



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

FOURTH SECTION

CASE OF KARYKOWSKI v. POLAND

(Application no. 653/12)

JUDGMENT

STRASBOURG

12 January 2016

FINAL

12/04/2016

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

In the case of Karykowski 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,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,

Iulia Antoanella Motoc, *judges*,
and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 8 December 2015,

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

PROCEDURE

1. The case originated in an application (no. 653/12) 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 Dariusz Karykowski (“the applicant”), on 27 December 2011.

2. The applicant, who had been granted legal aid, was represented by Mr T. Bąk, a lawyer practising in Szczecin. The Polish Government (“the Government”) were represented by their Agent, Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicant alleged a breach of Article 3 of the Convention on account of the imposition on him of the so-called “dangerous detainee” regime.

4. On 7 July 2014 the complaint under Article 3 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1966 and is detained in Stargard Szczeciński.

A. Criminal proceedings against the applicant

6. The applicant is a habitual offender. He was arrested on an unspecified date on suspicion of uttering threats. He was subsequently convicted as charged and sentenced to three years and six months' imprisonment. He was first detained in Nowogard Prison and subsequently in Goleniów Prison.

B. Imposition of the so-called "dangerous detainee" regime

7. On 7 September 2011 the applicant's cell was searched. During the search the prison officers found a note entitled "Protest letter" signed by 135 prisoners. The prisoners stated their opposition to the forthcoming changes to the Code of Execution of Criminal Sentences affecting, in particular, the possibility of shopping during prison visits. The letter was confiscated by the authorities.

8. On 8 September 2011 the Nowogard Prison Penitentiary Commission imposed on the applicant the so-called "dangerous detainee" regime. The commission held that the applicant was one of the organisers of a planned collective remonstrance in Nowogard Prison, and that it was therefore necessary to isolate him from other prisoners.

9. The applicant appealed against that decision. He submitted that he was not the organiser of the protest but merely one of 140 prisoners who had signed the letter.

10. On 29 November 2011 the Szczecin Regional Court dismissed the applicant's appeal. The court held that the decision had been lawful.

11. On an unknown date the applicant was transferred to Goleniów Prison.

12. On 6 December 2011 the Goleniów Prison Penitentiary Commission extended the imposition of the "dangerous detainee" regime, holding that the applicant represented a serious threat to the community and should be kept in a solitary cell. The applicant appealed.

13. On 31 January 2012 the Szczecin Regional Court quashed the decision and remitted the case to the commission. The court held that only the original decision to impose the regime of 8 September 2011 had been justified. The following one taken on 6 December 2011 had not indicated any new circumstances justifying the continuing application of the regime and its reasoning had been scarce. The court noted that several months had elapsed since the applicant had signed the protest letter and the suppositions regarding the allegedly planned collective remonstrance of the prisoners had been not confirmed.

14. On 14 February 2012 the Goleniów Prison Penitentiary Commission decided to lift the "dangerous detainee" regime. The regime was imposed on the applicant for a total of five months and seven days.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant domestic law and practice concerning the imposition of the “dangerous detainee” regime are set out in the Court’s judgments in the cases of *Piechowicz v. Poland* (no. 20071/07, §§ 110-17, 17 April 2012), and *Horych v. Poland* (no. 13621/08, §§ 49-56, 17 April 2012).

16. The provisions of the Code of Execution of Criminal Sentences concerning the imposition of the regime on convicted persons read as follows:

Article 88 § 3

“A convicted person posing a serious danger to society or to the security of a prison shall be placed in a prison with a closed regime in conditions ensuring increased protection of society and the security of the prison.”

Article 88a

“1. The convicted person referred to in Article 88 § 3 shall be placed in a designated wing or in a cell of a prison with a closed regime. A penitentiary judge shall be informed about this placement.

2. The provisions of paragraph 1 above shall be applied to a convicted person whose characteristics, personal circumstances, motivations, behaviour when committing the offence, type of offence and its consequences, behaviour in prison, or degree of depravity pose a serious danger to society or to the security of a prison, and who:

(2a) during the prior or current term of imprisonment posed a danger to the security of a prison or a remand centre in that he was a leader or an active participant in a collective remonstrance in a prison or a remand centre ...”

