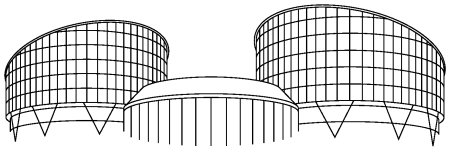

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SZAFRAŃSKI v. POLAND

(Application no. 17249/12)

JUDGMENT

STRASBOURG

15 December 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Szafrański v. Poland,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 17 November 2015,

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

PROCEDURE

1. The case originated in an application (no. 17249/12) 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 Andrzej Szafrański ("the applicant"), on 1 March 2012.

2. The applicant, who had been granted legal aid, was represented by Mr M. Jarzyński, a lawyer practising in Poznań. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that as a result of poor sanitary conditions and, especially, the insufficient separation of sanitary facilities from the rest of the cell, his rights under Articles 3 and 8 of the Convention had been breached.

4. On 17 November 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and is currently in detention in Wronki.

6. The applicant has been serving a prison sentence in Wronki Prison since 31 March 2010.

7. On 19 September 2010 he brought a civil compensation claim before the Szamotuły District Court. He claimed that the conditions of detention in many of his cells in Wronki Prison were so bad as to amount to a breach of Articles 3 and 8 of the Convention. He referred to the fact that the cells were not properly heated in the autumn and winter and had no proper ventilation in the summer, meaning that the prisoners suffered from intense levels of heat. The windows were old and the frames leaked. He further submitted that the toilet facilities were only separated from the cells merely by a low fibreboard partition, which made even a minimum level of privacy impossible for him.

8. On 21 June 2011 the Szamotuły District Court refused a request by the applicant to gather evidence in the form of photographs and carrying out an on-the-spot inspection of the cells concerned. It closed the hearing and gave judgment, dismissing the applicant's claim in its entirety.

The court established, referring to evidence submitted by the State Treasury, acting as the legal representative for Wronki Prison, that prisoners had access to sports, cultural and educational activities and medical care. They were provided with personal hygiene items and had appropriate food. Those factors, seen as a whole, alleviated the harm which was an inherent part and consequence of serving prison sentences.

The court further found that the toilet facilities in the applicant's cells were indeed separated from the cell by fibreboard partitions. This did not provide full privacy, but was sufficient to ensure that the prisoners were out of sight of others when they used the toilet. There was a WC and a washbasin in each toilet facility.

As regards the applicant's allegations of inadequate ventilation and insufficient heating in the cell, the court found that the cell was well lit and properly ventilated; the windows of the cell had been repaired and the heaters had been changed and worked properly. As regards the alleged lack of light, the court found that the applicant had been granted special permission to use an additional reading lamp.

The court was of the view that the State Treasury had not acted unlawfully and that there had been no intention to act in bad faith or to cause harm or damage to the applicant. In the absence of unlawfulness no breach of personal rights could be found. In any event, the conditions in Wronki Prison were not so harsh as to amount to a breach of personal rights.

9. The applicant appealed, arguing that the court had failed to establish the facts of the case correctly, in the main because it had refused to gather evidence in the form of photographs, film or an inspection of the cells. The judgment had therefore been based on insufficient factual findings. Furthermore, in so far as the court had referred to the general conditions in which the applicant served his sentence (quality of the food, medical care, access to cultural and sports activities), those factors had not constituted the basis of his claim. He had complained neither about poor food quality nor

about insufficient access to cultural and sports activities. The grounds of his claim had fundamentally related to the sanitary conditions in the cells and, in particular, a lack of privacy when using the toilet. This lack of privacy had been explicitly confirmed by the first-instance court. He reiterated that the lack of a proper divide between the toilets and the cell amounted to a breach of his personal rights and dignity. He further indicated that some of the cells at the prison had toilet facilities that were properly separated from the rest of the cell by normal walls and a door.

10. By a judgment of 6 December 2011 the Poznań Court of Appeal dismissed the appeal, fully accepting the findings of fact made by the first-instance court and that court's legal assessment of those facts. In particular, the Court of Appeal was of the view that the nuisance caused by the manner in which cells were fitted with toilet facilities, namely by way of fibreboard partitions, did not exceed the normal difficulties and harm which were inherent in serving a prison sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. A detailed description of the relevant domestic law and practice governing conditions of detention in Poland and domestic remedies available to detainees alleging that those conditions are inadequate are set out in the Court's pilot judgments in the cases of *Orchowski v. Poland* (no. 17885/04, §§ 75-85, 22 October 2009) and *Norbert Sikorski v. Poland* (no. 17599/05, §§ 45-88, 22 October 2009). More recent developments are described in the Court's decision in the case of *Łatak v. Poland* (no. 52070/08, §§ 25-54, 12 October 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. The applicant complained of poor sanitary conditions in the cells in which he had been kept at the prison in Wronki, and in particular he complained that the toilet facilities were not properly separated from the rest of the cell. 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."

