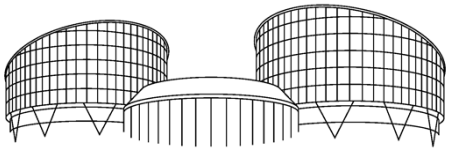

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ADAMKOWSKI v. POLAND

(Application no. 57814/12)

JUDGMENT

STRASBOURG

28 March 2019

This judgment is final but it may be subject to editorial revision.

In the case of Adamkowski v. Poland,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Armen Harutyunyan, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 5 March 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 57814/12) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr. J. Adamkowski ("the applicant"), on 31 August 2012.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

3. The applicant alleged that he was detained in overcrowded cells, which violated his rights under Article 3 of the Convention. He also complained that the rejection of his appeal for failure to send an identical copy thereof constituted excessive formalism and violated his right of access to a court under Article 6 § 1 of the Convention.

4. On 22 September 2014 the application was communicated to the Government.

5. The Government objected to the examination of the application by a Committee. Having considered the Government's objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1983 and is detained in Rzekuń.

A. The period of the applicant's detention

7. The applicant was detained in Płock Prison from 26 March to 29 August 2009 (five months and four days).

B. The conditions of the applicant's detention

8. The applicant submitted that during his detention in Płock Prison he had been held in overcrowded cells.

9. According to documents from the domestic proceedings which were provided, and the Government's submissions, the applicant was detained in overcrowded cells nos. 400 and 402 between 26 March and 29 August 2009. The ventilation and the sanitary conditions in these cells were inadequate. The applicant had one shower per week and one hour's outdoor exercise per day.

C. Civil proceedings against Płock Prison

10. On 17 January 2011 the applicant brought an action for infringement of his personal rights on account of inadequate conditions in Płock Prison. He claimed 10,000 Polish zlotys (PLN) in compensation (approximately EUR 2,500). He applied to be exempted from court fees. On 18 February 2011 the court allowed this application. The applicant did not apply for legal aid at this stage of the proceedings.

11. Between 21 January and 31 March 2011 the applicant submitted several requests for evidence and asked to attend the court's hearings. On 11 March 2011 the Płock District Court informed the applicant that he would not be transported to the hearing, and instructed him about the formal requirements in respect of requests for evidence, among other things that such requests should be lodged with the court in two copies.

12. The applicant was not present at the court hearing on 23 March 2011. On 24 March 2011 the Płock District Court served the applicant with a copy of Płock Prison's response to the applicant's action (*odpowiedź na pozew)* and ordered the applicant to clarify his pleading (*sprecyzowanie powództwa*), in particular as regards the period of his detention. The applicant was instructed to send the clarification of the pleading to the court in two copies.

13. On 12 April 2011 the Płock District Court rejected part of the applicant's action on the basis of *res judicata,* and asked the applicant to inform the court if he wished to maintain the remainder thereof. The court informed the applicant that the requested information should be sent in two copies.

14. On 6 January 2011 the applicant examined the files of his case in Warsaw Mokotów Remand Centre.

15. On 2 February 2012 he applied for legal aid. On 14 February 2012 the Płock District Court refused the request, finding that the applicant was able to represent himself. He had access to the court's files and was heard as a witness in the proceedings (I C 31/11).

16. On 28 May 2012 the Płock District Court dismissed the applicant's action. It held that the cells in question had indeed been overcrowded for approximately five months, but that the applicant had failed to demonstrate that the actions of the respondent (the relevant prison authorities) had constituted unlawful conduct for which the latter were liable. Lastly, the remainder of the applicant's allegations about the material conditions in his cells were considered unsubstantiated in the light of the material gathered in the case.

17. On 29 May 2012 the applicant was served with the judgment and information about the time and manner of the right to appeal, which read as follows:

> "You may request the written reasoning of the judgment within seven days of the day on which the judgment was served on you. You have the right to appeal. Any appeal should be submitted to the court which issued the judgment within two weeks, calculated from the date of service of the judgment with reasoning. Sending the appeal by post is equivalent to submitting it to the court."

