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Contact: Clare Ovey
Tel: 03 88 41 36 45

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Meeting: 1259 meeting (7-9 June 2016) (DH)

Item reference: Updated action report (28/04/2016)

Communication from Poland concerning the Orchowski group of cases against Poland (Application No. 17885/04)

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Bilan d'action mis à jour

Communication de la Pologne concernant le groupe d'affaires Orchowski contre Pologne (Requête n° 17885/04) (***anglais uniquement***)

CONSOLIDATED ACTION REPORT[1]
Information about the measures to comply with the judgments in the cases of *Orchowski v. Poland* group of cases

Case description

Orchowski, application no. 17885/04, judgment of 22/10/2009, final on 22/01/2010
Norbert Sikorski, application no. 17599/05, judgment of 22/10/2009, final on 22/01/2010
Grzywaczewski, application no. 18364/06, judgment of 31/05/2012, final on 31/08/2012
Miroslaw Zielinski, application no. 3390/05, judgment of 20/09/2011, final on 20/12/2011
Wenerski no. 2, application no. 38719/09, judgment of 24/07/2012, final on 24/10/2012
Olszewski, application no. 21880/03, judgment of 02/04/2013, final on 02/07/2013
Karabin, application no. 29254/06, judgment of 07/01/2014, final on 07/04/2014

The cases concern inhuman and degrading treatment of applicants due to imprisonment in inadequate conditions, particularly overcrowding (violation of Article 3 of the Convention). The applicants were detained in several different prisons where they did not benefit from the statutory minimum living space of 3m² per prisoner. This lack of space had been aggravated by factors such as lack of exercise, particularly outdoor exercise, lack of privacy, insalubrious conditions and frequent transfers. The European Court of Human Rights ("the Court") held unanimously that the distress and hardship endured by the applicants had exceeded the unavoidable level of suffering inherent in detention.

The Court recalled that imprisonment in inadequate conditions constituted a recurrent problem in Poland. It held that from 2000 until at least mid-2008, overcrowding in Polish prisons and remand centres revealed a persistent structural dysfunction, qualified as a practice incompatible with the Convention (§ 147 of the Sikorski judgment). The Court further observed that in the case of Kauczor (no. 45219/06), it had held that the excessive length of pre-trial detention in Poland revealed a structural problem consisting of a practice incompatible with Article 5 § 3 of the Convention and that the solution to the problem of overcrowding of detention facilities in Poland was indissociably linked to the solution of that identified in the Kauczor case.

The Court underlined that consistent and long-term efforts must continue in order to achieve compliance with Article 3 of the Convention. It acknowledged that solving the systemic problem of overcrowding in Poland could call for the mobilisation of significant financial resources, but stressed that it is incumbent on the respondent government to organise its penitentiary system so as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (§ 153 of the Sikorski judgment). The Court concluded that if the state is unable to ensure that prison conditions comply with the requirements of Article 3, it must abandon its strict penal policy in order to reduce the number of incarcerated persons or put in place a system of alternative means of punishment.

[1] Information submitted by the Polish authorities on 28 April 2016

The Court encouraged the respondent state to develop an efficient system of complaints to the authorities supervising detention facilities, in particular the penitentiary judge and the administration of these facilities, which would be able to react more speedily than courts and to order, when necessary, a detainee's long-term transfer to an establishment in which the conditions were compatible with the Convention (i.e. § 154 of the Sikorski judgment).

The Court took also note of an emerging practice of civil courts which allows prisoners to claim damages in respect of prison conditions. In this connection, the Court emphasised the importance of the proper application by civil courts of the principles which had been set out in the relevant judgment of the Polish Supreme Court of 26/02/2007.

1. Payment of just satisfaction and individual measures

1.1. Just satisfaction

Case	Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
Orchowski	-	3,500 EUR	12 EUR	3,512 EUR
				Paid on 22/04/2010
Norbert Sikorski	-	3,500 EUR	-	3,500 EUR
				Paid on 22/04/2010
Grzywaczewski	-	6,000 EUR	-	6,000 EUR
				Paid on 16/10/2012
Mirosław Zieliński	-	3,200 EUR	-	3,200 EUR
				Paid on 17/02/2012
Wenerski nr 2	-	5,000 EUR	-	5,000 EUR
				Paid on 12/12/2012
Olszewski	-	5,000 EUR	-	5,000 EUR
				Paid on 03/09/2013
Karabin	-	2,400 EUR	-	2,400 EUR
				Paid on 07/03/2014

1.2. Individual measures

- At present, Norbert Sikorski, Zbigniew Grzywaczewski, Mirosław Zieliński and Grzegorz Olszewski are not detained in penitentiary institutions.

Norbert Sikorski has been outside a penitentiary institution since 8 June 2009.

Zbigniew Grzywaczewski has been outside a penitentiary institution since 11 December 2008.

Mirosław Zieliński has been outside a penitentiary institution since 17 July 2015.

Grzegorz Olszewski has been outside a penitentiary unit since 6 February 2008.

- The other applicants: Krzysztof Orchowski, Ernest Wenerski and Klaudiusz Karabin are currently detained in penitentiary institutions.

