

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

FOURTH SECTION

DECISION

Application no. 36610/04
by Zbigniew ZESŁAWSKI
against Poland

The European Court of Human Rights (Fourth Section), sitting on 24 May 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano, *judges*,
and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 7 September 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Zbigniew Zesławski, is a Polish national who was born in 1976 and lives in Kielce. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

The applicant complained under Article 3 of the Convention about the conditions of his detention in Kielce Remand Centre and Pińczów, Tarnów, Nysa, Nowy Sącz, Nowy Wiśnicz and Strzelce Opolskie Prisons from June 1998 until July 2005.

THE LAW

The applicant complained about the conditions of his detention, in particular about overcrowding. He relied on Article 3 of the Convention which, in so far as relevant, provides as follows:

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

By letter dated 3 March 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 unilateral declaration – their acknowledgement of the fact that the applicant's conditions of detention, in particular overcrowding as indentified 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.), were not compatible with Article 3 of the Convention.
>
> In these circumstances, and having particular regard to violation of Article 3 of the Convention in respect of the applicant's conditions of detention, the Court's pilot judgment in the case of *Orchowski v. Poland* (no. 17885/04) as well as domestic jurisprudence submitted to this case, the Government declare that they offer to pay the applicant the amount of 6,000 PLN (six thousand Polish zlotys), which they consider to be reasonable in the circumstances of the case.
>
> The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of 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 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 periods 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 4 April 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*).

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's unilateral declaration and of the modalities for ensuring compliance with its undertakings;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Lawrence Early
Registrar

Nicolas Bratza
President