



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2183/2012

Decision adopted by the Committee at its 114th session (29 June-24 July 2015)

<i>Submitted by:</i>	M.G. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Poland
<i>Date of communication:</i>	15 April 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 26 July 2012 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2015
<i>Subject matter:</i>	Adequate compensation for inhuman conditions of detention
<i>Procedural issues:</i>	Admissibility — other procedure of international investigation or settlement
<i>Substantive issues:</i>	Right of persons deprived of their liberty to be treated with dignity; right to an effective remedy
<i>Articles of the Covenant:</i>	7, 9 (5), 10 (1)
<i>Articles of the Optional Protocol:</i>	5 (2) (a)

* Reissued for technical reasons on 28 September 2015.



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)

concerning

Communication No. 2183/2012**

Submitted by: M.G. (not represented)
Alleged victim: The author
State party: Poland
Date of communication: 15 April 2012 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 23 July 2015,

Having concluded its consideration of communication No. 2183/2012, submitted to it by M.G. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Decision on admissibility

1. The author is M.G., a Polish national born in 1941, who claims to be a victim of violations, by Poland, of his rights under articles 7, 9 (5) and 10 (1) of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 7 February 1992.¹ The author is not represented.

The facts as presented by the author

2.1 The author served a prison sentence at the Detention Centre of Warsaw-Mokotow from 28 February to 8 October 2007, after having been found guilty of fraud by the Warsaw District Court on 26 October 2006. He underwent his first medical examination three days

** The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

¹ On acceding to the Optional Protocol, the State party made a reservation to article 5 (2) (a) of the Protocol "that would exclude the procedure set out in article 5 (2) (a), in cases where the matter has already been examined under another procedure of international investigation or settlement".

after his arrival at the Detention Centre, although he suffered from chronic high blood pressure. He shared a cell with five other inmates, which, according to him, amounted to inhuman and humiliating treatment. In substantiation, he explains that the surface of the cell was such that there was only 1.9 square metres per inmate, while the national standard required 3 square metres per person. The other inmates had been sentenced for more serious crimes, such as murder and robbery, and some of them suffered from drug or alcohol addiction. No separation among inmates based on the crimes committed was applied. The author claims that the culture, upbringing and behaviour of his fellow inmates were unacceptable to him, causing him mental torture.

2.2 In the cell, the toilet was separated by a simple curtain, which prevented any privacy and caused inconveniences to all cellmates. Because of the lack of space, inmates had to eat on their beds, which resulted in the bed linen being constantly dirty. The only window did not allow for proper ventilation and the light from the two bulbs was insufficient for reading or writing. There was constant noise in the cell, caused by the inmates and the loud radio they listened to. The author contends that the conditions in his cell prevented him from preparing the materials for the planned publication of his new book.

2.3 According to the author, as a convicted person, he was supposed to serve a sentence in a half-open type of penitentiary facility. The administration of the Detention Centre, however, decided that he should remain in the centre in view of his high blood pressure, following the instruction of the physician who examined him. The author claims to have made numerous complaints to the administration of the centre about the detention conditions without receiving a written answer. An officer who was his “tutor” explained to him that the conditions were the same in all cells.

2.4 On 3 July 2007, the author complained to the Warsaw District Court about the conditions of detention in his cell, claiming financial compensation for the damages suffered, which he estimated at PLN 450,000.² On 29 October 2008, the District Court concluded that the author’s rights had been violated. In its decision, the court referred to a decision of the Polish Constitutional Court of 2008, according to which excessive cell-occupation density could in itself constitute inhuman treatment and an accumulation of disadvantages could amount to torture. The District Court ordered the Director of the Detention Centre to address a written statement to the author to acknowledge that the conditions of detention violated his human rights and also to make a commitment to not allow similar violations to occur in the future. Having assessed the duration of detention and the cumulative effect of the conditions of detention on the author’s health and personal rights, the District Court considered that such a statement would suffice to remedy the violation. In that light, the court rejected the author’s claim for financial compensation.

2.5 On 24 November 2008, the author appealed to the Warsaw Court of Appeal against the District Court’s decision. His appeal was rejected on 16 April 2010, on the ground that the written statement required from the Director of the Detention Centre was a sufficient remedy in the case.