Krzysztof Orchowski has been detained since 7 February 2015. He is serving a sentence of deprivation of liberty based on the judgment which was delivered in other proceedings than those to which the judgment of the Court applied.

Krzysztof Orchowski is currently detained in a closed penitentiary institution. He is accommodated in a 5-person cell where each inmate has 3 m^2 of floor space (this area does not include the sanitary corner).

The applicant goes for walks on a regular basis – he has the right to a one-hour walk and he spends this time outside the accommodation cell. K. Orchowski receives currently a light diet ("L").

There are no restrictions as regards visits to which the detainee is entitled. From 6 December 2015 to 5 February 2016, the detainee was visited by his wife six times. He uses basic medical care provided by the prison health care service. He is now awaiting an ophthalmic surgery.

After 22 January 2010, Krzysztof Orchowski, detained in the Penitentiary Institution in Wołów, filed in total 33 requests/complaints concerning, e.g.: improper medical treatment, medical assessment, living conditions, deposits, permission to leave the facility due to ill-fated circumstances, insufficient security, disciplinary punishment, classification decisions, ill-treatment by officers, limited purchases, transport, entitlement to use a telephone, waiting for being provided with health care services, operation of the library, the manner in which complaints/requests are examined, ill-treatment by fellow prisoners.

No complaint was found to be well-grounded. Within this period, Krzysztof Orchowski did not lodge a claim for compensation against the State Treasury.

Ernest Wenerski has been detained uninterruptedly since 28 February 2004.

He is currently detained in a closed penitentiary institution. He has for his disposal almost 4 m^2 of floor space. The sanitary corner is fully built-in. The cell has been renovated. E. Wenerski neither learns nor works. He occasionally exercises his right to a one-hour walk in the open air and hardly ever participates in cultural and educational activities carried out in the central day room of the institution and the day room of the unit. The detainee receives an easily digestible diet "L". There are no restrictions as regards visits to which the detainee is entitled.

During his stay in the Remand Center in Łódź, the detainee has a free-of-charge and unlimited access to basic and specialist medical care. He has been repeatedly consulted by a general practitioner and several specialists, e.g. an ophthalmologist and orthopaedist. He is undergoing pharmacological treatment consistent with the doctors' recommendations.

After 24 July 2012, Ernest Wenerski filed 139 complaints concerning treatment in the Remand Center in Łódź.

E. Wenerski has also filed 25 requests/complaints concerning facilities other than the Remand Center in Łódź. The complaints concerned the same issues as those presented above (complaints about calculation of the period of imprisonment, medical assessments, the possibility of using the phone, improper medical treatment, deposits, delays in serving letters, the manner in which other requests/complaints were considered). No complaint has been found well-grounded.

Klaudiusz Karabin has been detained since 19 January 2016. He is serving a sentence of deprivation of liberty based on the judgment which was delivered in other proceedings than those to which the judgment of the Court applied.

He is currently detained in a closed penitentiary institution on his own request. He did not want to be accommodated in the half-open penitentiary institution. Since the beginning of his imprisonment he has been accommodated in cells where each inmate has 3 m^2 or even more of floor space (this area does not include the sanitary corner). In every cell of the penitentiary institution where the applicant is accommodated are fully built-in sanitary corners. He has possibility of watching tv, listen to radio, reading books, playing games in his cell.

He has also access to a bath, at least twice a week. He has right to a one-hour walk in the open air every day. He has also access to the library, cultural, educational (inter alia professional training), sports and religious activities performed outside his cell. There is a gym and table tennis in the penitentiary institution. The applicant gas also a possibility to do shopping at least three times a month at the penitentiary institution.

The applicant may also apply for a job.

There are no restrictions as regards visits to which the applicant is entitled.

During his stay in the penitentiary institution in Mysłowice the applicant has a free-of-charge and unlimited access to basic and specialist medical care. He has been repeatedly consulted by a general practitioner and several specialists, e.g. an ophthalmologist, orthopaedist, neurologist, psychiatrist, surgeon, radiologist, family medicine specialist.

During his current stay at the Mysłowice penitentiary institution the applicant did not lodge any complaints.

