

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

FOURTH SECTION

CASE OF ŚWIDERSKI v. POLAND

(Application no. 5532/10)

JUDGMENT

STRASBOURG

16 February 2016

FINAL

16/05/2016

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



In the case of Świderski v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

András Sajó, *President,*
Vincent A. De Gaetano,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 26 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 5532/10) 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 Jakub Świderski ("the applicant"), on 15 January 2010.

2. 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. He also complained under Articles 6 and 13 of the Convention about the alleged unfairness of the proceedings before penitentiary commission and the lack of an effective remedy against its decisions.

4. On 7 July 2014 the above complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1989 and is detained in Opole Lubelskie.

A. Criminal proceedings against the applicant

6. On 29 June 2007 the applicant was arrested and remanded in custody in the Biała Podlaska Prison on suspicion of having committed a murder. He had a criminal record and had previously been detained.

7. On 17 December 2009 he was convicted of a murder and sentenced to 25 years' imprisonment. The applicant appealed.

8. On 10 November 2010 the Lublin Court of Appeal quashed the challenged judgment and remitted the case.

9. On 13 May 2014 the Lublin Regional Court convicted the applicant and sentenced him to 13 years' imprisonment.

B. Imposition of the "dangerous detainee" regime

10. On 14 August 2007 the Biala Podlaska Prison Penitentiary Commission classified the applicant as a dangerous detainee. It relied on the applicant's attempted escape while being transported outside the prison and on the serious nature of the offence he had been charged with.

11. On an unspecified day in September 2007, the applicant was transferred to the Lublin Remand Centre. On 3 October 2007 the Lublin Remand Centre Penitentiary Commission also imposed the dangerous detainee regime on the applicant. Subsequently, the commission extended the application of the dangerous detainee regime to the applicant on numerous occasions. The applicant submitted copies of the decisions of the commission dated: 6 May 2008, 19 March 2009, 12 August and 23 December 2010, 23 March, 23 June and 14 July 2011 and 15 March 2012. All these decisions were issued on a special form containing space for reasoning. However, these forms only refer to the applicant's progress in rehabilitation, classifying it as "moderate" or "negative".

12. On an unspecified date the applicant was transferred to the Kielce Remand Centre.

13. On 30 March 2010 the Kielce Remand Centre Penitentiary Commission also imposed the dangerous detainee regime on the applicant. The applicant appealed.

14. On 28 June 2010 the Kielce Regional Court upheld the decision. It first noted that it was capable of examining whether the commission had remained within the limits of reasonableness and the limits of free assessment of circumstances of the case. It further held that the decision had been issued in accordance with the law and that it had been justified taking into account the applicant's aggressive and vulgar behaviour in the remand centre, his refusing meals and his unrepentent attitude towards the offences of which he had been convicted by the first-instance court. The court also found that the applicant had received disciplinary penalties on 22 occasions for establishing illegal contacts.

15. On an unspecified date in 2010 the applicant was transferred back to the Lublin Remand Centre.

16. On 31 August 2010 he complained about the conditions of his detention and the further extension of his classification as a dangerous detainee to the regional inspector of the Prison Service.

17. On 2 November 2010 the inspector, relying on the applicant's attempted escape while being transported, found the complaint ill-founded. He also referred to the applicant's self-mutilation on 17 June 2010 and found that on 18 June 2010 he had been examined by a psychologist who had not found any obstacles to placing the applicant in solitary confinement as a disciplinary penalty.

18. The applicant appealed against the decisions of 23 December 2010 and 23 March 2011. In his appeal against the former decision the applicant claimed, in particular, that the commission had arbitrarily classified him as "dangerous", that he had no access to the opinions and the prison authorities' request leading to this classification, and he had been debased and humiliated by "[being] consciously kept ... in inhuman conditions".

19. On 28 February 2011 the Lublin Regional Court dismissed the appeal, finding that the applicant's classification had been justified in view of the fact that on 14 August 2007 he had unlawfully tried to escape while being transported. The court further referred to the fact that the applicant had been charged with murder and held that this alone would be sufficient to justify the dangerous detainee classification even without the attempted escape.

The court further held:

> "Further circumstances such as personal conditions, the applicant's behaviour in detention and the extent of his lack of moral character are subject to assessment and the decision in this respect cannot be examined from the viewpoint of lawfulness. It could be examined as regards its equity; this however would go beyond the limits of examination laid down by Article 7 § 1 of the Code of Execution of Criminal Sentences."

As regards the applicant's further complaints the court held that they did not have any influence on the commission's decision and as such "did not even merit examination."

20. On 11 May 2011 the Lublin Regional Court dismissed the applicant's appeal against the decision of 23 March 2011 holding that it had been based on "the applicant's attitude and negative behaviour and the assessment of his rehabilitation progress".

21. On 22 September 2011 the Lublin Remand Centre Penitentiary Commission lifted the dangerous detainee regime imposed on the applicant. It relied on the applicant's good behaviour.