13. The Government contested that argument.

A. Admissibility

14. 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

15. The applicant submitted that he was a victim of degrading treatment at Wronki Prison on account of the poor sanitary conditions in the cells where he was serving his sentence. The toilet facilities were not properly separated from the cells. The only method of separation consisted of a fibreboard partition 120 cm high without a door, which did not provide even a minimum level of privacy and breached his right to the dignity of his person.

16. The Government submitted that between 31 March 2010 and 6 December 2011 the applicant had been detained in Wronki Prison. During that period he had been placed in ten different cells. None of the cells had been overcrowded. All the cells were equipped with ventilation and windows that could be opened. The ventilation facilities were checked every four months. As regards heating, the Government submitted that the heating system in Wronki Prison was automatic and that the temperature in the cells depended on the air temperature outside. The cells were thus properly ventilated and heated. They further submitted that at the request of the applicant the windows had been sealed and the heaters replaced with new ones. He had also been granted permission to use an additional reading lamp, had received personal hygiene items as provided for by domestic law and had constant access to running water from a tap.

17. The Government admitted that in seven of the ten cells in which the applicant had been kept, the toilet had been separated from the rest of the cell by a fibreboard partition without doors. In the three other cells in which the applicant had been detained at the prison, the toilet had been fully separated off.

18. Finally, the Government submitted that the applicant had been allowed to leave his cell for various activities organised within the prison, such as volleyball and basketball. He was able likewise to participate in cultural and educational activities, and had access to a library and a day room with a television.

2. The Court's assessment

(a) General principles

19. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

20. As the Court has held on many occasions, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III, and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

21. Measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, the level of suffering and humiliation involved must not go beyond that which is inevitably connected with a given form of legitimate treatment or punishment.

22. In the context of prisoners, the Court has emphasised that a detained person does not lose, by the mere fact of his incarceration, the protection of his rights guaranteed by the Convention. On the contrary, persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Under Article 3 the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured. (see *Valašinas*, cited above, § 102, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

23. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR

2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

24. In the context of prison conditions the Court has frequently found a violation of Article 3 of the Convention in cases which involved overcrowding in prison cells (see, among many other authorities, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007, and *Orchowski*, cited above, § 135). However, in other cases where the overcrowding was not so severe as to raise an issue in itself under Article 3 of the Convention, the Court noted other aspects of the physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements included, in particular, the availability of ventilation, access to natural light or air, the adequacy of heating arrangements, compliance with basic sanitary requirements and the possibility of using the toilet in private. Thus, even in cases where a larger prison cell was at issue – measuring between 3 and 4 sq. m per inmate – the Court found a violation of Article 3 since the space factor was coupled with an established lack of ventilation and lighting (see, for example, *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005; and *Peers*, cited above, §§ 70-72), or with a lack of basic privacy in the detainee's everyday life (see, *mutatis mutandis*, *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007; *Valašinas*, cited above, § 104; *Khudoyorov*, no. 6847/02, §§ 106-107, ECHR 2005-X (extracts), and *Novoselov v. Russia*, no. 66460/01, §§ 32, 40-43, 2 June 2005).

(b) Application of these principles to the present case

25. Turning to the circumstances of the present case, the Court notes that the applicant was detained in Wronki Prison between 31 March 2010 and 6 December 2011 that is for one year and eight months. During this time he was placed in ten different cells, three of which had sanitary facilities completely separated from the rest of the cell (see paragraph 17 above).

26. The applicant's allegations as regards insufficient ventilation and heating and a lack of light in the cells in which he was kept were not confirmed in the proceedings before the domestic courts (see paragraph 8 above) which examined his claim of a violation of his personal rights. The courts did confirm, however, that the sanitary facilities situated at the entrance to his cell had indeed only been separated from the rest of the cell by a fibreboard partition and had no doors (see paragraphs 8 and 16 above).