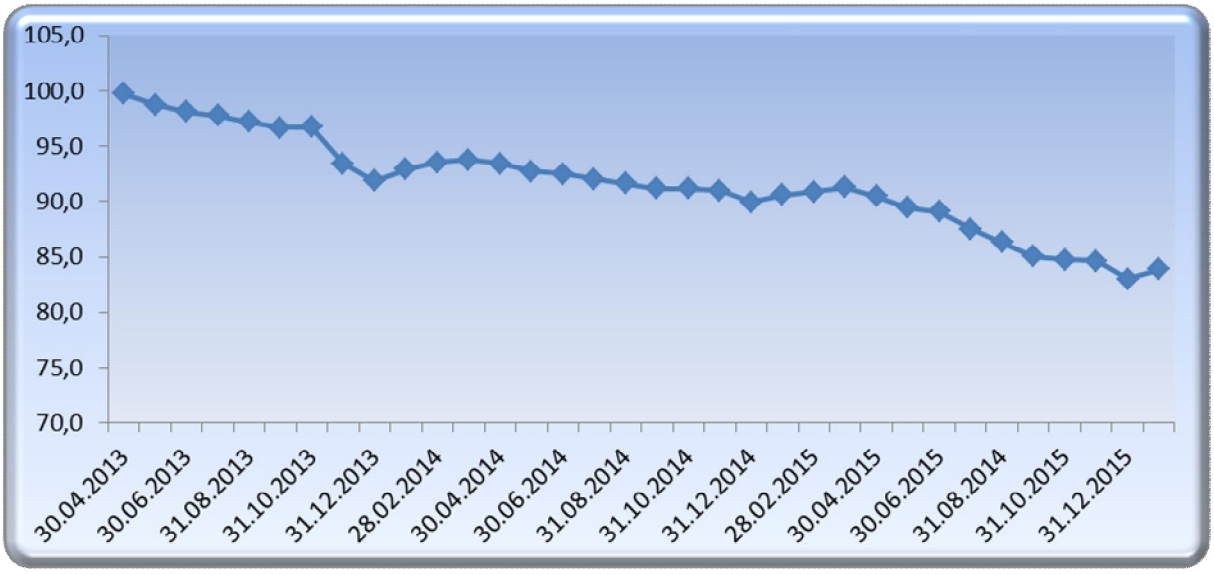
During his former stay in penitentiary institution, since 2014 he lodged 7 complaints concerning: inadequate living conditions, living space, medical treatment, access to the relevant provisions, visits, access to Internet.

On 15 April 2015 the applicant lodged a civil complaint against the State Treasury concerning inadequate living conditions and medical treatment. The proceedings are pending.

2. General measures

As at 5 February 2016, the occupancy rate in prisons and remand centers across the country was 85.0%. The overall capacity of penitentiary institutions as at that day was 84,988 accommodation units, while the number of detainees was 71,360. These data clearly shows that Polish penitentiary institutions are no longer overcrowded or overpopulated.

Occupancy rates prior to 5 February 2016 are shown in the table below:



Balanced population in penitentiary institutions is maintained – while ensuring compliance with the statutory requirement of floor space per detainee – through:

2.1. Strengthening the legal framework concerning domestic standard

Requirements concerning the minimum area of an accommodation cell per detainee have been laid down in the national law in Article 110(2) of the Code of Execution of Criminal Sentences of 6 June 1997 (*Kodeks Karny Wykonawczy* – "the Code"). The standard floor space per detainee has been set at minimum 3 m^2.

On 26 May 2008, the Constitutional Court delivered its judgment ascertaining the unconstitutionality of Article 248 of the Code, which allowed for the indefinite and arbitrary placement of detainees in cells in which the floor space per detainee was below the statutory area of 3 m² per person, thus causing chronic overcrowding in Polish prisons and exposing detainees to the risk of inhuman treatment.

As part of the implementation of the judgment of the Constitutional Court, under which Article 248 of the Code was abrogated on 6 December 2009, the Parliament adopted the *Act of 9 October 2009 on amending the Act – Code of Execution of Criminal Sentences*, which entered into force on 6 December 2009 and introduced a number of detailed rules governing temporary placement of convicts in cells that do not meet the statutory minimum floor space of 3 m².

In Article 110 of the Code, new paragraphs (2)(a)-(2)(i) were added:
Paragraph 2(a) provides for placing a detainee for a specified period of no more than 90 days in an accommodation cell in which the area per detainee is less than 3 m² but not less than 2 m², in the event of:

(1) introduction of martial law, state of emergency or natural disaster, or at the time they prevail;

(2) announcement of an epidemic risk or an epidemic in the region in which the prison or remand centre is located, or an outbreak of an epidemic or risk of an epidemic in the prison or remand centre – having regard to the severity of the threat to life and health;

(3) the need to prevent other events posing a direct threat to security of a detainee or the security of the prison or remand centre, or to mitigate the consequences of such events.

Paragraph 2(b) lists specific circumstances in which the prison authorities may reduce the cell floor space per person below 3 m² for a period of no more than 14 days. At the same time, paragraph 2(f) introduces the possibility of complaining against a decision on placing a detainee in a cell of an area below 3 m². Such a complaint shall be examined by the court within 7 days.

Paragraph 2(d) obliges the authority delivering the decision to place a detainee in conditions which do not meet the statutory floor space standard to minimize the risk of deterioration of the conditions of imprisonment and detention, and to take steps in order to promptly relocate the detainee to a cell that meets the requirements prescribed by law.

Paragraph 2(e) provides that the decision to place a detainee in an accommodation cell whose area per prisoner is less than 3 m^2 should specify the date and reasons for placing the

detainee in degraded conditions and indicate the date by which the offender is to remain in such conditions.

Under paragraph 2(h) inmates in overcrowded prisons and remand centers have the right to longer or additional walks. They can also participate in additional or longer cultural, educational and sporting activities taking place in day rooms, gyms, sports arenas and sports fields.