22. In total, the dangerous detainee regime was applied to the applicant for four years, one month and nine days.

C. Particular aspects of the regime

23. The applicant was detained in several detention facilities, specifically Biała Podlaska Prison and in Lublin, Mokotów, Białystok and Kielce Remand Centres.

24. In the Kielce Remand Centre the cells were constantly monitored via closed-circuit television. According to the Government, the applicant could publish articles in the prison bulletin and participate in competitions. He had access to a library and cultural and educational activities.

25. In the Mokotów and Białystok Remand Centres the cells and other areas in which the applicant was allowed were under special surveillance. The applicant was subject to a strip search each time he entered and left his cell. He was supervised by two officers each time he was outside of his cell. He had access to a library and daily newspapers, and could listen to the radio. He also had access to a recreation room with sport facilities. Additionally, in the Białystok Remand Centre he could participate in the programme of reintegration into society.

26. The applicant spent most of the time complained of in the Lublin Remand Centre. The cell there was equipped with a sanitary facility which was not separated from the rest of the cell. The cell, including its sanitary facilities, was constantly monitored via closed-circuit television.

27. The applicant had to wear a red uniform designated for dangerous detainees, which was not warm enough in winter. He was subjected to a strip search every time he left and entered the cell, which in practice meant that he had to strip naked in front of prison officers and was required to bend over in order to enable the examination of his anus. According to the applicant, whenever he was outside his cell, including his appearances at court hearings, he had to wear joined shackles *(kajdanki zespolone)* on his hands and feet. Those shackles consisted of handcuffs and fetters joined together with chains. According to the Government's submissions the applicant had to wear the joined shackles only when being transported. In prison, when outside his cell, he wore handcuffs.

28. The applicant had a one-hour-long period of outdoor exercise per day.

29. The cell window was covered with a plastic blind which, according to the applicant, limited access to fresh air and natural light in the cell. The cell was constantly in semi-darkness and for reading, even during the day, the applicant needed to use artificial light.

30. The applicant could participate in cultural activities and use the library three times a week; he also had access to a recreation room, equipped with a television, games, a laptop and work-out facilities.

31. Some disciplinary measures had to be applied to the applicant because of his aggressive and vulgar attitude toward prison guards. On 4 August 2009 he attempted to assault a public servant *(próba czynnej napaści na funkcjonariusza w służbie)*. On 17 December 2009 the Lublin Regional Court convicted him of attempting to escape while being transported to a psychiatric examination on 14 August 2007. This conviction was upheld by the Lublin Court of Appeal on 10 November 2010. On 10 February 2012 the applicant was convicted by the Lublin Regional Court of having assaulted a public servant on 4 August 2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. The relevant domestic law and practice concerning the imposition of the "dangerous detainee" regime and the relevant international documents are set out in the Court's judgments in the cases of *Piechowicz v. Poland* (no. 20071/07, §§ 110-17 and §§ 127-136, 17 April 2012), and *Horych v. Poland* (no. 13621/08, §§ 49-56 and §§ 69-78, 17 April 2012).

33. 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 ..."

34. 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

35. 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."

36. The Government contested that allegation.

A. Admissibility

1. The parties' submissions

37. 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 had not appealed against the first decision of the commission of 14 August 2007 imposing the regime on him, or against the following ones. In fact, although there were sixteen decisions extending his classification as a dangerous detainee, he appealed against only three of these: the decisions of 30 March and 23 December 2010, and 23 March 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.

38. The applicant did not comment on this point.

2. The Court's assessment

39. 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).

40. The Court observes that the applicant appealed against the decisions extending his classification as a dangerous detainee on three occasions: his first appeal was lodged on 30 March 2010, that is to say two years and six months after the regime had been applied to him (see paragraph 13 above). Subsequently he appealed twice, against the decisions of 23 December 2010 and 23 March 2011 and the regime was lifted on 22 September 2011 (see paragraphs 18 and 21 above).

41. The Court reiterates that Article 35 of the Convention, which sets out the rule of 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 effective, available in theory and in 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 prospect of success. In the present case the Court is not persuaded by the evidence provided by the Government in support of their objection.

42. In any event, the alleged non-exhaustion of domestic remedies is inseparably linked to 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.

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

44. 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

45. The applicant submitted that the prolonged imposition of the dangerous detainee regime had been in breach of Article 3 of the Convention.

46. He also submitted that the regime had been applied to him when he had been a very young man and that he had mostly been held in solitary confinement which, combined with his young age at that time, had had negative effects on his psychological development.

2. The Government

47. The Government maintained that the applicant had been classified as a dangerous detainee in accordance with the relevant legal provisions. The basis for the application of the regime was the applicant's "lack of moral character", his aggressive and vulgar attitude toward prison guards and his attempted escape from prison transportation. The imposition of dangerous detainee status should be thus considered as having been legitimate and necessary in order to ensure security in prison.

48. The application of the regime to the applicant had been reviewed every three months. The reasons had remained valid throughout the whole period concerned. As soon as the commission noticed an improvement in

the applicant's attitude – and when he no longer posed danger to the security of the prison – on 22 September 2011, it lifted the regime. In those circumstances, the Government considered that subjecting the applicant to the regime had been legitimate and necessary for preventing a risk of disturbance in prison and maintaining prison security.

