



## Detainees classified as dangerous should not have been kept under a special regime for several years

In today's Chamber judgments in the cases [Piechowicz v. Poland](#) (application no. 20071/07) and [Horych v. Poland](#) (application no. 13621/08), which are not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

- **Violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life)** of the European Convention on Human Rights in both cases;
- **violation of Article 5 §§ 3 and 4 (right to liberty and security)** in the case [Piechowicz v. Poland](#).

Both cases concerned a regime in Polish prisons for detainees who are classified as dangerous.

The Court held in particular that keeping detainees under that regime for several years, in isolation, without sufficient mental and physical stimulation, and without examining if there were concrete reasons for the prolonged application of that regime, was not necessary in order to ensure safety in prison.

### Principal facts

The applicant in the first case, Mirosław Piechowicz, is a Polish national who was born in 1977 and lives in Lublin. The applicant in the second case, Andrzej Horych, is a Polish national who was born in 1957 and is currently detained in Warsaw Mokotów Remand Centre for various drug-related offences committed in an armed organised criminal group. Since 2006, Mr Piechowicz has had three sets of criminal proceedings brought against him on various drug-trafficking, robbery and theft charges. Most recently, in June and July 2011, he was convicted of drug trafficking, attempted money laundering, leading an organised criminal group, which distributed large amounts of drugs, and sentenced to five years' imprisonment. He was released on bail in July 2010 and those proceedings are currently still pending on appeal.

While in detention on remand, both men were classified as "dangerous detainees" and subsequently subjected to a special detention regime. In particular, they were placed in solitary confinement, under constant monitoring via close-circuit television, subjected to strip-searches every time they left and entered their cells, and handcuffed behind their backs or required to wear "joined shackles" on their hands and feet every time they left their cells. Mr Piechowicz was subjected to this regime for two years and almost nine months between October 2007 and July 2010. Mr Horych is still being held in solitary confinement and the "dangerous detainee" regime has been applied to him for more than seven years and nine months.

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1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

Both men further alleged that excessive restrictions were imposed on family visits and that their correspondence was censored.

## Complaints, procedure and composition of the Court

Both men complained that the “dangerous detainee” regime and the detention conditions, including the restrictions on visits, to which they are/were subjected was inhuman and degrading and breached their right to private and family life. They relied on Articles 3 and 8. Further relying on Article 5 §§ 3 and 4, Mr Piechowicz also complained that he had been kept in pre-trial detention for more than four years without valid reasons and that the proceedings concerning the extension of his pre-trial detention (for setting up an organised criminal group) had not been adversarial as he was refused access to the investigation file.

Mr Piechowicz’ application was lodged with the European Court of Human Rights on 12 April 2007 and Mr Horych’s application was lodged on 25 February 2008.

Judgment was given by a Chamber of seven, composed as follows:

David Thór **Björgvinsson** (Iceland), *President*,  
Lech **Garlicki** (Poland),  
Päivi **Hirvelä** (Finland),  
George **Nicolaou** (Cyprus),  
Zdravka **Kalaydjieva** (Bulgaria),  
Nebojša **Vučinić** (Montenegro),  
Vincent A. **de Gaetano** (Malta), *Judges*,

and also Lawrence **Early**, *Section Registrar*.

## Decision of the Court

### Article 3

In both cases, the Court accepted that the initial decision to impose the “dangerous detainee” regime to the applicants had been a legitimate measure, given that they had been charged with serious offences. It had not been unreasonable for the authorities to consider that, in order to ensure safety in prison, they should be subjected to tighter security controls, involving constant supervision of their movements within and outside the cell, including monitoring via close-circuit television, limitations on their contact and communication with the outside world and some form of segregation from the prison community.

However, the Court could not accept that the continued, routine and indiscriminate application of the full range of measures, which the authorities were obliged to apply under the special regime, for a long duration - of two years and nine months and seven years and nine months, respectively - was necessary for maintaining prison security.

The Court referred to a report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2009, which had found that the Polish authorities failed to provide inmates under the special regime with appropriate stimulation and adequate human contact. The circumstances of the applicants’ cases fully confirmed those observations. It did not appear that the authorities had made any effort to counteract the effects of their isolation by providing them with the necessary mental and physical stimulation, except for daily, normally solitary, walks in a segregated area. Mr Piechowicz’ requests to be allowed to take part in any training, workshops, courses or sports activities organised for ordinary inmates,

or to give him any unpaid work had been refused, as had been Mr Horych's requests to place another inmate in his cell.