The living conditions of detainees have been specified in detail since 14 August 2014 by the *Ordinance of the Minister of Justice of 28 January 2014 on the living conditions of inmates in prisons and remand centers* (Journal of Laws of 2014, item 200), which repealed the *Ordinance of the Minister of Justice of 17 October 2003 on the living conditions of inmates in prisons and remand centers* (Journal of Laws No 186, item 1820). The Ordinance defines the standards with respect to the quantities of clothes, underwear, hygiene products and products used to keep cells clean, maintenance products and tableware to which the detainee is entitled, as well as standards applicable to housing equipment in cells and other facilities intended for handling detainees, ensuring adequate living conditions, as well as the conditions of stay in hospitals, infirmaries and doctors' surgeries in prisons and remand centers.

2.2. Organisational measures

2.2.1. Creating new accommodation units and improving living conditions (also with respect to people with disabilities):

In 2006-2010, a total of 15,249 new accommodation units were created (13,388 ones as a result of investment activities and 1,861 ones through renovation). In 2011, 50 accommodation units were created as a result of investment activities. In 2012, the number of accommodation units for detainees increased by 897, in 2013 – by 1,038, in 2014 – by 120, and in 2015 – by 538. As regards 2016, 760 new accommodation units for detainees are to be created.

After 2011, there has also been an increase in outlays for investments aimed at improving the technical condition of the infrastructure and logistics. For example, in 2015, capital expenditures and spending on investment purchases amounted to PLN 133,142,275.

In order to raise the standard of living and sanitary conditions, funds have been allocated each year since 2011 for the implementation of tasks related to building in sanitary corners in accommodation cells. The following numbers of sanitary corners were built-in in accommodation cells in subsequent years: in 2011 – 373, in 2012 – 879, in 2013 – 1,106, in 2014 – 1,278, in 2015 – 918.

Since 2012, penitentiary institutions have been taking a number of measures to enable detainees to have access to hot water in their accommodation cells. These measures are

aimed at a continuous increase in the number of cells connected to hot water supply. In subsequent years, hot water was supplied to the following numbers of accommodation cells: in 2012 – 269, in 2013 – 696, in 2014 – 1,897, in 2015 – 1,565.

Since 2014, more penitentiary institutions have been introducing changes to enable detainees to have two baths a week instead of one to which they were entitled until then. This process was continued in 2015.

Within the recent years, a number of measures have been taken to improve the living conditions for detainees with mobility impairments and eliminate architectural barriers which they encountered in the institutions. In 2013-2015, 60 accommodation cells were adapted to the needs of inmates with mobility impairments, whereas all newly built or reconstructed facilities must comply with the requirements of Article 5(1)(4) of the Act of 7 July 1994 – Construction Law (Journal of Laws of 2013, item 1409, as amended) and of the Ordinance of the Minister of Infrastructure of 12 April 2002 on technical conditions to be met by buildings and their location (consolidated text: Journal of Laws of 2015 item 1422), which means that all of them must have accommodation for detainees with disabilities.

Since 2011, works have been carried out systematically to eliminate architectural barriers in existing facilities (e.g. mounting platforms and ramps for people with mobility impairments, widening doorways and replacing doors, creating separate facilities in bath rooms, mounting grab rails and stools for people with disabilities in bath rooms, eliminating doorsteps and differences in floor levels and providing anti-slip protection).

Measures are also taken to develop appropriate attitudes, skills and organizational solutions aimed at improving living conditions for people with disabilities placed in penitentiary institutions:
- information on employees who use sign language has been gathered;
- data concerning detainees with physical disabilities using elbow crutches and wheelchair is monitored to accommodate those people in a proper way and provide them with access to such premises as visit rooms, bath rooms and dispensaries;
- In 2015, pilot training was conducted in cooperation with the "Poland without Barriers" Foundation to make prison officers more sensitive to the needs of detainees with disabilities, and to show ways to counter undesirable behavior towards people with disabilities. The purpose of the training was to disseminate information concerning people with disabilities and develop correct attitudes and behavior towards such people. Given its positive assessment, this type of training was recommended for implementation to the regional directors of the Prison Service. In 2015, a total of 10 different training courses were carried out in the organizational units for officers and employees of the Prison Service. Their scope included instructions how to deal with people with disabilities and teaching the trainees specific skills;
- in 2015, 55 programs were implemented in penitentiary institutions under which convicts worked with people with disabilities as part of voluntary service involving, among others, doing unpaid work in hospices, nursing homes and to the benefit of other institutions and organizations. These programs covered 415 convicts. Furthermore, 71 convicts participated

in courses or other forms of training for inmates aimed at qualifying them as carers of people with disabilities or the elderly in need of care;
- on 26 January 2016, the Deputy Director General of the Prison Service sent a letter to the regional directors of the Prison Service in which he obliged the staff of penitentiary institutions to get familiar with the legislation provided on the website of the Government Plenipotentiary for People with Disabilities, concerning the rights and obligations of people with disabilities and their exercise within the powers of the Prison Service;
- the draft *Order of the Director General of the Prison Service on the detailed rules of conduct and organization of penitentiary work and the scope of activities performed by officers and employees of penitentiary and therapeutic units* which is currently being developed, has standardized the manner of penitentiary interactions taking into account the special needs of prisoners with physical disabilities and the need to ensure that they are treated in a non-discriminatory manner. The draft specifies (as defined by the WHO) that a person with a disability (disabilities) is unable, partially or completely, to live on their own a normal individual and social life as a result of a congenital or acquired physical or mental impairment. The regulation also sets out detailed rules for conduct with such convicts and responsibilities of penitentiary staff as regards interactions.

