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La Corte EDU condanna il regime penitenziario per "detenuti pericolosi" se non giustificato da specifiche esigenze di sicurezza carceraria
(CEDU, sez. I, sent. 20 maggio 2021, ric. n. 39496/17)

Nella sentenza resa al caso qui in esame, la Corte EDU ha riscontrato la violazione dell'art. 3 della Convenzione che, come noto, vieta la tortura o comunque trattamenti e punizioni inumani o degradanti. Nella specie il ricorso era stato sollevato da un cittadino polacco condannato per omicidio e rapina alla reclusione di venticinque anni e detenuto presso un istituto penitenziario con regime carcerario previsto per "detenuti pericolosi". Tale misura era stata applicata sulla scorta di una serie di valutazioni svolte dalla Commissione penitenziaria, la quale aveva ritenuto il ricorrente, leader e partecipante attivo di una protesta collettiva scoppiata all'interno del centro di detenzione, mettendo in grave pericolo la stessa sicurezza carceraria. Trasferito in un'altra struttura il suddetto regime carcerario veniva prorogato stante la presunta pericolosità del soggetto ed il persistere di una condotta insubordinata.
Il ricorrente avverso tali decisioni aveva più volte presentato ricorso innanzi ai giudici nazionali, lamentando la prolungata applicazione del più gravoso e rigido regime carcerario, accompagnato – almeno sino alla modifica delle disposizioni inerenti le misure di sicurezza del Codice di esecuzione delle condanne penali – da perquisizioni corporali complete, ripetute quotidianamente ed ogni volta che usciva o entrava nella sua cella, pur senza essere giustificate da esigenze specifiche di sicurezza. Nel ricorso presentato innanzi alla Corte EDU, il Governo polacco riteneva la fondatezza delle decisioni prese dalla Commissione penitenziaria, peraltro, confermate dai giudici nazionali. Diversamente i giudici di Strasburgo, dopo aver dichiarato la ricevibilità del ricorso stesso, e facendo leva su un analogo precedente, hanno ritenuto che le misure di sicurezza applicate al detenuto non fossero necessarie ad assicurare e garantire specifiche esigenze di sicurezza carceraria. Le perquisizioni e le ispezioni così come l'ammanettamento sistematicamente applicati si erano rivelati di fatto intrusivi ed imbarazzanti e "non necessari". Per di più tali pratiche avevano suscitato nel ricorrente sentimenti di inferiorità, angoscia ed umiliazione, superando la soglia dell'inevitabile sofferenza. Sulla scorta di tali valutazioni, la Corte EDU, non ravvisando fondate e giustificate le motivazioni comprovanti la necessarietà delle misure applicate, ha ritenuto vi fosse stata violazione dell'art. 3 CEDU.

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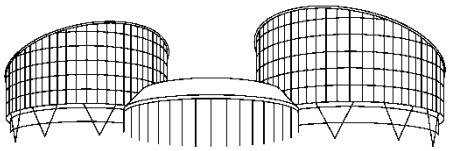

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF XXX v. POLAND
(Application no. 39496/17)

JUDGMENT
STRASBOURG
20 May 2021

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

In the case of XXX v. Poland,

The European Court of Human Rights (First Section), sitting as a Committee composed of:
Erik Wennerström, *President,*
Krzysztof Wojtyczek,
Ioannis Ktistakis, *judges*
and Liv Tigerstedt, *Deputy Section Registrar,*
Having regard to:
the application (no. 39496/17) 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 xxx national, Mr xxx ("the applicant"), on 29 May 2017;
the decision to give notice to the Polish Government ("the Government") of the application;
the parties' observations;
Having deliberated in private on 13 April 2021,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the lengthy imposition of a "dangerous detainee" regime on the applicant.

THE FACTS

2. The applicant was born in xxx and is detained in xxx.
3. The Polish Government ("the Government") were represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
5. In 1999 the applicant was convicted for, in particular, murder and robbery and sentenced to twenty-five years' imprisonment. He has been continuously detained since 1995.

6. On 5 May 2016 the Prison Commission of Opole Lubelskie Prison (*komisja penitencjarna*) classified the applicant as a "dangerous detainee" and decided that he should be detained under this regime of detention for three months. The commission relied on Article 88a § 1 of the Code of Execution of Criminal Sentences ("the Code") finding that the applicant had been a leader and active participant in a collective protest on 4 May 2016. On that day the applicant and other prisoners had refused to eat meals, objecting to the manner in which the prisoners were divided between cells. The commission also considered that the applicant had been highly demoralised and enjoyed a prominent position among other prisoners and, therefore, had great capacity to influence them. The applicant still intended to pursue the protest, which posed a real and serious threat to prison security. The commission further decided that it was necessary to apply all the measures provided by section 88b § 1 of the Code. The commission reached its decision after a hearing at which the applicant was present and his arguments were heard; he was informed of his right to appeal.

7. On the same day the applicant was transferred to the Lublin Detention Centre.

8. On 14 July 2016 the Lublin Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal against the decision of 5 May 2016. The court considered that a convicted person may not refuse to eat meals and incite others to do the same as a means of exercising pressure on the prison authorities. It considered that the commission's decision had been correct and well-grounded.