27. The Court notes that in previous cases where the insufficient partition between sanitary facilities and the rest of the cell was at issue, other aggravating factors were present and only their cumulative effect allowed it to find a violation of Article 3 of the Convention (see *Canali v. France*, no. 40119/09, §§ 52-53, 25 April 2013, and *Peers*, cited above, § 73). In contrast, in the present case, as appears from the Government's

submissions confirmed by the findings made by the domestic courts, the only hardship that the applicant had to bear was the insufficient separation of the sanitary facilities from the rest of the cell. Apart from that, the cells were properly lit, heated and ventilated. The applicant also had access to various activities outside the cells (see paragraphs 8 and 16 above).

28. Taking into consideration the foregoing, the Court considers that the overall circumstances of the applicant's detention in Wronki Prison cannot be found to have caused distress and hardship which exceeded the unavoidable level of suffering inherent in detention or went beyond the threshold of severity under Article 3 of the Convention.

29. There has accordingly been no violation of this provision in the present case.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Admissibility

30. The applicant complained that the circumstances of the present case amounted to a violation of Article 8 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

31. The applicant submitted that the sanitary facilities were only separated from the rest of the cell by a fibreboard partition that was 1.20 m high and had no doors. He had requested that the prison authorities at least provide a curtain to separate the sanitary facilities from the rest of the cell in a way that would provide for a minimum of privacy. His requests were, however, refused on the grounds that domestic law did not contain special rules as regards the way in which sanitary facilities should be separated from the rest of the cell.

32. The Government did not comment on these submissions. They considered, however, that even though the sanitary facilities had indeed not been completely separated from the rest of the cell, the applicant had been ensured a sufficient degree of privacy.

33. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

1. General principles

34. The Court reiterates that even though a measure falls short of treatment prohibited by Article 3, it may fall foul of Article 8 of the Convention (see, in another factual context, *Wainwright v. the United Kingdom*, no. 12350/04, § 43, ECHR 2006-X).

35. Prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention (see *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, § 69, ECHR 2005-IX).

36. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in ensuring that respect for private and family life is effective. Those obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of the relations of individuals between themselves. The boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In particular, in both instances regard must be had to the fair balance to be struck between the competing interests (see *Odièvre v. France* [GC], no. 42326/98, § 40, ECHR 2003-III, and *Evans v. the United Kingdom* [GC], no. 6339/05, § 75, ECHR 2007-I).

2. Application of the principles to the circumstances of the present case

37. As noted above, the applicant was detained in Wronki Prison, and in seven of the ten cells where he was kept, the sanitary facilities were only separated from the rest of the cell by a fibreboard partition. The sanitary facilities were situated at the entrance to the cell and had no doors.

38. The Court has frequently found a violation of Article 3 of the Convention on account of poor conditions of detention, where the lack of a sufficient divide between the sanitary facilities and the rest of the cell was just one element of those conditions (see paragraph 24 above with further references). It therefore follows from the Court's case-law that the domestic authorities have a positive obligation to provide access to sanitary facilities which are separated from the rest of the prison cell in a way which ensures a minimum of privacy for the inmates. The Court recalls that according to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment ("CPT"), a sanitary annex which is only partially separated off is not acceptable in a cell occupied by more than

one detainee (CPT/Inf (2012) 13, § 78 and 2nd General Report [CPT/Inf (92) 3], §49). The in-cell toilets should be provided with a full partition i.e. up to the ceiling (CPT/Inf (2015) 12, § 74). The CPT has recommended, also after visits in Polish prisons, that a full partition in all the in-cell sanitary annexes be installed (see, for example, 2013 CPT/Inf (2014) 21, § 61 and CPT/Inf (2011) 20, §§ 105 and 106).

39. The Court notes that between 31 March 2010 and 6 December 2011 the applicant was placed in ten cells, seven of which had sanitary facilities not fully separated off. In these cells he had to use the toilet in the presence of other inmates, was deprived of a basic level of privacy in his everyday life. The applicant raised the matter with the prison authorities and requested that at least a curtain be hung in place to separate off the sanitary facilities. The prison authorities replied that domestic law did not set out specific regulations as regards the equipping and separating off of sanitary facilities in a prison cell (see paragraph 31).

40. It follows that in the present case the domestic authorities failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant when he was detained in Wronki Prison.

41. Taking into consideration the above, the Court concludes that there has been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 32,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government considered this claim excessive.

45. The Court, ruling on an equitable basis, awards the applicant EUR 1,800 in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicant did not make any claim for costs and expenses.

C. Default interest

47. 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 no violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,800 (one thousand eight hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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 15 December 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	András Sajó
Deputy Registrar	President