The need to define rules of conduct with respect to the aforementioned issues stems from binding international standards, in particular Recommendation Rec (2006) 2 of the Committee of Ministers to the Member States of the Council of Europe on the European Prison Rules which set out categories of particularly vulnerable prisoners, and the UN Convention on the Rights of Persons with Disabilities of 13 December 2006, ratified by Poland on 6 December 2012.

The draft accounts for, in particular, the need to:

- ✓ sensitize inmates as regards proper treatment of people with disabilities, respect for their otherness and their acceptance;
- ✓ take action to combat stereotypes and prejudices against people with disabilities;
- ✓ carry out rehabilitation programs, encourage detainees to participate in cultural, educational and sporting activities, provide employment and vocational training, taking into account medical assessment as regards the detainee's current health condition;
- ✓ organize occupational therapy for people with disabilities;
- ✓ enhance the linguistic identity of the deaf and dumb by creating opportunities to learn sign language;
- ✓ cooperate within health promotion programs implemented by the prison health care service;
- ✓ organize vocational courses for convicted caregivers of people with disabilities;
- ✓ cooperate with institutions and non-governmental organizations whose activities are focused on providing help to people with disabilities.

2.2.2.transportation of detainees from more populated penitentiary institutions to less populated ones;

Each transport of detainees takes place compliant with the rules provided for in Article 100(1) and Article 165(1) of the Code of Execution of Criminal Sentences.

The provision of Article 100(1) of the Code stipulates that the convict shall serve the sentence in a prison which is appropriate for the nature and type of the sentence and the system in which it is to be executed, or meets relevant security requirements. The transfer of the convict to another appropriate prison may take place particularly in the event of:

- change in the intended purpose of the prison or to ensure the conditions referred to in Article 110(2) (i.e. floor space of no less than 3 m^2 per detainee),
- employment or learning,
- rendering health care services,
- referral to a diagnostic center, therapeutic unit or a unit for people posing a serious social threat or a serious threat to the security of the remand center or prison;
- participating in court proceedings,
- important family reasons,
- the need to ensure security of the convict,
- the need to ensure order and security in the penitentiary institution.

In accordance with Article 165(1) of the Code, within the last 6 months preceding the expected conditional earlier release or the end of sentence, the convict should be preferably detained in an appropriate prison which is closest to the convict's future place of residence.

Detailed technical rules as regards transportation of prisoners are defined in Instruction No. 7/2010 of the Director General of the Prison Service of 13 August 2010 on the transportation of convicts, which was later replaced by Decree 29/15 of 1 July 2015.

2.2.3. rational use of accommodation units in the institution's units and accommodation cells by adjusting the number of cells assigned to the different categories of detainees to the actual needs prevailing at a given time in the penitentiary institution (using the existing legal instruments, the Director General of the Prison Service introduces changes in the purposes served by penitentiary institutions to balance the load in these institutions when they are overcrowded, while the regional directors of the Prison Service introduce changes in the zoning of offenders detained on remand in order to adjust the number of those accommodation units in remand centers that are dedicated to offenders detained on remand to the actual needs of courts and prosecutor's offices).

2.3. Promotion of alternatives to imprisonment

2.3.1. Penalty in the form of limitation of liberty

Limitation of liberty is one of the alternatives to imprisonment, and involves doing unpaid, supervised social work, or deducting part of the convict's salary for a social purpose indicated by the court. It may also involve a ban on living the place of residence. Since 1 July 2015, due to the amendment to the Criminal Code - *the Act of 20 February 2015 on amending the Act – Criminal Code and certain other laws* (Journal of Laws of 2015, item 369),

it has been possible to monitor whether the offender remains in their place of residence or in another specified location using the electronic surveillance system. Since 1 July 2015, it has been possible to award such a sentence for a period of two years (until that date, this period could not be longer than 12 months).

It should be emphasized that the primary objective of the Act of 20 February 2015 is to further promote the use of alternative penalties instead of imprisonment, to accomplish, within the next five years, the ultimate level of 60% of fines with no additional incarceration and 20% of non-custodial penalties in the structure of penalties imposed by Polish courts.

In 2010, the Code of Execution of Criminal Sentences was amended in order to make the enforcement of penalties in the form of limitation of liberty easier and more common. On 8 June 2010, the provisions of this Code applicable to a penalty in the form of limitation of liberty (Articles 53-66) were amended. The amendment provided for broadening the list of entities in which a convicted person may perform unpaid, controlled work for social purposes.

