



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

FOURTH SECTION

CASE OF ROMANIUK v. POLAND

(Application no. 59285/12)

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 Romaniuk 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. 59285/12) 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 Tomasz Romaniuk (“the applicant”), on 3 September 2012.

2. The applicant, who had been granted legal aid, was represented by Mr P. Osik, a lawyer practising in Warsaw. 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, 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 1985 and lives in Sokołów Podlaski.

A. Criminal proceedings against the applicant

6. On 8 April 2009 the applicant was arrested and remanded in custody. He was charged with, *inter alia*, murder, attempted murder, and illegal possession of firearms.

7. On 2 December 2011 the Ostrołęka Regional Court convicted the applicant of battery and attempted murder and sentenced him to twelve years' imprisonment.

8. On 25 October 2012 the Białystok Court of Appeal upheld the first-instance judgment.

9. On 8 November 2013 the Supreme Court dismissed the applicant's cassation appeal.

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

10. On 10 April 2009 the Czerwony Bór Prison Penitentiary Commission ("the commission") classified the applicant as a "dangerous detainee". It considered that it was necessary to place him in a cell for dangerous detainees as he had been charged with murder committed with the use of firearms. The commission referred to the applicant's "personal circumstances and serious lack of moral character". The applicant did not appeal against the decision.

11. Between 7 July 2009 and 7 January 2010, the commission reviewed its decision every three months. In renewing its decision to classify the applicant as a "dangerous detainee", the commission reiterated the same reasoning, which read as follows:

"His characteristics, personal circumstances, serious lack of moral character and [the fact of] being charged with offences committed with the use of a firearm, pose a serious danger to society and to the security of the remand centre."

12. The reasoning given on 5 April, 30 June and 30 September 2011 differed slightly in that gave a detailed description of the offences with which the applicant had been charged as the grounds for extending the regime. The commission referred to the offences of murder and three attempts to commit murder with the use of a firearm.

13. The applicant lodged an appeal against the decision of 30 September 2011.

14. On 13 December 2011 the Białystok Regional Court dismissed the applicant's appeal, holding that the decision had been lawful.

15. On 29 December 2011 the commission extended the application of the "dangerous detainee" regime to the applicant for the eleventh time. The reasoning given was the same as in the decisions of 2009.

16. On 29 March 2012 the commission lifted the "dangerous detainee" regime in respect of the applicant. It considered that, on the basis of the

relevant documentation and the assessment of the applicant's behaviour, he no longer posed a danger to society or to the security of the remand centre.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. 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).

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

1. *The parties' submissions*

20. The Government argued that the applicant had failed to make use of the available remedies, as he had not appealed against all the decisions of the penitentiary commission. He did not appeal against the first decision of the commission of 10 April 2009 imposing the regime on him, or against the following ones. In fact, he appealed only once – against the decision of 30 September 2011 – and his appeal was dismissed by the court on 13 December 2011. The Government argued that the applicant had been informed on each occasion about the time-limit for lodging an appeal but he had remained totally passive. They concluded that the application should be rejected for non-exhaustion of domestic remedies.

21. The applicant disagreed. He argued that in the light of the Convention principles it had not been necessary for him to appeal against every decision of the commission. He had exhausted domestic remedies by appealing against the decision of 30 September 2011. Moreover, he had been behaving well, hoping for the authorities to lift the measure, as prescribed by law. The applicant considered that he had not been passive and that his application should be considered admissible. He also stated that

he had been prevented from effectively appealing against the first decision of 10 April 2009 as the commission had failed to notify him of that decision on time.

2. The Court's assessment

22. The Court reiterates that although Article 35 § 1 of the Convention requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, it does not require that recourse should be had to remedies that are inadequate or ineffective (see *Egmez v. Cyprus*, no. 30873/96, § 64, ECHR 2000-XII).

23. In the present case the Court observes that the applicant appealed to the Białystok Regional Court against one decision classifying him as a “dangerous detainee” issued on 30 September 2011 (see paragraph 13 above). The applicant remained in the regime for a further six months, after which the penitentiary commission decided to lift the measure. The applicant lodged his application with the Court within six months of that date.

24. The Court reiterates that Article 35 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. In the present case the Court is not persuaded by the evidence provided by the Government in support of their objection.

25. In any event, in the present case the alleged non-exhaustion of domestic remedies is inseparably linked with the Court's assessment of the reasonableness of the measures complained of, and in particular with the question whether the lengthy imposition of the dangerous detainee regime on the applicant was properly justified by the authorities. In the Court's view, it would therefore be more appropriate to deal with the Government's argument at the merits stage.

26. The Court accordingly joins the Government's plea of inadmissibility on the grounds of non-exhaustion to the merits of the case.

27. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant

28. 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. All of the decisions imposing and extending the regime lacked justification and did not refer to any individual circumstances attributable to him. The regime was imposed arbitrarily and extended automatically. Moreover, his good behaviour in the remand centre had not been taken into account by the penitentiary commission.

29. The applicant submitted that he had been held in solitary confinement. He further 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. Those images had been recorded and stored for at least seven days. Every time he left or entered his cell, usually several times a day, he had been subjected to a degrading, exceptionally intrusive body search by two prison guards. He was isolated from other inmates and had the right to one solitary walk in the prison yard per day.