18. On 22 June 2012 the applicant lodged an appeal against the first-instance judgment. On 29 June 2012 the court issued an order and instructed the applicant to submit two additional copies of his appeal. On 9 July 2012 the applicant submitted to the court a handwritten letter entitled "appeal" (in two copies), the content of which was similar but not identical to the original appeal.

19. On 17 July 2012 the court rejected the applicant's appeal. The court pointed out that a copy of a pleading meant a handwritten copy of an original or a photocopy containing exactly the same submissions and arguments. It held that as the applicant had extended his arguments by relying on the Supreme Court's jurisprudence, it followed that he had changed his original submissions, and the copies provided by him could not be regarded as copies of the original appeal.

20. On 2 August 2012 the applicant appealed against the rejection of his earlier appeal. On 22 August 2012 the court requested from the applicant a copy of his interlocutory appeal. He did not comply. Consequently, on 13 September 2012 his interlocutory appeal was rejected. On 20 September 2012 the applicant submitted an interlocutory appeal against the decision of 13 September 2012, arguing as follows:

> "I should have been informed in advance that the court would require me to provide copies of pleadings. I am a simple man without legal knowledge and my application for a legal-aid lawyer was dismissed by the court. If I had had a legal-aid lawyer I would have known that the court might require copies of appeals or interlocutory appeals. The court asked me to provide the copies only after I had sent the original pleading, and I do not have a computer memory to reproduce exactly the same copy of

> what I had written one month before. If the court had sent me the original pleading I could have copied it and sent it back. For the above reasons I ask the court to accept my appeal and interlocutory appeals."

21. On 15 November 2012 the court instructed the applicant that in order to comply with the formal requirement of his interlocutory appeal he should submit an additional copy of it, which the applicant failed to do. On 24 January 2013 the court rejected the applicant's interlocutory appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Conditions of detention

22. A detailed description of the relevant domestic law and practice concerning general rules governing the conditions of detention in Poland, and of the domestic remedies available to detainees alleging that the conditions of their detention were inadequate, are set out in the Court's pilot judgments in the cases of *Orchowski v. Poland* (no. 17885/04), and *Norbert Sikorski v. Poland* (no. 17599/05), both adopted 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) adopted on 12 October 2010 (see §§ 25-54).

B. Access to a court

23. The relevant domestic law and practice concerning access to a court and procedural requirements concerning pleadings lodged with the courts is described in the Court's judgment in the case of *Parol v. Poland* (no. 65379/13, §§ 18-26, 18 October 2018).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

24. The applicant complained of a violation of his right of access to a court as provided in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

25. The Government submitted that this complaint by the applicant should be found inadmissible under Article 35 § 3 of the Convention as manifestly ill-founded.

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

27. The applicant complained that the rejection of his appeal for failure to send an identical copy thereof had deprived him of the right of access to a court safeguarded by Article 6 § 1 of the Convention.

28. The Government relied on well-established domestic case-law concerning Articles 128 and 368 of the Code of Civil Proceedings that showed that failure to rectify the formal shortcomings of an appeal by sending an identical copy thereof was a valid reason to reject that appeal. The Government underlined that the relevant rules governing domestic courts' practice served the purpose of proper organisation of the proceedings, including the ability of all the parties to proceedings to acquaint themselves with the case files thereof. The Government also relied on the Court's judgment *Siwiec v. Poland* (no. 28095/08, 3 July 2012), and argued that, having regard to the similarity of the circumstances, the case at hand should be decided in a similar way. The Government further submitted that the applicant had been informed of his obligation to submit pleadings in the correct number of copies. They referred to letters of 11 and of 23 March 2011, and argued that the applicant should have known about the requirement to submit appeals in two identical copies.

