the applicant submitted that he had been placed together with fifteen other prisoners in a cell measuring approximately 34 m². The beds in his cell were bunk beds and on some occasions a third bed was placed on top of the other beds, just below the ceiling. The applicant complained that he had often been forced to sleep on such a high bed which had not been properly secured.

The Government did not comment on the applicant's statements. They submitted that the applicant was currently detained in Strzelce Opolskie Prison in a cell in which the statutory minimum standard of 3 m² per person was respected. The applicant did not contest this submission.

2. Civil proceedings against the State Treasury

On 28 January 2005 the applicant brought a civil action for compensation against the State Treasury and Kluczbork Detention Centre, alleging an infringement of his personal rights on account of the conditions of his detention.

The applicant claimed PLN 300,000 (approx. EUR 75,000) in damages and compensation. He requested to be exempted from court fees which had been set at PLN 16,600 (approx. EUR 4,150). He justified his request by the fact that he was serving a long-term sentence of imprisonment and was not employed. Therefore, he did not have sufficient financial means to pay the court fees.

On 20 May 2005 the Opole Regional Court (*Sąd Okręgowy*) refused to exempt the applicant from the court fees, holding that the applicant had had no arguable claim in respect of the conditions of his detention. The court held that the applicant had not indicated in a sufficiently precise manner the harm which he had allegedly sustained on account of the conditions of his detention. Moreover, the court observed that the applicant had failed to file evidence in support of his claims or to identify by name the persons who had allegedly infringed his personal rights.

On 16 July 2005 the applicant appealed.

On 9 August 2005 the Wrocław Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal, repeating the grounds invoked by the court of first-instance.

On 19 October 2005 the Opole Regional Court returned the statement of claim to the applicant (*zwrot pozwu*) on account of his failure to pay the court fees.

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 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).

The legal provisions concerning exemption from court fees, applicable at the material time, and questions of practice are set out in the Court's judgments given in the cases *Kreuz v. Poland* (no. 28249/95, ECHR 2001 VI, §§ 23-33) and *Jedamski and Jedamska v. Poland* (no. 73547/01, §§ 29-39).

COMPLAINTS

The applicant alleged a breach of Article 3 of the Convention in that he had been detained in overcrowded cells and that the State had failed to secure to him adequate living conditions throughout his detention.

The applicant further complained under Article 6 § 1 that the excessive court fees required from him for proceeding with his claim had been in breach of his right of access to a court for the determination of his civil rights.

THE LAW

A. Alleged violation of Article 3 of the Convention

The applicant alleged a breach of Article 3 of the Convention in that he had been detained in overcrowded cells and that the State had failed to secure to him adequate living conditions throughout his detention.

Article 35 § 1 of the Convention reads, in so far as relevant, as follows:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

The Government argued that the applicant had not exhausted domestic remedies available to him, as required by Article 35 § 1 of the Convention. They raised a preliminary objection similar to that relied on in the case of *Łatak v. Poland* (see *Łatak v. Poland* (dec.) no. 52070/08, 12 October 2010, §§ 63-64). In particular, they stressed that the applicant had been moved to a cell in which he had been secured at least the statutory minimum standard space of 3 m^2 per person shortly after the delivery of the *Orchowski* and *Norbert Sikorski* pilot judgments. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed and the applicant should bring a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code in order to seek compensation for the past violation.

In view of the foregoing, the Government invited the Court to reject the application for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

The applicant in general disagreed with the above arguments and maintained that the remedy suggested by the Government could not be considered "effective" for the purposes of Article 35 § 1 of the Convention.

The Court examined the issue of admissibility in the above-mentioned case *Łatak*, where it considered the Government's arguments not only in the context of that particular applicant but also in respect of other actual or potential applicants with similar complaints (see *Łatak*, cited above, §§ 71 85).

In so doing, the Court had regard to the fact that on the date of the adoption of its decision there were 271 cases pending before it where the applicants had raised complaints similar in substance, alleging a violation of Article 3 in that at various times and for various periods they had been adversely affected by the same structural problem, having been detained in overcrowded, insanitary cells (ibid. § 84).

Having found that a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code could be considered an "effective remedy" for the purposes of Article 35 § 1 of the Convention as from 17 March 2010 and having regard to the 3-year limitation period for lodging such an action, the Court held that essentially in all cases in which in June 2008 the alleged violation had either been remedied by placing the applicant in Convention-compliant conditions or had ended *ipso facto* because the applicant had been released, the applicants concerned should bring a civil action for the infringement of personal rights and compensation (ibid. § 85 and § 76 respectively).

In the present case, the applicant's civil action initiated in 2005 was of no legal effect, which means that he may still have recourse to the above-mentioned remedy. Furthermore, the situation giving rise to the alleged violation of Article 3 ended on the date on which the applicant was placed in a cell in which the statutory minimum size requirement of 3 m^2 per person was respected. As to the various periods of detention which he spent in different prisons in cells which did not comply with the statutory minimum size requirement, the applicant still has adequate time to prepare and lodge with the Polish civil courts an action against all such prisons under Article 24 taken in conjunction with Article 448 of the Civil Code. Before having his Convention claim examined by the Court, he should be required to seek redress at domestic level.