17. Article 88b of the Code of Execution of Criminal Sentences lays down specific arrangements applicable to convicted persons to whom the “dangerous detainee” regime is applied. They are identical to those specified in Article 212b of the Code applicable to persons remanded in custody (see *Piechowicz*, cited above, § 106).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

18. The applicant complained that he had been unlawfully classified as a “dangerous detainee” and subjected to degrading treatment prohibited by Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

19. The Government contested that allegation.

A. Admissibility

20. 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 applicant

21. The applicant submitted that the prolonged imposition of the “dangerous detainee” regime had been in breach of Article 3 of the Convention. In his opinion, there had been no reasonable grounds for applying the regime to him. He contested the allegation that he had been the author of the “protest letter” that had been found by the authorities. The applicant was only one of about 135 prisoners who had signed the letter, which had been addressed to the Minister of Justice. Moreover, the letter voiced the prisoners’ criticism of proposed legislative changes and should under no circumstances have been considered as putting the security of the prison at risk. The applicant pointed out that no collective remonstrance had taken place in the months following the incident, which proved his assertion.

22. The applicant also contested the Government’s allegations that he had behaved badly while in prison and had had a negative influence on other prisoners. He referred to an opinion on his behaviour of 17 October 2011 provided by the Government, which stated that he “had made efforts to behave well in relation to the prison staff and abided by the prison regulations. Before the regime was imposed on him he had received rewards for his exemplary conduct”.

23. The applicant submitted that he had been held in solitary confinement. He referred to the prolonged and excessive isolation from his family, the outside world and other detainees, and to other restrictions, such as wearing “joined shackles”, routine strip searches to which he had been subjected on a daily basis and, lastly, monitoring of his cell (including the sanitary facilities) via closed-circuit television. The applicant stressed that all of his movements in his cell had been constantly monitored. Whenever he left or entered his cell, usually several times a day, he was subjected to a degrading, exceptionally intrusive body search by at least three prison guards. He was allowed to take one solitary walk in a designated area under increased supervision. Moreover, for a month after the regime had been applied to him, he had no access to electronic equipment such as television

or radio. Lastly, he complained that he had been unable to continue to see his psychiatrist.

2. The Government

24. The Government submitted that in the present case the treatment complained of had not attained the minimum level of severity required under Article 3.

25. The Government maintained that the applicant had been classified as a “dangerous detainee” in accordance with the relevant legal provisions. The authorities considered that the applicant had been planning a prisoners’ protest; therefore, he had posed a danger to the security of the prison. They also considered that the applicant had had a negative influence on other detainees.

26. After three months the authorities had verified whether the “dangerous detainee” status was still applicable to the applicant. As soon as the commission noticed an improvement in his attitude it had lifted the regime. This had been done on 14 February 2012, after five months and seven days. In those circumstances the Government considered that subjecting the applicant to the regime had been legitimate and necessary in order to prevent any risk of disturbance in the prison to maintain prison security.

27. The Government stressed that the regime had been imposed on the applicant for a very short period of time, during which he had been provided with adequate stimulation and human contact. In particular, he had opportunities to participate in sportive and cultural activities, had access to a library and could listen to a radio. During the period in question the applicant had been able to contact his wife and attend a session with a psychologist.

The Government concluded that the treatment to which the applicant had been subjected had not been incompatible with Article 3 of the Convention. They invited the Court to find no violation of that provision.

3. The Court’s assessment

(a) General principles deriving from the Court’s case-law

28. The relevant general principles deriving from its case-law were recently summarised in the Court’s judgments in the cases of *Piechowicz v. Poland* (see *Piechowicz*, cited above, §§ 158-65) and *Horych v. Poland* (see *Horych*, cited above, §§ 85-92).

(b) Application of the above principles in the present case

29. The Court notes that there is no dispute over the fact that from 8 September 2011 to 14 February 2012, that is, for five months and seven days, the applicant was classified as a “dangerous detainee” and, in

consequence, subjected to high-security measures and various restrictions (see paragraphs 8-15 above). The main aspects of the regime raised by the applicant and specified below have not been contested by the Government. The details of the core aspects of the “dangerous detainee” regime were also extensively analysed in the *Piechowicz* judgment (cited above, § 166 with further references).

30. The measures applied in the applicant’s case comprised confinement in a special high-security prison cell and increased supervision of his movements within and outside the prison, which meant that he had to wear so-called “joined shackles” (handcuffs and fetters joined together with chains) whenever he was taken outside his cell. The measures involved his segregation from the prison community and restrictions on contact with his family. In addition, every time he left or entered his cell he was routinely subjected to a “full strip search” – a thorough inspection of his body and clothes for which he was required to strip naked and make deep knee bends in order to enable an examination of his anus. In addition, his cell, including the sanitary facilities, was constantly monitored via close-circuit television (see paragraph 23 above).

The Government did not contest those allegations. They underlined that the applicant had had access to various facilities in the prison, such as a library. Moreover, they submitted that he had had the right to contact his wife, without specifying whether any visits had taken place during the period in question (see paragraph 27 above).

31. The parties disagreed on whether the adverse consequences of the imposition of the above measures on the applicant had been serious enough to attain the minimum level of severity required for a breach of Article 3 of the Convention.