2. The Court's assessment

(a) General principles

29. The Court reiterates that that the right to a fair trial, as guaranteed by Article 6 § 1, must be construed in the light of the rule of law, which requires that litigants should have an effective judicial remedy enabling them to assert their civil rights (see *Běleš and Others v. the Czech Republic*, no. 47273/99, § 49, ECHR 2002-IX). In this way, that provision embodies the "right to a court", of which the right of access, that is the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from

the further guarantees laid down in paragraph 1 of Article 6 (see *Kreuz v. Poland*, no. 28249/95, § 52, ECHR 2001-VI).

30. The "right to a court" is not absolute. It may be subject to limitations, permitted by implication because the right of access by its very nature calls for regulation by the State. In laying down such regulations the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is not part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012).

31. The Court further observes that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly true for the guarantees enshrined in Article 6, in view of the prominent place held in a democratic society by the right to a fair trial with all the guarantees under that Article (ibid., § 231). The rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal or an application for judicial review are aimed at ensuring proper administration of justice and compliance, in particular, with the principle of legal certainty. That being so, the rules in question, or their application, should not prevent litigants from using an available remedy (see *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, § 51, ECHR 2002-IX). In applying the rules of procedure, the national courts must avoid both excessive formalism, which would affect the fairness of the procedure, and excessive flexibility, which would result in removing procedural requirements established by law (see *Frida, LLC v. Ukraine*, no. 24003/07, § 33, 8 December 2016).

32. The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Its role is limited to ascertaining whether the effects of such interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of procedural rules such as time-limits for filing documents or lodging appeals (see *Běleš and Others,* cited above, § 60). Additionally, there is no obligation under the Convention to make legal aid available for all disputes ("*contestations*") in civil proceedings. However, in discharging its obligation to provide parties to civil proceedings with legal aid, when legal aid is provided for under the domestic law, the State must display diligence so as to secure to those

persons the genuine and effective enjoyment of the rights guaranteed under Article 6 (see *Muscat v. Malta*, no. 24197/10, § 46, 17 July 2012).

(b) Application of these principles to the present case

33. The Court must examine whether the decision taken by the Płock District Court to reject the applicant's appeal infringed his right of access to a court. The question arises whether the applicant, especially in view of the fact that he had been refused legal aid, was sufficiently informed about the relevant law, and whether he could reasonably have been expected to fulfil the Płock District Court's order (see, *mutatis mutandis, Frida, LLC,* cited above, § 36, and *Eşim v. Turkey*, no. 59601/09, § 21, 17 September 2013).

34. The Court notes that the applicant was deprived of his liberty, and that in the civil proceedings complained of he was not represented by a lawyer; his request for a legal-aid lawyer was refused (see paragraph 15 above). In these circumstances he could only rely on his own knowledge and the information provided by the domestic courts about the procedural rules governing the civil proceedings.

35. The Court further notes that the applicant was informed on three occasions that he should send specific pleadings to the court in two copies. The relevant information concerned requests for evidence (see paragraph 11 above), clarification of his pleading (see paragraph 12 above), and information regarding his wish to continue the proceedings (see paragraph 13 above). Each time he was informed about the obligation to send his pleadings in two copies, he complied. He was never informed generally about the obligation to send all pleadings to the court in two copies, or about the wording of Article 128 of the Code of Civil Procedure.

36. The Court further notes that the instruction about the time and manner of lodging the appeal did not contain the information that the appeal should be lodged in two copies (see paragraph 17 above). When ordered, the applicant made an attempt to comply with the Płock District Court's order, and sent two copies of his appeal which were not identical to the original one sent three weeks earlier (see paragraph 18 above).

37. The Court has already examined a similar case and found a violation of Article 6 on account of the limitation of the applicant's access to a court (see *Parol,* cited above, §§ 39-49). It considers that in the present case, on the one hand the applicant was not properly informed about the time and manner of lodging the appeal, and on the other, when ordered to rectify the shortcomings of his appeal, he made an attempt to comply with the order (see, *mutatis mutandis, Karakutsya v. Ukraine*, no. 18986/06, §§ 53-54, 16 February 2017).

38. Taking into account all the circumstances of the present case, the Court considers that the applicant's right of access to a court was disproportionately restricted.