49. The Government stressed that the applicant had been provided with appropriate stimulation and adequate human contact during the relevant period. In particular, he had been allowed to receive visits from family members, had had access to the library and had participated in various sporting and cultural activities.

50. As regards the applicant being obliged to wear handcuffs and joined shackles when he was being transported, they submitted that it had been connected with the applicant's prior attempted escape while in transit and his attempted assault on one of the prison guards. The use of joined shackles was thus necessary and proportionate in the present case.

51. They further referred to the applicant's strip searches and submitted that the application of the dangerous detainee regime included body searches. They had been conducted in accordance with the relevant provisions of law, in a separate room and without any third persons present.

52. In conclusion the Government invited the Court to find no violation of Article 3 of the Convention.

3. The Court's assessment

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

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

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

54. The Court notes that there is no dispute over the fact that from 14 August 2007 to 22 September 2011, that is for four years, one month and nine days, the applicant, a remand prisoner, was classified as a dangerous detainee and, in consequence, subjected to high-security measures and various restrictions (see paragraphs 23-31 above). The main aspects of the regime raised by the applicant and specified below were not contested by the Government (see paragraphs 48-51 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).

55. The measures applied in the applicant's case comprised confinement in a special high-security prison wing and increased monitoring of his movements within and outside the cell, which meant that he had to wear joined shackles whenever he was taken out of the prisons and handcuffs

whenever he was taken out of his cell. The measures involved his segregation from the prison community including placement in solitary confinement, and restrictions on contact with his family. Furthermore, 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 bend over several times in order to enable an examination of his anus (see paragraphs 25 and 27 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" or a library. Moreover, they submitted that he had had the right to receive family visits without giving any details as regards number of visits by family members in the relevant period.

56. 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.

57. The Court notes that the decision of 14 August 2007 imposing the dangerous detainee regime on the applicant was a legitimate measure warranted by the fact that the applicant had been charged with a serious crime (namely murder) and that he had attempted to escape while being transported (see paragraph 10 above). It was therefore not 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 monitoring 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.

58. 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 over four years was necessary in order to maintain prison security and was compatible with Article 3 of the Convention (see *Piechowicz*, cited above, § 170).

59. Although it appears that the applicant was held in solitary confinement 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; he also had access to a library and various sporting and cultural activities. In any event, given the nature and extent of the other restrictions, the family visits and access to cultural and sporting activities could not sufficiently mitigate the cumulative, adverse effects of the imposition of the dangerous detainee regime on the applicant.

60. 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 secure the prison. 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.

61. Given that the applicant was already subjected to several other strict surveillance measures, the Court considers that the practice of daily strip searches applied to him for over four years 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, §§ 175 and 176).

62. In the present case, 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, his attempted escape from prison transport in 2007, as well as his "serious lack of moral character", the authorities did not subsequently find any further reasons to classify him as a dangerous detainee (see paragraph 11 above). In this respect the Court notes that the present case differs from that of *Piechowicz* in that the applicant was not charged with participating in an organised criminal group and therefore the regime could not be automatically imposed on him on the grounds of Article 212a § 3 of the Code of Execution of Criminal Sentences (see and compare ibid, §§ 105 and 168). The circumstances relied on by the authorities could indeed justify the imposition of the regime on the applicant for a certain time. However they could not suffice as the sole justification for extending the regime over such a long period. With the passage of time the procedure for review of the applicant's dangerous detainee status became a pure formality, limited only to indicating whether the progress of the applicant's behaviour was "moderate" or "negative". The decisions given by the Penitentiary Commission in 2011 and in 2012 submitted to the Court do not contain a proper reasoning. Only on appeal did the courts refer to the grounds originally relied on by the Commission (see paragraphs 11, 14 and 19 above).

63. In conclusion, assessing the facts of the case as a whole and considering 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,

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.

64. There has accordingly been a violation of Article 3 of the Convention. In consequence, and particularly in the light of the findings in paragraph 62 above, the Government's preliminary objection based on non-exhaustion of domestic remedies (see paragraph 43 above) must be rejected.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

65. The applicant complained of a violation of Articles 6 and 13 of the Convention. He complained about the manner in which the penitentiary commission had applied and extended the regime, and the alleged ineffectiveness of his appeals against those commission's decisions.

66. The Government contested those arguments.

67. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

68. The Court observes that at the heart of the applicant's complaint under Article 3 of the Convention lies not only the prolonged imposition of the dangerous detainee regime but also the procedure for reviewing his status. These issues have been examined and have resulted in the finding of a violation of that provision (see paragraph 63 above). In the circumstances, the Court considers that no separate issue arises under Articles 6 and 13 of the Convention and makes no separate finding.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government considered the claim excessive.

72. The Court awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

73. The applicant made no claim for costs and expenses.

C. Default interest

74. 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* that there is no need to examine the complaints under Articles 6 and 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant, to be converted into the currency of the respondent State 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Registrar	András Sajó President