The amended provisions impose on the State Treasury the obligation to cover the expenses related to insurance against accidents of a convicted person. All issues related to the insurance contract, i.e. among others, the minimum and the maximum insurance sum, persons authorized to conclude an insurance contract, terms and the whole procedure have been defined in an Ordinance of the Minister of Justice.

The competence of the domestic court with respect to organization and control of the execution of the penalty of limitation of liberty have been transferred to professional probation officers *(kurator sądowy*). These officers instruct the convicted persons of their rights and obligations, as well as the consequences of evasion of the penalty. They also determine the type, location and date of the commencement of work. Supervision over the execution of the penalty of limitation of liberty and deciding on matters concerning the execution of the penalty continua to fall within the competence of the domestic courts.

The number of judgments imposing the penalty of limitation of liberty which were supervised by the domestic courts amounted to 94,868 in 2013, 82,013 in 2014, 79,302 in 2015 (these numbers indicate a downward trend, but they should be considered taking into account the generally decreasing number of offenders convicted by the domestic courts – 357,818 people were convicted in 2013, 307,263 – in 2014, and 280,028 in 2015).

2.3.2. Electronic surveillance system

In 2009—2015, the electronic surveillance system was one of the forms of serving sentences of deprivation of liberty. The system enables monitoring of a convict who is outside a penitentiary institution, using electronic devices, installations and systems with special electric or electronic components.

The possibility of using this system appeared on 7 September 2007, when the Sejm of the Republic of Poland adopted the *Act on the electronic surveillance of persons serving a*

penalty of imprisonment outside penitentiary facilities (ESS), which was in force from 1 September 2009. On 27 August 2013, following the amendment to the above-mentioned normative act, the electronic surveillance system became a permanent fixture of the national legal regime. However, on 1 July 2015, this act was repealed, and its provisions were implemented to the Criminal Code and the Code of Execution of Criminal Sentences. As regards penalties, the new wording of these provisions allows for using the electronic surveillance system only with respect to penalties of limitation of liberty.

On 26 January 2016, the Sejm received a draft of amendments to the Code of Execution of Criminal Sentences, restoring the possibility of serving penalties of imprisonment (up to one year) in the electronic surveillance system.

As at 1 January 2016, 12,500 convicts may serve their sentences in the electronic surveillance system at the same time. However, from 1 January 2017, this number will increase to 15,000.

As at 11 January 2016, 3,054 offenders were covered by the electronic surveillance system, and a total of 45,994 convicts had already served their sentences by then (since September 2009). A total of 23,741 convicts have been released from penitentiary institutions to serve the remaining part of their sentences in the electronic surveillance system.

Data from the six-year period of using the ESS has proved that the system is high effective, as only approx. 10% of permits to serve sentences in this system have been revoked by the court due to convicts' non-compliance with the conditions of serving their sentences.

2.3.3. Conditional earlier release

In 2013-2015, a total of 45,136 convicts were paroled from penitentiary institutions due to conditional earlier release. Detailed information in this regard is presented in the table below.

The numbers of convicts who were paroled from penitentiary institutions due to conditional earlier release in 2013 - 2015		
2013	2014	2015
17,917	14,207	13,012

2.3.4. Penal policy:

From 9 November 2013 to 30 September 2014, 1,945 detainees were released from penitentiary institutions due to depenalization.

Under the *Act of 27 September 2013 amending the Act – Code of Criminal Procedure and certain other laws*, a number of offences have been depenalized since 9 November 2013 (from crimes to petty offences threatened with punishment of detention of up to 30 days, limitation of liberty or a fine), e.g. cycling in a state of intoxication, theft or misappropriation

of property worth less than ¼ of the minimum wage, recognizing that the punishment of detention is inadequate to the seriousness and the degree of social harm of these offences.

2.4. Other measures

2.4.1. A legislative amendment providing for prompt release of detainees: a solution introduced in Article 7 of the *Ordinance of the Minister of Justice of 23 June 2015 on the administrative tasks related to the execution of the penalty of detention on remand and penalties and coercive measures resulting in the deprivation of liberty and on documenting these activities* (Journal of Laws of 2015, item 927), which stipulates that the decision resulting in the detainee's release, included in documents submitted by the competent authority via fax is to be enforced, provided this authority sends electronically (e.g. using the Electronic Inbox of the Prison Service, email) information on the wording of the decision, affixed with a secure electronic signature and time stamped, to the director of the penitentiary institution concerned. This solution allows for faster release of inmates from penitentiary institutions, where the penitentiary institution and the competent authority are located in different towns or cities.