39. As regards the Government's arguments concerning the case of *Siwiec* (cited above), the Court has held that the facts of the case relied on by the Government must be distinguished from the Court's case-law on access to court and excessive formalism (see *Parol,* cited above, § 49). The Court sees no reason to hold otherwise in the present case.

40. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained of inadequate conditions of his detention, in particular overcrowding. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

42. The Government submitted that this complaint by the applicant should be found inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies. In particular, the Government submitted that the applicant had failed to avail himself of an appeal in civil proceedings concerning overcrowding; thus the applicant had failed to pursue his case effectively and have recourse to an effective domestic remedy.

43. The Court reiterates its principle that applicants must exhaust the available domestic remedies before coming to the Court, and while doing so they must comply with the applicable rules and procedures of domestic law (see *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010).

44. However, the existence of remedies must be sufficiently certain, not only in theory but also in practice. In determining whether any particular remedy meets the criteria of availability and effectiveness, regard must be had to the particular circumstances of the individual case. Where the Government claim non-exhaustion of domestic remedies, they bear the burden of proving that the applicant has not used a remedy that was both effective and available. Once the Government have discharged their burden of proving that there was an appropriate and effective remedy available to the applicant, it is for the latter to show for example that the remedy was for some reason inadequate and ineffective in the particular circumstances of the case (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V).

45. The Court notes that the Government's objection in the present case is closely linked to the complaint under Article 6 § 1 of the Convention examined above. The applicant used the domestic remedy regarding his conditions of detention, but the domestic authorities rejected his appeal

against the judgment of the first-instance court. The Court has found a violation of Article 6 § 1 of the Convention, taking the view that the applicant's access to a court was disproportionately restricted (see paragraph 40 above).

46. Taking into account the foregoing, the Court considers that in the present case the applicant was prevented by the domestic courts from making normal use of the remedy, and therefore dismisses the Government's objection. It further notes that this complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

47. The applicant maintained his complaint that he had been held in overcrowded conditions for approximately five months in Płock Prison.

48. The Government did not comment on the merits of the case.

49. A restatement of the general principles concerning the examination of conditions of detention under Article 3 may be found in the Court's pilot judgement against Poland (see *Orchowski* (cited above, §§ 119-131), *Norbert Sikorski* (cited above, §§ 126-141), and *Muršić v Croatia* [GC], no. 7334/13, §§ 102-141 ECHR 2016).

50. The Government did not contest that the applicant had been detained in overcrowded conditions for five months. In fact, they confirmed this in their submissions that the applicant was placed in overcrowded cells was also proved by documents he produced (see paragraph 9 above). In these circumstances the Court considers it to be established that between 26 March and 29 August 2009 the applicant was placed in cells in which the space per person was below the statutory 3 sq. m.

51. Having regard to the circumstances of the case and their cumulative effect on the applicant, the Court considers that the distress and hardship endured by him exceeded the unavoidable level of suffering inherent in detention, and went beyond the threshold of severity under Article 3. Therefore, it finds that there has been a violation of that provision on account of the conditions in which the applicant was detained.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

53. The applicant claimed 20,000 Polish zlotys (PLN) in respect of pecuniary and non-pecuniary damage[1].

54. The Government submitted that this claim was exorbitant and unjustified.

55. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects that claim. On the other hand it considers it justified to to award the applicant EUR 3,500 in respect of non-pecuniary damage.

B. Costs and expenses

56. The applicant also claimed PLN 1,200[2] for the costs and expenses incurred before the domestic courts. It appears that the applicant meant the costs of legal representation that he was ordered to pay to the other party by the first-instance court.

57. The Government submitted that the applicant did not provide any evidence that he had in fact covered the costs of legal representation.

58. Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses.

C. Default interest

59. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, EUR 3,500 (three thousand five hundred euros) plus any tax that may be chargeable, in respect of pecuniary damage, to be converted

1. approx. EUR 5,000
2. approx. EUR 300

into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that 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.

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Deputy Registrar	Ksenija Turković President