2. The Government

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

31. The Government maintained that the applicant had been classified as a “dangerous detainee” in accordance with the relevant legal provisions and that the measures complained of had had a legal basis. They stressed that, pursuant to Article 212(b) of the Code of Execution of Criminal Sentences, the authorities had been obliged to carry out a “strip search” of the applicant every time he left or entered his cell.

32. The application of “dangerous detainee” status to the applicant had been reviewed every three months. As soon as the commission noticed an improvement in his attitude – on 29 March 2012 – it lifted the regime. In those circumstances the Government considered that subjecting the applicant to the regime had been legitimate and necessary in order to prevent a risk of disturbance in the prison and to maintain prison security.

33. The Government stressed that the applicant had had the right to receive a visit from a family member or a phone call once a week. Moreover, once a week he had the right to visit a “day room” in which he

could participate in cultural and educational activities. The Government concluded that the treatment to which he 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**

34. 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* (*Horych*, cited above, §§ 85-92).

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

35. The Court notes that there is no dispute over the fact that from 10 April 2009 to 29 March 2012, that is, for almost three years, the applicant, a remand prisoner, was classified as a so-called "dangerous detainee" and, in consequence, subjected to high-security measures and various restrictions (see paragraphs 10-16 above). The main aspects of the regime raised by the applicant and specified below were not contested by the Government (see paragraphs 29 - 33 above). 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).

36. The measures applied in the applicant's case comprised confinement in a special high-security prison wing and increased supervision of his movements within and outside the cell, 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. Also, 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 in which he was required to strip naked and make deep knee bends in order to enable an examination of his anus (see paragraph 29 above). In addition, his cell, including the sanitary facilities, was constantly monitored via closed-circuit television.

The Government did not contest those allegations. They underlined that the applicant had had access to facilities in prison such as a "day room" once a week. Moreover, they submitted that he had had the right to receive family visits, without specifying whether any visits had taken place during the period in question (see paragraph 33 above).

37. The parties disagreed as to 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.

38. The Court notes that the decision of 10 April 2009 imposing the “dangerous detainee” regime on the applicant was a legitimate measure, warranted by the fact that the applicant had been charged with numerous violent offences (see paragraph 10 above). It was not therefore unreasonable on the part of the authorities to consider that, for the sake of ensuring prison security, he should be subjected to tighter security controls, involving increased and constant supervision of his movements within and outside his cell, restrictions on his contact and communication with the outside world, and some form of segregation from the prison community.

39. However, for the reasons stated below, the Court cannot 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 for nearly three years was necessary in order to maintain prison security and compatible with Article 3 of the Convention (see *Piechowicz*, cited above, § 170).

40. Although it appears that the applicant was held in a solitary cell in a special high-security wing separated from the rest of the prison, he was not subjected to complete sensory or social isolation. As submitted by the Government the applicant was allowed to receive visits from his family, although it is not clear how many visits he received during the period in question. Moreover, given the nature and extent of the other restrictions, the family visits alone could not sufficiently mitigate the cumulative, adverse effects of the imposition of the “dangerous detainee” regime on the applicant.

41. It does not appear that the authorities made any effort to counteract the effects of the applicant’s isolation by providing him with the necessary mental or physical stimulation, with the exception of a daily and solitary walk within the segregated area (see *Piechowicz*, cited above, §§ 172 and 173).

42. Furthermore, the Court is not convinced that shackling the applicant was necessary on each and every occasion (see *Piechowicz*, cited above, § 174).

43. 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. The Court has already stated in the *Piechowicz* case (cited above, § 176) 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 the prison security. 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.

44. Given that the applicant was already 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 almost three years must have caused him feelings of inferiority, anguish and accumulated distress which went beyond the unavoidable suffering and humiliation involved in the imposition of pre-trial detention (see *Horych*, cited above, § 101, and *Piechowicz*, cited above, §§ 175 and 176).

45. Lastly, the Court notes that the commission in extending the regime, failed to give any new reasons. It emerges from the relevant decisions that, apart from the original grounds, which were based essentially on the admittedly very serious nature of the charges against the applicant, as well as his “serious lack of moral character”, the authorities did not subsequently find any other reasons to classify him as a “dangerous detainee” (see paragraphs 11, 12 and 15 above). The Court has already noticed that, due to the strict, rigid rules for the imposition of the special regime and the vaguely defined “exceptional circumstances” justifying its discontinuation laid down in Article 212a § 3 of the Code of Execution of Criminal Sentences, 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.

46. 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.

47. There has accordingly been a violation of Article 3 of the Convention. In consequence, and particularly in the light of the findings in paragraph 45 above, the Government’s preliminary objection based on non-exhaustion of domestic remedies (see paragraph 26 above) must be rejected.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

50. The Government contested those claims as excessive.

51. The Court awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

52. The applicant also claimed EUR 1,177 for the costs and expenses incurred before the Court.

53. The Government requested that if the Court were to make an award, it should do so only in so far as the costs and expenses were actually and necessarily incurred and were reasonable as to quantum.

54. The Court notes that the applicant has received legal aid from the Council of Europe for the costs and expenses incurred in the context of the proceedings before it. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the claimed sum in full for the proceedings before the Court, minus the EUR 850 already paid under the Court’s legal-aid scheme.

C. Default interest

55. 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. *Joins* the Government's objection of non-exhaustion to the merits of the case and rejects it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *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, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement:
 - (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 327 (three hundred and twenty-seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 12 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

András Sajó
President