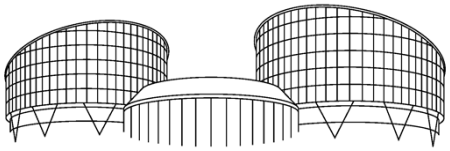

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KUNERT v. POLAND

(Application no. 8981/14)

JUDGMENT

STRASBOURG

4 April 2019

FINAL

04/07/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kunert v. Poland,

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

Linos-Alexandre Sicilianos, *President,*
Ksenija Turković,
Aleš Pejchal,
Krzysztof Wojtyczek,
Tim Eicke,
Jovan Ilievski,
Gilberto Felici, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 12 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 8981/14) 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 Wojciech Kunert ("the applicant"), on 15 November 2013.

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. On 8 September 2014 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Wrocław.

A. The period of the applicant's detention

6. The applicant was detained in Wrocław Remand Centre during various periods between 1991 and 2014, including from 24 June 2009 to 2 October 2010. He was released from detention on 8 July 2017.

B. The conditions of the applicant's detention

7. The applicant submitted that during his detention in Wrocław Remand Centre he had been held in overcrowded cells in which the space per person had been below the Polish statutory minimum standard of 3 sq. m

8. According to documents from the domestic proceedings and the Government's submissions, the applicant was held in overcrowded cells between 29 July and 26 August 2009 (a period of approximately one month).

C. Civil proceedings against the State Treasury

9. On 5 April 2011 the applicant brought a civil claim before the Wrocław Regional Court against the State Treasury for infringement of his personal rights and for compensation on account of his detention in overcrowded cells in Wrocław Remand Centre. He claimed 20,000 Polish zlotys (PLN) in compensation. His case was transferred to the Wrocław-Śródmieście District Court in Wrocław (hereinafter "the court") and registered under the reference number IX C 295/11.

10. On 6 May 2011 the court exempted the applicant from the court fees and dismissed his application for legal aid. The court held that the applicant was able to formulate his claims in a clear and understandable manner. Hence, the legal aid was not necessary. The applicant did not challenge that decision.

11. In the course of the judicial proceedings the applicant lodged several applications and requests with the court, including a letter of 8 August 2012. The court, by an order of 28 August 2012, instructed the applicant that to comply with formal requirements he should submit an additional copy of that letter. The order further stated:

> "At the same time the court informs [you] that all pleadings (*pisma*) should be submitted in two copies."

12. On 5 October 2012 the Wrocław-Śródmieście District Court dismissed the applicant's civil claim. The court found that the applicant's cells had indeed been overcrowded for approximately one month, but that he had failed to demonstrate that the actions of the defendant had been unlawful.

13. On 10 October 2012 the applicant lodged with the court a letter entitled "application: refers to an appeal against the judgment of the Wrocław-Śródmieście District Court of 5 October 2012" which the court treated as an appeal. That pleading was submitted in one copy.

14. On an unspecified date the applicant applied for legal aid. On 26 October 2012 the Wrocław-Śródmieście District Court rejected the

applicant's request on the same grounds as previously (see paragraph 10 above).

15. On 29 October 2012 the applicant was served with the judgment and information about the time and manner of the right to appeal, in the following terms:

> "A party who disagrees with the judgment has a right to request the written reasoning of the judgment within seven days of the service of that judgment and later to appeal to the second-instance court *via* the court that issued the judgment, within two weeks, calculated from the service of the reasoned judgment. If the party does not ask for the reasoned judgment, the appeal is to be submitted directly within 21 days of the service of the judgment. Article 369 § 1: The appeal shall be submitted to the court that issued the judgment within two weeks, calculated from the service of the reasoned judgment."

16. On 12 November 2012 the applicant received the reasoning of the court's judgment of 5 October 2012.

17. On 21 December 2012 the applicant lodged with the court a request for leave to appeal out of time against the judgment of 5 October 2012, as well as two copies of a letter entitled "appeal". On 1 February 2013 the court dismissed the applicant's request for leave to appeal, and explained that he had already lodged his appeal on 10 October 2012, which was within the relevant time-limit. The court underlined that the applicant's appeal of 10 October 2012 did not comply with the formal requirements.

18. Therefore, on 6 February 2013 the court issued an order and instructed the applicant to comply with the formal requirements of his appeal by submitting a copy thereof within seven days of the service of the court order. The order was served on 14 February 2013.

19. On 15 February 2013 the applicant submitted a letter in which he informed the court that he was unable to comply with the order because he did not have the text of his appeal that he could copy or rewrite and he did not remember the exact wording of his pleadings. He added that he had not been aware that he should have submitted his appeal in two copies.

20. On 19 March 2013 the court rejected the applicant's appeal for failure to submit an exact copy thereof.

21. On 30 March 2013 the applicant appealed against that decision. When ordered, he rectified the formal requirements of his interlocutory appeal by submitting a copy of it and stating the amount of his claim. On 21 June 2013 the Wrocław Regional Court dismissed the applicant's interlocutory appeal, holding that the applicant, who had started a civil action and knew that he was deprived of his liberty, could justifiably be expected to keep copies of all letters he sent to the court, especially since he had been informed on 28 August 2012 that all letters to the court should be submitted in two copies. Additionally, after the judgment had been issued the applicant was informed about the means and procedure of submitting appeals.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Conditions of detention

22. A detailed description of the relevant domestic law and practice concerning the general rules governing the conditions of detention in Poland and domestic remedies available to detainees who claim that the conditions of their detention are inadequate is 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 should be found inadmissible under Article 35 § 3 of the Convention owing to its manifestly ill-founded character.