2.4.2. Publication and dissemination of judgments:

- The Court's judgments in the cases of Orchowski, Norbert Sikorski, Grzywaczewski, Zieliński, Wenerski no. 2 and Olszewski as well as description of the Karabin judgment were translated into Polish and published on the website of the Ministry of Justice (www.msz.gov.pl);
- based on the aforementioned judgments, the Ministry of Justice prepared a concise guide on the standards related to the living conditions of persons deprived of liberty in penitentiary institutions. The guide has been disseminated among judges, and the judgments have been disseminated also among officers and employees of the Prison Service;

2.4.3. Trainings for penitentiary staff, judges and prosecutors:

In 2012-2014, training courses were conducted in the framework of the Norwegian Financial Mechanism (Program: "Support for the Prison Service including non-custodial sanctions") to, among other things, promote the application of non-custodial penalties in the criminal justice system (training of judges, prosecutors, probation officers and other relevant institutions involved in the enforcement of non-custodial penalties), raise the social and professional skills of prisoners, train the staff of the Prison Service, enhance the equipment base and modernize the education system dedicated to the staff of the Prison Service, etc.

In 2013-2015, the National School of Judiciary and Public Prosecution continued training on issues related to detention on remand in the context of the standards of the case-law of the European Court of Human Rights. The topic of the training was: "Protection of Human Rights and the Convention System (Convention for the Protection of Human Rights and Fundamental Freedoms of 1950)". One of the specific topics was the problem of the excessive length of detention on remand. In 2013-2014, the training was held annually in each of the 11 appeals for prosecutors and judges adjudicating in criminal cases and was provided to 50-person groups, while in 2015, two three-day training sessions relating to the same issues were held and addressed to a group of 50 trainees and a group of 70 trainees.

In 2016, it is planned to hold a training session on "Protection of Human Rights and the Ban on Discrimination", which is a continuation of the system training launched in 2015 in the area of the protection of human rights and the convention system, aimed at judges and prosecutors. The training will also relate to issues concerning the excessive use of detention on remand and judicial review of the legality of detention.

Notwithstanding the foregoing, starting from the last quarter of 2014, judges seconded to the Department of International Cooperation and Human Rights in the Ministry of Justice have been providing training for judges of common courts. The training accounts for the specific needs identified in individual appeals/judicial districts based on the Department's ongoing analyses of the Court's case-law concerning the administration of justice. The training has the form of workshops held in the premises of the courts. Participation in the workshops is supposed to enable judges to solve cases developed based on facts arising from cases examined in a given district, in which the Court, as a result of an individual application, has found a violation of the provisions of the Convention for the Protection Human Rights and Fundamental Freedoms.

In 2014, a total of 7 such training sessions were organised, during which a total of 179 individuals were trained. In 2015, 17 such training sessions were held and a total of 493 individuals were trained. During each of the training sessions conducted so far, attention was paid to, among other things, the problem of the excessive use of detention on remand and the problem of overcrowding in penitentiary institutions, as well as general conditions of detention (in the context of decisions of civil courts concerning claims for redress and compensation made by detainees).

3. The results of undertaken measures and continuous monitoring of the situation

3.1.Impact of the measures taken to comply with the judgments of the Trzaska group on the implementation of the judgments of the Orchowski group

The Court found a link between the *Orchowski* and the *Trzaska* groups of judgments.

Measures taken by the authorities and the results thereof were presented in detail in the report on the implementation of judgments of the *Trzaska against Poland* group of cases, submitted to the Committee of Ministers of the Council of Europe on 23 October 2014 year.

On 4 December 2014, the Committee of Ministers of the Council of Europe adopted the Final Resolution CM/ResDH(2014)268 closing the supervision of the execution of the judgments of the *Trzaska* group of cases, assessing positively the measures taken by the government to, among others, prevent similar violations in the future.

Measures taken to remedy the excessive length of pre-trial detention are being continued.

In consequence in 2014 and 2015, there was a further decrease in the number of prosecutors' requests for application of detention on remand – in 2014, there were 18,726 such requests, while in 2015, this figure was 13,533, as well as in the number of prosecutors' requests approved of by the courts – in 2014, the courts applied detention on remand with respect to 16,298 suspects, while in 2015, this figure was 11,951.

Compared to the data for 2008 – 2013, there was in a significant decrease in the number of people with respect to whom detention on remand was applied. In 2014, detention on remand was applied with respect to 11,558 people, while in 2015 – to 8,619.

Compared to the data for 2008 – 2013, the data on the number of individuals subjected to detention on remand in the course of court proceedings for more than two years continues to be satisfactory. At the end of 2014, there were 370 such individuals in regional courts and 44 in district courts, and at the end of 2015 there were 276 people detained on remand more than two years in regional courts and 28 in district courts.

The above information shows positive trends and demonstrates that the implemented measures have brought the expected results, i.e. reduced use of detention on remand, while shortening its length, which directly translates into better living conditions in penitentiary institutions.

3.2. Impactof the measures taken to comply with the judgments inthe *Orchowski* group of cases

All the measures listed above (legislative and organizational, particularly in the area of investment and changes in the penal policy) have brought the expected results, i.e. elimination of overcrowding in Polish penitentiary institutions. Excessive population in Polish penitentiary institution was recorded for the last time on 22 February 2013 (population of100.1%). However, yet on 2 May 2013, the number of inmates in prisons and remand centers across Poland was below the overall capacity (99.7%). From then on, the population rate has been decreasing, reaching the minimum level on 31 December 2015 (population of 83%). As indicated above, the current population rate (as at 5 February 2016) is 85%.