9. On 4 August 2016 the Lublin Detention Centre Prison Commission extended the regime for a further three months. The commission considered that the applicant's behaviour in prison had not improved as he had recently received two disciplinary punishments. He had been confrontational towards prison staff and refused to comply with the rules. The commission considered that the applicant still posed a risk to prison security and that extending the regime might have a positive influence on the applicant's behaviour in prison. At the same time, in application of section 88b § 2 of the Code, the commission discontinued the automatic application of strip searches every time the applicant left or entered the cell. The strip searches were to be carried out only when the applicant left or entered the prison's residential unit. Secondly, the applicant was allowed to wear his own shoes (suspension of measures described in section 88b § 1 points 5 and 10). The commission reached its decision after a hearing at which the applicant was present and his arguments were heard; he was informed of his right to appeal.

10. On 19 September 2016 the Lublin Regional Court dismissed the applicant's appeal against that decision. The court considered that the decision was given in accordance with the law and was justified in the circumstances of the case. It reiterated that the regime had been extended on the grounds of the character of the offence committed by the applicant, the fact that he had organised the protest in Opole Lubelskie Prison and because of his incorrect behaviour in prison. With respect to the latter the court noted that, since the imposition of the regime the applicant, had twice received disciplinary punishment. The court concluded that the applicant continued to pose a threat to prison security and that his aggressive behaviour towards the prison staff would recur.

11. On 3 November 2016 the Lublin Detention Centre Prison Commission extended the duration of the regime for three months. The commission also decided to alleviate the applicant's regime ordering that, when outside his cell, he should wear handcuffs in front of his body and not behind his back. The commission upheld its previous decision to suspend the application of strip searches

every time the applicant entered and left his cell, which had been ordered earlier. The applicant was still allowed to wear his own shoes.

12. On 10 January 2017 the Lublin Regional Court dismissed the applicant's appeal against that decision. The court established that the applicant had recently received yet another disciplinary punishment for insulting prison guards and had refused to participate in a resocialisation programme. The applicant continued to display confrontational and aggressive behaviour towards the prison staff.

13. On 25 January 2017 the Lublin Detention Centre Prison Commission lifted the regime. The commission noted a gradual improvement in the applicant's behaviour, in particular since no disciplinary punishment had been imposed on him in the previous three months. The commission considered that there had been grounds to assume that the applicant would no longer pose any real threat to prison security. Moreover, the continued application of the dangerous detainee regime would no longer have a positive impact on the applicant's behaviour.

14. During his detention the applicant was placed in single cells. The cells, including the toilet corner, were monitored by closed-circuit television. The applicant was subjected to strip searches every time he left or entered his cell. When moving outside the cell the applicant was handcuffed with so-called joined handcuffs (hands joined by chains with fetters).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

15. The relevant domestic law and practice concerning the imposition of "dangerous detainee" status are set out in the Court's judgments in the cases of *Piechowicz v. Poland* (no. 20071/07, §§ 105-117, 17 April 2012) and *Prus v. Poland* (no. 5136/11, §§ 16-17, 12 January 2016).

16. On 10 September 2015 the relevant sections of the Code of execution of Criminal Sentences were amended. They entered into force on 24 October 2015. They currently read as follows:

Section 88a

"2. When taking the decision to classify a convicted person as posing a serious danger to society or prison security, and when reviewing such decision, the prison commission takes into account:

1) the personal characteristics and circumstances of the prisoner;

2) the motives and conduct while committing the offence [for which the person had been convicted] and the type of offence...

3) the behaviour in prison;

4) lack of moral character and progress in social rehabilitation."

Section 88b

"§ 1 In a closed-type prison, convicted persons posing a serious danger to society or prison security shall serve their sentence under the following conditions:

1) cells and places designated for: work, study, walks, visits, services, religious meetings and cultural and educational and sport activities are equipped with appropriate technical safeguards;

2) the cells remain closed the whole day and are more frequently controlled...

3) within their unit, convicted persons may study, work and participate in religious teachings, meetings and services, as well as in cultural and sport activities;

4) movement of the convicted person within the prison facility shall take place under increased control and is limited to necessary needs only;

5) convicted persons shall be subject to a [strip search] each time they leave and enter their cells...