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 of the appeal to the court had deprived him of the right of access to a court under Article 6 § 1 of the Convention.

28. The Government relied on well-established domestic case-law on the application of Articles 128 and 368 of the Code of Civil Proceedings, according to which failure to rectify 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 the domestic courts' practice served the purpose of proper organisation of the proceedings, including the ability of all the parties to the proceedings to acquaint themselves with the case file. They also relied on the Court's judgment in *Siwiec v. Poland*, (no. 28095/08, 3 July 2012), and argued that because of the similarity of the circumstances the case at hand should be decided in a similar way. Further, they submitted that on 28 August 2012 the applicant had been informed about the obligation to submit all pleadings to the court in two 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 regulation, 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 no 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; *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 115, 15 March 2018).

31. The Court further notes 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 the 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). The Court recalls that "excessive formalism" can run counter to the requirement of securing a practical and effective right of access to a court under Article 6 § 1 of the Convention. This usually occurs in cases of a particularly strict construction of a procedural rule, preventing an applicant's action being examined on the merits, with the attendant risk that his or her right to the effective protection of the courts would be infringed (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 97-99, 5 April 2018).

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 verifying 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 submitting 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 in civil proceedings. However, in discharging its obligation to provide parties to civil proceedings with legal aid, when it is provided by 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, in the circumstances of the case at hand, the decision taken by the Wrocław-Śródmieście District Court and later by the Wrocław Regional Court to reject the applicant's appeal infringed his right of access to a court.

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 application for legal aid was dismissed twice (see paragraphs 10 and 14 above). In these circumstances he could only rely on his own knowledge and the information provided to him by the domestic courts about the procedural rules governing the civil proceedings.

35. The Court further notes that before the judgment of the firstinstance court was delivered, on 28 August 2012, the applicant had been informed about the obligation to send all pleadings to the court in two copies (see paragraph 11 above). On 10 October 2012, before he was instructed how to submit an appeal, he sent a letter to the court, which was considered by the court to constitute an appeal on his part (see paragraphs 13 and 15 above). At that time the applicant was refused legal aid for the second time (see paragraph 14 above). The Court also notes that the domestic court's instruction, issued after the first-instance judgment, about the time and manner of lodging appeals, did not contain the information that any appeal should be sent in two copies (see paragraph 15 above).

36. In these circumstances the question arises as to whether it was reasonable and justified to expect the applicant, who was relying only on the instruction of 28 August 2012 (see paragraph 11 above), to be aware that an appeal, as with any other letter or pleading to the court, should be sent in two copies.

37. The Court finds that this requirement pursued a legitimate aim, namely the proper administration of justice. Next, it should be ascertained whether, in the light of all the relevant circumstances of the case, there was a reasonable relationship of proportionality between that aim and the means employed to attain it. The Court has already examined a similar case where an appeal lodged by an applicant was rejected for failure to submit a second copy thereof (see *Parol,* cited above, §§39-49). In that case a violation was found because, on the one hand, the applicant had not been informed of the obligation to lodge an appeal in several copies, and, on the other, he had displayed the diligence normally required from a party to civil proceedings; he had requested from the domestic court a copy of his original appeal and, when his request was not responded to, he submitted to the court a handwritten copy of his original appeal. By contrast, in the present case, even though the applicant had received, on 28 August 2012, general information that all pleadings should be submitted to the court in two copies, he lodged his appeal in one copy only. Subsequently, he informed the court that he had been unable to comply with the order (see paragraph 19 above). He failed, however, to take any further steps. In particular, he did not make any attempt to submit to the court even a handwritten copy of his original appeal. Taking into account all the circumstances of the present case, especially the instruction of 28 August 2012, the Court is of the opinion that it was not unreasonable to expect the applicant also to lodge his appeal in two copies (see *Berecki v. Poland* (dec.), no. 46366/12, 3 May 2016). At the same time it considers that the

applicant failed to display the diligence normally expected from a party to civil proceedings. Having regard to the foregoing, the Court finds that the requirement in issue did not appear to amount to a disproportionate hindrance impairing the very essence of the applicant's right of access to a court as guaranteed under Article 6 § 1 of the Convention. It follows that the applicant's access to a court was not unduly restricted in the present case.

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

39. There has accordingly been no violation of Article 6 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained that the conditions of his detention had been inadequate, in particular in respect of 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."

41. The Government submitted that the applicant had failed to properly lodge his appeal, and thus had not exhausted the available domestic remedies. They contended that for that reason the complaint under Article 3 should be declared inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies.

42. The Court reiterates that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. While Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of effective remedies designed to challenge decisions already given. It normally requires also that the complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law. Consequently, domestic remedies have not been exhausted when an appeal is not accepted for examination because of a procedural mistake by the applicant. However, non-exhaustion of domestic remedies cannot be held against him if, in spite of his failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the appeal (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 142-43, ECHR 2010).

43. The Court has already found that applicants complaining about conditions of detention, including overcrowding, had at their disposal an effective remedy from 17 March 2010 (see *Łatak,* cited above, §§ 80 and 85). That remedy was also available to the applicant. The applicant attempted to use that remedy, but his appeal against the first-instance judgment was rejected for procedural shortcomings (see paragraph 20 above). Since, as found above, the rejection of the applicant's appeal did not constitute a disproportionate restriction of the applicant's right of access to a court (see paragraph 39 above), the Court concludes that the applicant failed to use the available effective domestic remedy in accordance with procedural requirements because of his own procedural mistake and his lack of required diligence in the defence of his interests.

44. It follows that the complaint under Article 3 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 of the Convention;

Done in English, and notified in writing on 4 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President