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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (06/04/2018)

Communication from Poland concerning the case of Artur Pawlak v. Poland (Application No. 41436/11)

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Réunion : 1318e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de la Pologne concernant l'affaire Artur Pawlak c. Pologne (requête n° 41436/11)
***(anglais uniquement)***

# ACTION REPORT[1]

## Information on measures aiming at execution of the judgment in the case of *Artur Pawlak against Poland*

Case description
*Artur Pawlak v.Poland*, application number 41436/11, judgment of 05/10/2017, final on 05/10/2017.

The case concerns violation of Article 3 of the Convention due to prolonged imposition of the "dangerous detainee" regime on the applicant and in particular the fact that for the whole period during which the regime had been imposed on him, he had been routinely strip-searched.

The Court allowed the application and found violation of Article 3 of the Convention. The Court noted that there was no dispute that the applicant was classified as "dangerous detainee" for four years and almost five months (since 14 September 2009 till 12 February 2014) and thus he was subjected to high-security measures and various restrictions. The Court further noted that the decision on application of a "dangerous detainee" status on the applicant was justified by his recurrent aggressive and destructive behavior. However, it did not accept that the continued, routine and indiscriminate application of the full range of measures that the authorities applied under the "dangerous detainee" regime for over four years was necessary in order to maintain prison security or compatible with Article 3 of the Convention, and in particular – the practice of daily full body searches, applied for over four years, went beyond the unavoidable suffering and humiliation involved in the execution of prison sentence.

The Court noted that the applicant, while indeed showing recurrent aggressive and destructive behavior, did not pose a threat that he might abscond from prison, however the authorities did not consider the possibility of imposition of other, less severe measures which could constitute a suitable reply to the applicant's aggression. Therefore, the Court stated that the authorities failed to show that the combination of surveillance and security measures imposed on the applicant was indeed necessary in its entirety to attain the legitimate aim of ensuring prison security.

## I. Individual measures

### 1. Just satisfaction

| Pecuniary damage | Non-pecuniary damage | Costs and expenses | Amount |
|---|---|---|---|
| - | 8 000 EUR | - | 8 000 EUR |
| Due on: 05/01/2018 | | | Paid on: 06/12/2017 |

[1] Information submitted by the Polish authorities on 6 April 2018.

2. Individual measures

The applicant remains in prison. On 5 May 2015 he was again classified as a "dangerous detainee" by the penitentiary commission, which found that he posed serious threat to the security of the prison because he attacked the prison guard. On 1 July 2015 this regime was lifted and the applicant has not been classified as dangerous ever since.

*In these circumstances, no other, no individual measures appear necessary.*

II. General measures

In the judgment, the Court identified the problem resulting from the application of the provision of Article 212a § 3 of the Code of Execution of Criminal Sentences (hereinafter: CECS), according to which the authorities, due to the strict and rigid rules of imposing a special regime and vaguely defined "special circumstances" for its omission, were not obliged to consider changes of the personal situation of a detainee and, in particular, the combined effects of further application of the contested measures, while simultaneously lack of making every efforts to counteract the effects of isolation of prisoners by providing the necessary psychological or physical stimulation.

The judgment was translated into Polish and published on the website of the Ministry of Justice. It is also available in Polish on the Court's website.

The information about the judgment was sent directly to the presidents of the courts in which the applicant's complaints against the decisions of the penitentiary committee was proceeded, *i.e.* the Presidents of the Regional Court in Lublin and Rzeszów and the presidents of the courts exercising administrative supervision over above mentioned regional courts, *i.e.* the President of the Appellate Court in Lublin and to the President of the Appellate Court in Rzeszów.

The general measures taken by the Government regarding the application of the so-called "dangerous detainee" regime were presented in Action Reports in the *Horych and Piechowicz v. Poland* group of cases and in the cases *Karwowski v.Poland* and *Michał Korgul v. Poland*.

In addition to the information already presented in these Action Reports, it should be added that the introduction of new mechanism in Article 88a § 2 of the CECS allows for alleviation of the rigors connected with being classified as a "dangerous detainee". The provision in question stipulates in a clear and precise manner obligations of the Prison Service *vis-à-vis* treatment of dangerous detainees. The penitentiary commissions were also called, by the Director General of the Prison Service in his letter of 18 April 2016, to apply the "dangerous detainee" status only in particularly justified cases and to thoroughly examine decisions upholding the application of such status. The regional penitentiary directors were asked to take under special supervision cases in which there is a need to apply this status for a period exceeding one year. Lastly, the need to enhance the efforts aimed at improving the substance of the verification decisions was pointed out.

Moreover, the training centers subordinated to the Director General of the Prison Service, in their continuing work on providing professional trainings to the prison officers, are presenting the legal framework for the Prison Service's work on the basis of regularly updated – in accordance with newest legal changes – training programmes.

As a result of the actions taken so far the number of so-called dangerous detainees has considerably decreased. As of 1 February 2018 there were 113 such detainees in the Prison Service's organisational units, which is the lowest level since 1999.

*In these circumstances, no other general measures appear necessary.*

## III. Conclusions of the respondent state

The Government is of the opinion that no further individual measures are necessary in this case and that measures of a general nature will be sufficient to conclude that Poland has fulfilled its obligations under Article 46 § 1 of the Convention.