



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

ROUND TABLE THE SETTING UP OF EFFECTIVE DOMESTIC REMEDIES TO CHALLENGE CONDITIONS OF DETENTION

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**The Polish experience concerning conditions of detention and
remedies to challenge these conditions**

The opinions expressed in this document are those of the author.

There is no international act that establishes specific requirements for space in correctional institutions. However, many of them indicate the standards that should be met for living space, recognizing its importance in achieving the global objectives of the penitentiary system

(e.g. N. Pawłowska, *Prawo podmiotowe więźniów do powierzchni mieszkalnej*, „Państwo i Prawo” no. 6/2007, p. 85).

Of particular importance in the context of overcrowding in Polish prisons is a ruling by the Supreme Court from 28 February 2007 (V CSK 431/06, Biuletyn SN 2007/6/15). The Supreme Court held that placing a convict serving a custodial sentence in overcrowded cells without separate toilet facilities, and failing to ensure all prisoners individual places for sleeping, constitutes a violation of such personal rights as dignity and privacy which may expose the State Treasury to liability under Art. 24 and Art. 448 of the Civil Code. The burden of proof that the conditions in a correctional institution are compliant with the relevant norms, and that no personal rights have been violated, rests on the respondent (Art. 6 in conjunction with Art. 24 of the Civil Code).

On 26 May 2008 the Constitutional Court issued a judgement ascertaining the unconstitutionality of Art. 248 of the Executive Penal Code (EPC), stating that it permits the unrestricted and discretionary placement of prisoners serving custodial sentences in cells that fail to meet the statutory requirement of 3 m² of space per person, and thus contributes to chronic overcrowding in Polish prisons, exposing prisoners to the risk of inhuman treatment.

In implementing the Constitutional Court's verdict abrogating Art. 248 of the Executive Penal Code effective until 6 December 2009, on 9 October 2009 the Parliament of the Republic of Poland adopted an act amending the aforementioned Code. That act entered into force on 6 December 2009, bringing with it a range of new and detailed provisions regulating the temporary housing of prisoners in cells not in compliance with minimum statutory dimensions.

Paragraphs 2a-i were added to Art. 110 of EPC. Paragraph 2a enumerates exceptional situations that make it permissible to place a convict for a defined period, not to exceed 90 days, in a residential cell which provides less than 3 m² but not less than 2 m² per occupant; such situations include the imposition of martial law or state of emergency, the declaration of an epidemic or the threat of one in a detention or correctional facility – taking into account the degree of the threat to life and health, and when it is necessary in order to prevent the occurrence of other circumstances that would constitute a direct threat to the safety of the prisoner or of the detention or correctional facility, or for preventing the effects of such an event. Paragraph 2b details the specific circumstances in which prison authorities may reduce the space per person in a cell to below 3 m² for a period of not more than 14 days. Paragraph 2f provides for the potential to lodge a grievance against the decision to place a prisoner in a cell with less than 3 m² per person. Such a grievance should be reviewed by a court within 7 days.

In 2013, 16,940 decisions addressed to 12,269 convicts were issued placing prisoners in cells providing individual prisoners with less than 3 m² of living space.

But in the period between 1 January 2014 and 30 June 2014, only 1,486 such decisions concerning 1,173 prisoners were issued which illustrates clear downward trend in the number of such decisions.

Under the Executive Penal Code, convicts being held in overcrowded correctional and detention facilities must be provided with a longer walk each day. They may also participate in additional educational, cultural and sporting activities in dayrooms, exercise rooms, gymnasiums and sport pitches. Prisoners may participate in clubs, theatre and music groups, they may edit prison newspapers, and they may be involved in cultural activities organized both inside prison facilities and outside in the local community.

Following the amendments of 2009, Art. 151 EPC, which enumerates the circumstances in which the serving of a sentence may be deferred, includes general overcrowding of prisons at the national level as an additional circumstance justifying deferral.

Damages for failure to ensure statutory living space norms are met in Polish penitentiary facilities in 2013 amounted to approx.

PLN 555,000

equivalent to **EUR 135,000**

Judicial rulings addressing overcrowding in penitentiary facilities

In its ruling of 17.03.2010 (II CSK 486/09), the Supreme Court reiterated the principle that the right to incarceration in conditions ensuring personal dignity is undoubtedly a personal right, and any action that violates that right may result in liability on the part of the State Treasury under Art. 24 and 448 of the Civil Code.

In its decision of 12.10.2010 in the *Łatak* case (no. 52070/08) the European Court held that from the Supreme Court's judgement of 17.03.2010, the means of challenge provided for under Art. 24 in conjunction with Art. 448 of the Civil Code may be applicable in cases concerning overcrowding in penitentiary facilities.

In its *Łatak* decision of 12.10.2010 (no. 52070/08) the European Court remarked that the new wording of Art. 110 EPC not only set out the circumstances in which the statutory minimal standard may be lowered as well as limits on the time for the application of such a measure, it also provides prisoners with new legal avenues under Art. 110 § 2f EPC for challenging a decision issued by the administration of a penal facility limiting individual living space in a cell. The Court also did not exclude that in future cases involving an appeal based on violation of Art. 3 of the Convention associated with overcrowding, it will require use of the new system for submitting grievances introduced by the EPC.

Legislative activity concerning partial depenalization of illegal behaviours:

The Act of 27 September 2013 on changes to the Code of Criminal Procedure and some other Acts also introduced amendments to the Criminal Code and the Code of Petty Offenses reclassifying some crimes as petty offences.

The Act entered into force on 9 November 2013.

As a result, through 30 June 2014 **1,793** people have been released from Polish penitentiary facilities.

The legislative amendments encompassed the following categories of offences:

1. Operating a non-motorized vehicle while intoxicated (1,226 people);
2. Theft or misappropriation of a moveable object (471 people);
3. Destruction or damage to property (73 people);
4. Felling or taking of lumber in a forest (4 people);
5. Handling stolen goods (wilfully or unwilfully) (19 people).

Electronic surveillance

In 2007 electronic surveillance of prisoners was introduced.

It is a system allowing for serving the sentence outside the detention facilities.

As of today approximately 30,000 prisoners have been placed under Electronic Surveillance Act.

As of 30 June 2014, there are 86,022 places
in Polish penitentiary facilities.
The prisoner population is 83,002 people,
which amounts to 92 %.

Thank you for your attention