The Court would also observe that, as from 6 December 2009, the date on which Article 110 § 2 (f) of the Code of Execution of Criminal Sentences entered into force, a detainee placed in conditions where the area per person is less than the statutory minimum may lodge a complaint with a

domestic court and contest a decision of the prison administration to reduce his cell space (see *Łatak* cited above, §§ 42-43 and 86-87).

It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Alleged violation of Article 6 § 1 of the Convention

The applicant complained under Article 6 § 1 that the excessive court fees required from him for proceeding with his claim had been in breach of his right of access to a court for the determination of his civil rights. The relevant part of Article 6 § 1 provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal established by law. ..."

The Government did not comment on the applicant's submissions.

The Court observes that in its judgment in *Kreuz v. Poland* (cited above, § 60) it dealt with the question whether the requirement to pay substantial fees to civil courts in connection with claims could be regarded as a restriction of the right of access to a court.

In this connection the Court held that the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction had been imposed, were factors which were material in determining whether or not a person had enjoyed his right of access and had "a ... hearing by [a] tribunal".

Moreover, the Court reiterates that a claim submitted to a tribunal for determination must be presumed to be genuine and serious unless there are clear indications to the contrary which might warrant the conclusion that the claim is frivolous or vexatious or otherwise lacking in foundation (see *Rolf Gustafson v. Sweden*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 38).

In this respect, the Court recalls that in the case *Kupiec v. Poland* it held that applicants who deliberately inflate the value of their claims for compensation cannot be expected to be exempted entirely from the payment of court fees or from the requirement to contribute in a reasonable amount to the costs of taking the action (see *Kupiec v. Poland*, no. 16828/02, § 47, 3 February 2009, and also *Kuczera v. Poland*, no. 275/02, § 45, 14 September 2010).

The Court will now determine whether, in the light of the above-mentioned principles and in the particular circumstances of the present case, the required fee constituted a restriction that impaired the very essence of the applicant's right of access to a court.

The Court first of all notes that the refusal to exempt the applicant from court fees occurred before the court of first instance. It also takes due note

of the fact that, at the time of filing the civil claim, the applicant had been in prison for 14 years and was to remain in detention until 2016. He had not been employed in prison and there is no information as to whether he had any savings.

The Court further observes that, in the particulars of claim, the applicant generally indicated that his claim was based on the inadequate medical assistance in detention and the inadequate conditions of his detention, in particular cell overcrowding. He moreover specified the legal basis of his action and attached a number of relevant documents in support of his claim. Furthermore, contrary to the finding of the domestic court, he correctly identified both defendants by name.

In the written grounds of its refusal to exempt the applicant from the required court fees, the first-instance court did not refer to the applicant's financial situation. Instead, it based its decision on the premise that the applicant's claim was manifestly groundless and insufficiently substantiated.

In the Court's view, what is decisive in the assessment of whether the applicant's right of access to a court had been unjustifiably restricted is whether his proposed action had any prospects of success

The Court recalls that it has already found in its above-mentioned *Łatak* decision that the Polish courts' practice allowing prisoners to claim compensation for inadequate conditions of detention only began to take shape in the wake of the Polish Supreme Court's judgment of 27 February 2007 and had not become fully consolidated and established before the delivery of the Supreme Court's judgment of 17 March 2010.

In the list of civil cases brought by detainees against prison authorities in connection with inadequate conditions of detention, produced by way of example by the Polish Government in the *Łatak* case, only one case was litigated in 2005 and another in 2006. The plaintiffs in those cases were awarded compensation for damage caused to their health by their prolonged detention with smokers. However, no award was made on account of cell overcrowding (see *Łatak*, in §§ 47-8).

In these circumstances, and given the Polish civil courts' jurisprudence as it stood in 2005, the Court is convinced that a civil action for compensation on account of inadequate conditions of detention and in particular cell overcrowding, filed in 2005, would have had hardly any prospects of success.

The Court further observes that the value of the claim, as indicated by the applicant in the particulars of claim, amounted to PLN 300,000, i.e. approximately EUR 75,000. The court fees which the domestic court required the applicant to pay amounted to PLN 16,600 [approx. EUR 4,150] and corresponded to the value of the claim.

The Court considers that the value of the applicant's compensation claim was grossly exaggerated and was out of any proportion to the nature of the

claim (see in this connection *Kupiec v. Poland*, cited above, § 47). Without doubt, had the applicant claimed a more reasonable amount, the court fees required would have been much lower.

Finally, it should be reiterated that the applicant still has adequate time to prepare and lodge a civil action in order to seek redress at domestic level in connection with the conditions of his detention.

In the circumstances, the Court considers that the amount of court fees required from the applicant in the present case cannot be considered disproportionate (compare and contrast *Stankov v. Bulgaria*, no. 68490/01, §§ 43-67, 12 July 2007). At the same time, it also concludes that the domestic court's decision not to exempt the applicant from court fees, made on the premise that the applicant's claim had no prospects of success, cannot be regarded as arbitrary or unfair. Consequently, and having regard to the fact that the applicant can still lodge a civil action (see above), it cannot be held that the court fees required from the applicant for proceeding with his claim constituted a restriction which impaired the very essence of his right of access to a court.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Nicolas Bratza
President