2.6 On 3 February 2011, in the light of the District Court’s decision, the Director of the Detention Centre, in a written statement, acknowledged that during the author’s imprisonment from 29 February to 8 October 2007 the conditions of detention had violated the author’s personal rights and stated that that would not happen again.

2.7 According to the author, an appeal to the Supreme Court is subject to limitations and is not effectively open to him. In Poland, judicial proceedings usually involve decisions of the first instance court and the Court of Appeals. The basis for an appeal cannot be the re-

² Approximately 120,000 euros as at 3 July 2007. Source: National Bank of Poland, www.nbp.pl.

examination of facts but only the correct application of the law. Moreover, the plaintiff must be represented by a lawyer and, owing to a lack of sufficient financial means, the author sought the assistance of a State-appointed lawyer. The lawyer explained to him that there were no prospects of success before the Supreme Court in his case. This avenue was therefore not open to the author. There are no more judicial remedies available to him and, thus, he considers that he has exhausted the available domestic remedies.

The complaint

3. The author considers that the compensation awarded to him by the national courts, namely, the statement by the Director of the Detention Centre, is insufficient to remedy the harm suffered. He claims that he is a victim of a violation of his rights under articles 7, 9 (5) and 10 (1) of the Covenant and asks to be granted financial compensation.

State party's observations on admissibility

4.1 On 26 October 2012 the State party submitted its observations on admissibility, asking the Committee to reject the communication as inadmissible.

4.2 The State party argued, first, that the author's claim under article 9 (5) of the Covenant is inadmissible *ratione materiae* because his detention was not unlawful, but rather was ordered by the Warsaw District Court, by its decision of 26 October 2006 under article 228, paragraph 1, of the Criminal Code, as the author had committed a crime punishable by a prison term.

4.3 According to the State party, the author did not provide any evidence that the conditions of his detention in the Warsaw-Mokotow Detention Centre attained such level of severity as to fall within the scope of article 7 of the Covenant. The State party notes that under the Committee's case law, issues related to inadequate conditions of detention fall under the scope of article 10, rather than under article 7, of the Covenant, and that there should be serious aggravating factors in order for the violation resulting from the conditions of detention to be elevated to a breach of article 7.³ The State party admits that the author was placed in an overcrowded cell, with 2 square metres per person instead of the statutory 3 square metres, and that the cell's sanitary corner was not properly isolated. It maintains, however, that the author was provided with all necessary supplies and food, and at no point was he ill-treated. The State party argues that, therefore, the author's allegations of a violation of his rights under article 7 of the Covenant are inadmissible *ratione materiae*.

4.4 As regards the author's allegations about a violation of article 10 (1) of the Covenant, the State party declares that it is inadmissible *ratione personae*. The State party refers to articles 1 and 2 of the Optional Protocol to the Covenant, according to which a person should have the status of a victim in order to submit a complaint to the Committee. The State party argues that the author lost his status as a victim when the domestic courts recognized the violation of his rights due to the inadequate conditions of detention, and redressed the violation by ordering a written apology from the Director of the Detention Centre. When examining the author's pecuniary claim, the domestic courts had taken into due consideration such factors as the length of detention, the scope of the infringement, existence of cumulative factors, and the effects of the detention on the author's health, both

³ In this context the State party refers to the Committee's jurisprudence in communications No. 683/1996, *Wanza v. Trinidad and Tobago*, Views adopted on 26 March 2002; No. 458/1991, *Mukong v. Cameroon*, Views adopted on 21 July 1994; No. 8/1977, *Weismann and Lanza Perdomo v. Uruguay*, Views adopted on 3 April 1980; Nos. 241 and 242/1987, *Birindwa and Tshisekedi v. Zaire*, Views adopted on 2 November 1989; No. 731/1996, *Robinson v. Jamaica*, Views adopted on 29 March 2000; and No. 775/1997, *Brown v. Jamaica*, Views adopted on 23 March 1999.

physical and mental. The courts reached a conclusion that all the circumstances in the author's case do not constitute a sufficient ground for awarding pecuniary compensation under article 448 of the Civil Code.

4.5 On 28 January 2013, the State party reiterated its position on the inadmissibility of the communication and requested the Committee to consider its admissibility separately from the merits.