32. The Court firstly notes that the facts of the instant case differ from the leading cases of *Piechowicz* and *Horych*, where the dangerous detainee regime was imposed on the basis of Article 212a § 3 of the Code of Execution of Criminal Sentences, which sets out strict, rigid rules for the imposition of the regime in cases where the charges against the detained persons are of a particularly serious nature (see *Piechowicz*, cited above, §§ 105 and 177).

33. In the present case the authorities justified their decision of 8 September 2011 imposing the “dangerous detainee” regime on the applicant by the fact that they had found in his cell a “protest letter” signed by some 135 prisoners criticising changes to the Code of Execution of Criminal Sentences. The letter was addressed to the Minister of Justice and the authorities assumed that the prisoners would organise a collective remonstrance once the new law entered into force. The legal basis for imposing the regime was Article 88a § 2 (2a) of the Code of Execution of Criminal Sentences (see paragraphs 7 and 16 above).

The reasoning in the prison penitentiary commission's decisions of 8 September and 6 December 2011 was brief and based solely on the risk to the security of the prison resulting from the allegedly planned collective remonstrance. The Court considers as unfounded the Government's submission that the authorities had based their decisions also on the applicant's negative influence on other prisoners and his generally bad behaviour in prison.

In those circumstances the Court is not convinced that it was reasonable on the part of the authorities to consider that, for the sake of ensuring prison security, the applicant should be indiscriminately subjected to the full range of measures that were available to them under the "dangerous detainee" regime.

34. The Court notes that the "dangerous detainee" regime was applied to the applicant for a total of five months and seven days. Although it appears that he was held in a solitary cell, separated from the rest of the prison, he was not subjected to complete sensory or social isolation. The Government stressed that he had had the right to visit the library and other facilities in the prison and to contact his wife. There is no evidence that the applicant in reality benefited from any mental or physical stimulation, with the exception of a daily and solitary walk within the segregated area.

35. In the *Piechowicz* case the Court did not accept that the continued, routine and indiscriminate application of the full range of measures that were available to the authorities under the so-called "dangerous detainee" regime had been necessary in order to maintain prison security and were compatible with Article 3 of the Convention (see *Piechowicz*, cited above, § 170). Also in the present case, the Court is not convinced that shackling the applicant was necessary on each and every occasion (see *Piechowicz*, cited above, § 174).

36. The Court has even more misgivings with regard to the full body search to which the applicant was likewise subjected daily, or even several times a day, whenever he left or entered his cell. Strip searches were carried out as a matter of routine and were not linked to any specific security needs, or to any specific suspicion concerning the applicant's conduct.

The Court has already stated in the *Piechowicz* case that while strip searches might be necessary to ensure prison security or to prevent disorder or crime, it was not persuaded by the Government's argument that such systematic, intrusive and exceptionally embarrassing checks performed daily, or even several times a day, were necessary to ensure safety in the prison (see *Piechowicz*, cited above, § 176).

37. Given that the applicant was already being subjected to several other strict surveillance measures and that the authorities did not rely on any specific or convincing security requirements, the Court considers that the practice of daily strip searches applied to him for over five months must have caused him feelings of inferiority, anguish and accumulated distress

which went beyond the unavoidable suffering and humiliation involved in the execution of his prison sentence (see *Horych*, cited above, § 101, and *Piechowicz*, cited above, § 176).

38. Lastly, the Court notes that the commission in extending the regime on 6 December 2011, failed to give any new reason apart from the original one given three months earlier. This lack of a new justification for extending the regime was criticised by the Szczecin District Court, which quashed the decision of 6 December 2011 and ordered the commission to re-examine the matter (see paragraph 14 above). The Court has already noticed that the authorities, in extending that regime, were not in fact obliged to consider any changes in the applicant's personal situation and, in particular, the combined effects of the continued application of the impugned measures (see *Piechowicz*, cited above, § 177).

The Court considers that also in the instant case the authorities failed to sufficiently justify the extension of the regime and that the procedure for review of the applicant's "dangerous detainee" status was a pure formality, limited to a repetition of the same grounds.

39. In conclusion, taking into account the cumulative effects of the "dangerous detainee" regime on the applicant, the Court finds that the authorities did not provide sufficient and relevant reasons which could justify, in the circumstances of the case, the severity of the measures taken. In particular, the authorities failed to show that the impugned measures were necessary in their entirety to attain the legitimate aim of ensuring prison security.

40. There has accordingly been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government considered the claim excessive.

44. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant, who received legal aid from the Council of Europe in connection with the presentation of his case, did not make any claim for costs and expenses.

C. Default interest

46. 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 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into Polish zlotys 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

András Sajó
President