There has also been a continuous improvement in the sanitary and living conditions of inmates (through investment and modernization of penitentiary institutions, including the provision of built-in sanitary corners, supply of hot running water to cells, and adapting cells, bath rooms and other facilities used by inmates to the needs of detainees with disabilities) – the ultimately desired conditions are to be achieved within approx. five years.

4. Monitoring

4.1. Supervision by the Minister of Justice

The level of prison population is continuously monitored by the Department of Enforcement of Judgments and Probation in the Ministry of Justice. The Department of Enforcement of Judgments and Probation also analyzes, on a regular basis, issues related to the enforcement of penalties of limitation of liberty or imprisonment as well as fines, whose application has an impact on the level of prison population. Conclusions in this regard are transmitted to relevant courts.

4.2. Organizational measures taken by the Central Board of the Prison Service

The Prison Service has implemented a system called the Central Database of Persons Deprived of Liberty Noe.NET, which enables an ongoing analysis of collected data. Information about inmates has been collected since 4 October 2010. Entries in the system are made immediately after decisions on transport, or prison leave of a given convict, etc., have been taken, which ensures that the database information is always complete and up to date. The system also allows for browsing data for specific information about specific detainees and continuous monitoring of population levels in all penitentiary facilities.

5. Effective domestic remedy available for detainees

5.1. The measure provided for in Article 110(2) of the Code of Execution of Criminal Sentences

Complaints about decisions of the directors of penitentiary institutions relating to accommodation cells where the floor space per convict is less than 3 m^2

Under Article 110 § 2 (f) of the Code of Execution of Criminal Sentences an applicant may complain about their placement in an overcrowded cell to the prison administration who can remedy his situation. In its decision in the case of *Łatak v Poland*, the European Court noted that this remedy not only specifies the circumstances in which the statutory minimum space requirement can be reduced and sets time-limits for the application of that measure, but also provides a detainee with a new legal means enabling him to contest a decision of the prison administration to reduce his cell space.

The statistical data with respect to decisions taken pursuant to Article 110(2)(a)-(c) of the Code of Execution of Criminal Sentences, and complaints about those decisions lodged pursuant to Article 110(2) of the Code of Execution of Criminal Sentences in 2013 – 2015 is presented in the table below.

Year	2013	2014	2015
Number of decisions	16,940	1,709	71
Number of complaints	20	6	4

All the complaints were considered unfounded.

5.2. Civil-law remedy available to offenders detained in inadequate conditions

Civil claim for compensation for a violation of personal rights

In its judgment of 28 February 2007 (case no. V CSK 431/06), the Supreme Court acknowledged for the first time that a detainee might, under Article 24, read in conjunction with Article 448 of the Civil Code, lodge a civil claim against the State Treasury and seek compensation for infringement of their personal rights, in particular, the right to dignity and private space, on account of overcrowding and inadequate living and sanitary conditions in a penitentiary institution. It further held that the burden of proof that conditions in a penitentiary institution complied with the required standards and that there was no infringement of personal rights lay with the defendant prison authority;

In its judgment of 17 March 2010 (case no. II CSK 486/09), the Supreme Court restated the principle that the right to be detained in conditions respecting one's dignity undoubtedly belonged to the catalogue of personal rights and that actions infringing this right could involve the State Treasury's liability, as specified in Articles 24 and 448 of the Civil Code.

In its decision of 12 October 2010 in the *Łatak* case (no. 52070/08), the Court recognized that as from 17 March 2010 the remedy provided for in Article 24, read in conjunction with Article 448 of the Civil Code, could be considered effective in cases concerning overcrowding in prisons.

In its subsequent judgments, the Supreme Court continued the line of case-law started with the judgments of 2007 and 2010. In particular, in the Resolution of seven judges of the Supreme Court of 18 October 2011 (file ref. no. III CZP 25/11), the Supreme Court stated that placing a person deprived of liberty in a cell where the floor space per detainee is less than 3 m^2 may be sufficient to find a violation of their personal rights. The liability of the State Treasury pursuant to Article 448 of the Civil Code for damage caused by such a violation does not depend on guilt.

Then, in its judgment of 22 March 2012 (file ref. no. V CSK 85/11), the Supreme Court pointed out that the date of 6 December 2009, i.e. the date of the entry into force of the act amending Article 110 of the Code of Execution of Criminal Sentences, should be treated as a dividing line, after which the approach to the assessment of the issue of overcrowding in Polish prisons should be changed. Although each case must be considered individually, but it can be assumed, as a rule, that should there be now – with prejudice to Article 110(2) of the Code of Execution of Criminal Sentences – a violation of the statutory standard of the floor space per convict, this alone could result in a violation of their personal rights.

6. Conclusions of the respondent state

The Government considers that other individual measures are not necessary in the present cases and that adopted general measures will be sufficient to conclude that Poland has complied with its obligations under Article 46, paragraph 1 of the Convention in respect to

the breach of Article 3 of the Convention. Nevertheless, the Government undertakes to continue its efforts in order to further improve conditions of detention in the Polish penitentiary facilities, taking into account international standards, in particular those established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).