Author's comments on the State party's observations

5.1 On 15 April 2013, the author presented his comments to the State party's observations. He disagrees with the State party's argument on inadmissibility.

5.2 He reiterates his contentions regarding the conditions of detention and adds that at the time of detention he was 66 years old and suffered from high blood pressure. Thus, the conditions in which he had been detained had put him in danger of a stroke or a heart attack. The author points out that he was initially sentenced to serve his sentence in a penitentiary of a half-open type, where residential cells remain open during daytime and are closed only at night, but, instead, he was placed in an overcrowded cell, locked in all day, with the exception of a daily one-hour walk.

5.3 Concerning the State party's observation on the inadmissibility *ratione materiae* of his claim under article 9 (5) of the Covenant, he submits that the fact that his detention was ordered by a court is of no relevance, since by putting him in inhuman conditions of detention, the State made his imprisonment unlawful.

5.4 The author disagrees with the State party's argument regarding his claim under article 10 (1) of the Covenant to the effect that he had been provided with an effective remedy and should not be considered a victim. He argues that he did not receive any apology from the State. In his view, the written statement from the Director of the Detention Centre only confirmed the violation of his rights, without constituting an apology. In addition, since no monetary compensation was granted to him by the domestic courts, the author does not consider that he has been offered any effective remedy.

5.5 The author finally contests the State party's statement that the conditions of detention fall only under article 10, and not under article 7, of the Covenant. He maintains that, if his complaint is considered only under article 10 (1), this would mean that he had not been subjected to cruel and inhuman treatment on account of the poor conditions of detention.

State party's additional observations

6.1 On 21 August 2013 and 9 January 2014, the State party reiterated its previous observations, maintaining its argument that the communication should be declared inadmissible.

6.2 By a note verbale of 15 December 2014, the State party informed the Committee that on 24 May 2010 the author had lodged a complaint with the European Court of Human Rights concerning his conditions of detention in the Warsaw-Mokotow Detention Centre between 28 February and 8 October 2007. The application was registered by the European Court under the number 43325/10 and communicated to the Government on 6 October 2014.

Additional comments from the author

7.1 Concerning the State party's correspondence of 21 August 2013 and 9 January 2014, the author submitted additional comments on 13 September 2013 and 6 February 2014, noting that the State party should provide its observations on the merits of his complaint.

7.2 On 25 January 2015, the author submitted his comments on the information provided by the State party concerning his submission to the European Court of Human Rights. He stated that because his complaint to the European Court had been registered only on 25 March 2014, he had considered that there was no case pending before the Court when submitting his complaint to the Committee. He did not reply to the letter from the European Court asking him to confirm his standing interest in having his complaint considered by the Court, believing that if his reply was not received, the Court would discontinue his case.

7.3 On 16 February 2015, the author transmitted to the Committee his letter to the European Court, dated the same day, in which he asks the Court to discontinue consideration of his complaint. The author insists on having his communication considered by the Committee.⁴

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must determine, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

8.2 In accordance with article 5 (2) (a) of the Optional Protocol, the Committee shall not consider any communication from an individual unless it has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes that while submitting his initial communication in April 2012, the author stated explicitly that he did not submit a similar complaint to any other procedure of international investigation or settlement. Nevertheless, on 15 December 2014, the State party informed the Committee that a similar complaint had been filed by the author with the European Court of Human Rights in May 2010 and had been registered by the Court as application No. 43325/10. The Committee also notes that the author informed the Committee about the request to discontinue consideration of his case that he allegedly sent to the Court on 16 February 2015. However, according to the information on file, the case remains pending before the Court. The Committee recalls its jurisprudence that where the same matter is being examined under another procedure of international investigation or settlement, the Committee has no competence to deal with a communication under article 5 (2) (a) of the Optional Protocol.⁵ In the light of the information before it, the Committee considers that it is precluded from considering the present communication by virtue of article 5 (2) (a) of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under article 5 (2) (a) of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author of the communication.

⁴ On 27 February 2015, the Registry of the European Court of Human Rights confirmed that the author's case was still pending before the Court.

⁵ See, for example, communication No. 1573/2007, *Štroub v. the Czech Republic*, decision of inadmissibility adopted on 27 October 2009, para. 8.2.