10) convicted persons shall not be allowed to wear their own clothing and footwear.
§ 2 the Prison Commission may decide that there is no need to use all measures referred to in § 1 and suspend their application... If justified by circumstances, the measures suspended may be reinstated.
§ 3 At the request of the convicted person or his or her defence counsel, but not more than once every 3 months, the prison commission shall indicate the reasons justifying the qualification of the convicted person as posing a serious danger to society or prison security ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION
17. The applicant complained that the lengthy imposition of the dangerous detainee regime had amounted to a breach of Article 3 of the Convention, which reads as follows:
"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."
A. Admissibility
18. The Government raised a preliminary objection, claiming that the applicant had failed to exhaust domestic remedies. They submitted that if he considered that his personal rights had been violated, it had been open to him to claim compensation from the State Treasury.
19. The applicant submitted in general terms that he had exhausted all the relevant and available domestic remedies.
20. In a number of cases against Poland concerning imposition of the dangerous detainee regime the Court has rejected the Government's argument that the applicants should have had recourse to a claim for the protection of personal rights (see, for example, *Głowacki v. Poland*, no. 1608/08, §§ 60-63, 30 October 2012; *Chyła v. Poland*, no. 8384/08, § 69, 3 November 2015; and *Klibisz v. Poland*, no. 2235/02, §§ 301-302, 4 October 2016). In the present case the Government failed to submit any examples of the domestic practice which would demonstrate the effectiveness of that remedy for the purposes of Article 35 § 1 of the Convention (see *Dejnek v. Poland*, no. 9635/13, § 54, 1 June 2017). It follows that the Government's plea of inadmissibility on the grounds of non-exhaustion of domestic remedies must be dismissed.
21. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Likewise, it is not inadmissible on any other grounds. It must therefore be declared admissible.
B. Merits
1. The parties' submissions
22. The applicant did not submit any arguments on the merits of the case. In general, he maintained his original application.
23. The Government underlined that the domestic law had changed in 2015, which had led to a reduction in the number of detainees classified as dangerous and a decrease in the measures applied to them.
24. The Government underlined that the decisions imposing and extending the regime on the applicant had been well-reasoned and upheld by a court. The decisions were based on concrete incidents in which the applicant had been involved, namely a collective protest and then several

disciplinary incidents where punishments had been imposed. The Government underlined that the measures applied in respect of the applicant had on each occasion been examined and, in view of a general improvement in his behaviour in prison, alleviated. For instance, from 4 August 2016 strip searches were no longer systemically carried out every time the applicant left or entered his cell. The Government further argued that, although the applicant had been the sole occupant of his cell, he had never been totally isolated, having the right to a daily walk and access to the common room and library. The Government submitted that the applicant had been confrontational towards the prison staff and had difficulty following prison rules, for which he had received disciplinary punishments.

2. The Court's assessment

25. The relevant general principles deriving from the Court's case-law were summarised in *Piechowicz* (cited above, §§ 158-165) and *Horych v. Poland* (no. 13621/08, §§ 85-92, 17 April 2012).

26. Turning to the present case the Court observes that on 5 May 2016 the prison commission imposed on the applicant the "dangerous detainee" regime and indicated that it should include application of all measures provided by law. The regime was imposed on the applicant on account of his alleged participation in a collective protest in the prison (see paragraph 6 above). The main aspects of the regime raised by the applicant and specified below have not been contested by the Government (see paragraph 14 above).

27. The Court firstly observes that, following the amendments to the domestic law which entered into force on 24 October 2015, the new section 88b (2) made it possible for the prison commission to modify the scope of security measures applicable to the detainees (see paragraph 16 above). In application of this provision, on 4 August 2016, the prison commission decided that the applicant would no longer be subject to strip searches every time he left or entered his cell (see paragraph 9 above). On the next occasion when the commission reviewed the applicant's classification, on 3 November 2016, the measures applied in respect of the applicant were further alleviated (see paragraph 11 above).

28. Furthermore, the Court notes that, in application of Section 88a (2) of the Code, the decisions of the prison commission were based on specific reasons pertaining to the applicant's recent behaviour (compare and contrast previous cases, for instance *Prus*, cited above, § 37, and see paragraph 16 above). On each occasion the authorities examined the applicant's personal situation, namely his behaviour, and assessed the need to continue the application of the regime depending on the fresh assessment of the risk posed by him to the security of the prison and its staff. Once this risk diminished and his behaviour in prison improved, on 25 January 2017 the commission decided to lift the regime (see paragraph 13 above).

29. In view of the above the Court considers that, in the application of the amended domestic law, the authorities progressively alleviated the regime by lifting some measures, taking into account the applicant's behaviour (compare and contrast *Piechowicz*, cited above, § 166).

30. Nevertheless the Court notes that during the first three months of the regime the applicant was subjected daily, or even several times a day, whenever he left or entered his cell, to a full body search. The strip searches consisted of a thorough inspection of his body and clothes, which required him to strip naked and bend over in order to enable the examination of his anus (see *Piechowicz*, cited above, § 166). They 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.

31. 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). 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 three 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, §§ 175 and 176).

32. Also, the Court considers that the Government failed to provide sufficient reasons to justify systematic shackling on each and every occasion the applicant left his cell, for the entire duration of the dangerous detainee regime imposed on the applicant (see *Piechowicz*, cited above, § 174).

33. In conclusion, taking into account the cumulative effects of the "dangerous detainee" regime on the applicant, the Court finds that the authorities failed to show that the application of a wide range of measures, particularly during the initial period of the imposition of the regime, were necessary to attain the legitimate aim of ensuring prison security.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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."

35. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

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.

Done in English, and notified in writing on 20 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar
Erik Wennerström
President