

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

FIRST SECTION

CASE OF BOJAR v. POLAND

(Application no. 11148/18)

JUDGMENT

STRASBOURG

11 May 2023

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Bojar v. Poland,

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

Lətif Hüseynov*, President*,
Krzysztof Wojtyczek,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 11148/18) 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") on 14 February 2018 by a Polish national, Mr Bartłomiej Bojar ("the applicant"), who was born in 1973 and is currently detained in Strzelce Opolskie, and who had been granted legal aid and was represented by Ms B. Solińska, a lawyer practising in Wrocław;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs;

the parties' observations;

Having deliberated in private on 11 April 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns several instances of strip searches to which the applicant was subjected while detained.

2. Since 2002 the applicant has been serving a sentence of twenty-five years' imprisonment. In December 2013 he was placed in Strzelce Opolskie Prison. On 5 March 2014 he started working for a company located outside the prison.

3. On 29 August 2017 during a general prison check the applicant was subjected to a strip search in his cell. He complained about it. On 14 November 2017 the Director of the Regional Prison Service Inspectorate ("the Director") informed the applicant that his complaint had been unfounded. The applicant lodged a further complaint with the Opole Regional Court, which, on 12 January 2018, replied that the Director's reply "remained valid".

4. On 11 September 2017 the applicant was strip-searched after finishing his shift at work. The applicant lodged a complaint with the Director, in which he argued that there had been no grounds to perform the strip search and alleged that strip searches were performed systematically on randomly chosen working prisoners after the end of their shifts. On 22 November 2017 the Director informed him that the complaint had been unfounded as the applicant had been subjected to a so-called "enhanced supervision

programme" in view of suspicions that he had been involved in drug dealing. Strip searches of inmates, in particular as they returned from work, were the main protective measure used to maintain order and security in prison. The applicant lodged an appeal with the Opole Regional Court, which on 21 December 2017 refused to examine it. The court found that since the Director had not issued any decision, there had been no right of appeal to a court.

5. On 19 October 2017 the applicant was subjected to a strip search after he had finished his shift. The applicant alleged that during the strip search a person who was not wearing a uniform and who was unknown to the applicant had been present, as well as other prison guards who had not performed the strip search of the applicant. The applicant lodged a complaint with the Director, who on 19 December 2017 informed the applicant that the complaint had been unfounded.

6. The next strip searches took place on 3 June 2018, after the applicant had received a visit, and on 15 June 2018, after he had finished his shift. The applicant lodged a complaint with the Director. In reply, the Director informed him that it had not been possible to confirm whether the strip searches had taken place, because there was no official register of strip searches.

7. The applicant complained that the strip searches had breached his right to respect for his private life under Article 8 of the Convention. Secondly, he complained that he had not had at his disposal an effective domestic remedy for his complaint under Article 8 of the Convention, as required by Article 13 of the Convention in that the authorities had not issued any reasoned decision ordering strip searches and that he had no right to lodge an appeal to a court.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN RESPECT OF STRIP SEARCHES

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

9. The general principles concerning strip searches have been summarised in *Piechowicz v. Poland* (no. 20071/07, §§ 105-17, 17 April 2012).

10. The applicant submitted that the strip searches had no justification and had not been proportionate. In particular, he had never given the prison authorities any reason to suspect that he might have hidden any objects in the intimate parts of his body, and he objected to the Government's assertion that he had been involved in dealing in drugs, which would have justified enhanced supervision.

11. The Government submitted that the interference with the applicant's right to respect for his private life had been justified for the prevention of disorder or crime and to protect the rights and freedoms of others and that it had been proportionate. Furthermore, the strip searches had been performed in the presence of two officers of the same sex as the applicant with no other persons present. The applicant had not been treated in a humiliating way and nobody had used abusive or offensive language towards him. In the Government's view, the strip searches had also been justified by a suspicion that the applicant had been involved in drug dealing and therefore subjected to enhanced supervision. The applicant's complaints about the strip searches had been examined and no breach of domestic regulations had been found.

12. The Court has already found that where a measure falls short of Article 3 treatment, it may fall foul of Article 8 of the Convention, which, among other things, provides for the protection of physical and mental integrity under the head of respect for the individual's private life. There is no doubt that the requirement to undergo a strip search will generally constitute an interference under the first paragraph of Article 8 and must be justified in terms of the second paragraph, namely as being "in accordance with the law" and "necessary in a democratic society" for one or more of the legitimate aims listed therein. According to the settled case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued (see *Wainwright v. the United Kingdom*, no. 12350/04, § 43, ECHR 2006-X).

13. Turning to the present case, the Court notes that the orders for the strip searches had a basis in the provisions of domestic law, namely the Code of Execution of Criminal Sentences. The Court is also satisfied that the interference complained of pursued the legitimate aim of "the prevention of disorder or crime".

14. It remains to be examined whether the strip searches to which the applicant was subjected were proportionate in the circumstances of the present case.

15. The authorities referred to the security needs of the prison in general terms without pointing to any concrete event or behaviour by the applicant that would have justified the measures. From the grounds given by the authorities it also appears that the prisoners were subjected to preventive strip searches when returning from work. The Government have provided no evidence justifying the authorities' suspicion that the applicant might have been involved in drug dealing.

16. The Court is aware of the need to ensure security in institutions where people are deprived of their liberty. It considers, however, that highly invasive and potentially debasing measures like body searches or strip searches require a plausible justification. It does not appear that such a justification was given to the applicant by the prison authorities in the present case (see *Dejnek v. Poland*, no. 9635/13, § 75, 1 June 2017). The Court also

notes that the Regional Court considered that it could not examine the complaint as there had been no official decision issued. On another occasion the authorities were not able to confirm that a strip search had been carried out, as alleged by the applicant, since there was no register of searches. Such a situation prevents the Court from assessing whether the requirement of a sufficient justification for strip searches at the domestic level had been complied with (see, *mutatis mutandis*, *Dejnek*, cited above, § 75, and *Nowak v. Poland*, no. 60906/16, § 37, 13 October 2022).

17. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to provide sufficient and relevant reasons justifying the strip searching of the applicant.

18. There has accordingly been a violation of Article 8 of the Convention.

II. OTHER COMPLAINTS

19. The applicant also complained that the facts of the case gave rise to a breach of Article 13 of the Convention in conjunction with Article 8 in that the authorities had not issued any reasoned decision ordering the strip searches of the applicant which could be appealed against.

20. The Court observes that at the heart of the applicant's complaint under Article 13 of the Convention lie issues that have been examined and have resulted in the finding of a violation of Article 8 of the Convention (see paragraphs 15 and 16 above). Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that no separate issue arises under Article 13 of the Convention and makes no sperate finding under this provision (see *Prus v. Poland*, no. 5136/11, § 43, 12 January 2016).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage (of which EUR 4,000 in respect of Article 8 of the Convention). In respect of costs and expenses incurred before the Court the applicant sought 1,474 Polish zlotys (equivalent to EUR 320) and additionally 30% of the award granted to the applicant by the Court.

22. The Government contested the claims.

23. The Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

24. Having regard to the documents in its possession, and the fact that the applicant had been granted legal aid, the Court considers it reasonable to award EUR 320 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 of the Convention admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention taken together with Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 320 (three hundred and twenty 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 11 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Lətif Hüseynov
Deputy Registrar	President