The negative psychological effects of the applicants' social isolation had been aggravated by the routine application of other special security measures. The Court was not convinced that handcuffing or shackling the applicants on leaving their cells – which had been a matter of everyday procedure unrelated to any specific behaviour – had indeed been necessary on each and every occasion. It was further not convinced that the intrusive and embarrassing strip searches performed on them daily or several times a day, involving anal inspections, were necessary to ensure safety in prison.

Under the rigid rules for the imposition of the special regime, the authorities had not been obliged to consider any changes in the applicants' personal situation. They had never referred to the likelihood of the applicants' escaping in the event of being detained under a less strict regime. Apart from the original grounds based essentially on the serious nature of the charges against the applicants, the authorities had not found any other reasons for classifying them as "dangerous detainees".

The Court concluded that the duration and severity of the measures exceeded the requirements of prison security and that they were not in their entirety necessary. There had accordingly been a violation of Article 3 in both cases.

#### Article 8

In Mr Piechowicz' case, it was in dispute between the parties whether he had been refused visits from his son during a period of nine months in 2006 and 2007, as he maintained. In any event, he had been unable to see his son, a small child at the time of his detention, for several months, and he had not been allowed to receive visits from his common-law wife for about two years and three months between June 2006 and September 2008. The Court accepted that the authorities had to restrict the contact between Mr Piechowicz' and his common-law wife, who had been charged and indicted in the same proceedings, in order to secure the process of obtaining evidence. However, the prolonged and absolute ban on contact with her had to have had a particularly serious and negative impact on his family life. If the authorities had been convinced that an "open visit", allowing direct physical contact and unrestricted conversation, could not be permitted to ensure the interests of the proceedings, they could have allowed a supervised visit without the possibility of direct contact.

Mr Horych had received regularly monthly visits only during the first six months after his arrest. During the following years he was only allowed to receive between five and ten visits per year, and most of them were closed visits without the possibility of direct contact, as he was separated from the visitors by a partition. While the Court accepted that certain restrictions on contact with his family had been inevitable, it did not find that those restrictions, overall, struck a fair balance between the requirements of the special detention regime and his right to respect for his family life.

The Court therefore concluded in both cases that the prolonged restrictions on family visits had violated the applicants' rights under Article 8.

In Mr Piechowicz' case, the Court also found a violation of Article 8 on account of the censorship of his correspondence. He had submitted several envelopes of letters he had received from various national and international institutions and his defence counsel bearing the stamp "censored". The Court had already held on many occasions that as long as the Polish authorities continued the practice of marking detainees' letters with the "censored" stamp, it had to presume that those letters had been opened and their contents read. There had accordingly been an interference with Mr Piechowicz' right to respect for his correspondence, which was not in accordance with the law, as under the

Polish Code of Execution of Criminal Sentences a detainee had the right to conduct uncensored correspondence with the investigating authorities, the courts and other authorities. While under that Code a detainee's correspondence with his defence counsel could be monitored, the Court did not see any reason to believe in Mr Piechowicz' case that the letters from his counsel constituted a danger to prison security.

### Article 5 §§ 3 and 4

In Mr Piechowicz' case, the Court found a violation of Article 5 § 3 on account of the duration of his pre-trial detention of more than four years. The Court accepted that the reasonable suspicion against him of having committed serious crimes and the risk that, if released, he might bring pressure to bear on witnesses or co-accused initially warranted his detention. However, the domestic courts, apart from repeatedly referring to that risk in general terms, had not mentioned any concrete circumstance indicating that he had ever made attempts to intimidate any witness or defendant at any stage of the proceedings. While the severity of the sentence he faced, which had also been given as a reason for his continued detention, was a relevant element in the assessment of the risk of absconding or re-offending, the gravity of the charges could not by itself justify long periods of detention on remand.

Finally, the Court found a violation of Article 5 § 4 in Mr Piechowicz' case on account of the fact that he had been denied access to documents of the investigation file relating to the circumstances justifying his detention, without any measures being considered which could have counterbalanced that lack of disclosure.

### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Poland was to pay Mr Piechowicz 18,000 euros (EUR) in respect of non-pecuniary damage. It held that Poland was to pay Mr Horych EUR 5,000 in respect of non-pecuniary damage.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.