



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

FOURTH SECTION

CASE OF MUSIAŁEK AND BACZYŃSKI v. POLAND

(Application no. 32798/02)

JUDGMENT

STRASBOURG

26 July 2011

FINAL

26/10/2011

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

In the case of Musiałek and Baczyński v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Sverre Erik Jebens,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 5 July 2011

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

PROCEDURE

1. The case originated in application (no. 32798/02) 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 two Polish nationals, Mr Tomasz Musiałek (“the first applicant”) and Mr Jarosław Baczyński (“the second applicant”), on 12 August 2002 and 20 November 2003 respectively.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicants mainly complained under Article 3 of the Convention of the inadequate conditions of their detention, in particular of overcrowding.

4. On 23 June 2008 a Chamber of the Fourth Section of the Court decided to give notice to the Government of the complaints under Article 3 of the Convention. It was decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, Mr Tomasz Musiałek, is a Polish national who was born in 1966. He lives in Kamień, Poland. The second applicant, Mr Jarosław Baczyński, is a Polish national who was born in 1974. He is currently serving a prison sentence in Zaręba Górna Prison.

A. The first applicant

1. The period of the applicant's detention

6. The applicant, who had been convicted of murder, was deprived of liberty on two separate occasions.

7. On the first occasion, he was in continuous detention (committed to different penitentiary facilities) from 2 July 1995 until 9 July 2004. On the latter date he was released on leave to seek medical treatment outside prison.

8. On the second occasion, he was in continuous detention (committed to different penitentiary facilities) from 26 January 2006 until 2 February 2009.

2. The applicant's first detention

9. From 8 until 23 November 1999 and from 1 December 2000 until 12 September 2001 the applicant was detained in Wrocław Prison No. 1. From 12 September 2001 until 9 July 2004 he was detained in Wołów Prison.

(a) The conditions of the applicant's detention

10. According to official data, throughout 1999 and the greater part of 2000, the number of detainees in Wrocław Prison was inferior to the prison's designated capacity. In December 2000, however, the prison's designated capacity was exceeded by 144 persons.

11. In December 2000 the applicant was detained in a hospital wing of Wrocław Prison and it appears that he was not affected by the prison's general overcrowding at that time.

12. The applicant submitted, however, that from 2001 until an unspecified later date he had been held in severely overcrowded cells in both Wrocław and Wołów Prisons. He had had one-hour outdoor exercise per day and one shower per week.

13. The Government did not submit any information as to the number of detainees held in Wrocław Prison in 2001 or in Wołów Prison from September 2001 until July 2004. They did not contest the applicant's submission about the limited accessibility to the outdoor yard and shower.

(b) The applicant's medical care in prison

14. Since 1998 the applicant had suffered from Dupuytren's contracture, a condition that, if untreated, prevents the fingers and toes from straightening.

15. On an unspecified date the applicant had operations on his right hand and right foot in Warsaw Remand Centre hospital.

16. Subsequently, on 7 December 2000, he again underwent surgery, this time in Wrocław Prison hospital.

The applicant submitted that both operations had been performed incorrectly and that he had not received sufficient medical attention after each procedure. As a result, his wounds had taken a long time to heal and he had developed inflammation, mycosis and scar contracture of two fingers of his right hand.

17. A number of expert reports and testimonies of witnesses which had been produced in the course of criminal investigations instituted by the applicant (see paragraphs 40-43 below) revealed that shortly after the second surgery the applicant soaked his hand in an unspecified disinfectant and put needles in his healing wound.

18. It appears that on an unspecified date in 2001 the applicant was examined by a plastic surgeon who recommended a third operation on the applicant's hand in the specialised orthopaedic centre of Warsaw Remand Centre.

19. On 22 January 2002 the Governor of Wołów Prison informed the applicant that he qualified for reconstructive surgery of his right hand, but that such surgery could not be performed within the penitentiary system. The applicant was also informed that prison hospitals could not offer him any further diagnostic care or surgical treatment.

20. An expert medical report which was obtained on 18 February 2002 by the penitentiary court (see paragraph 38 below) stated that the applicant required surgery, but not urgently, and that his condition could be improved by physiotherapy available in prison. In consequence, on 8 July 2002 the Wrocław Regional Court rejected the applicant's request for a short period of leave from the enforcement of the sentence.

21. On 6 March 2003 the Chief Doctor of the Wołów Prison hospital issued a written statement in which he noted that the contracture of the applicant's right-hand little finger was so advanced that it could no longer be treated. The doctor recommended instead that the finger be amputated. The applicant did not consent to amputation.

22. The Government submitted that in 2003 the applicant had five orthopaedic examinations and refused to undergo another two specialist consultations scheduled. At that time, the condition of the applicant's right thumb was considered satisfactory but changes in his right elbow were detected. The applicant also qualified for an operation on his two contracted left-hand fingers. His damaged hip-joint was monitored periodically.

23. In 2004 four specialist examinations were scheduled for the applicant but he agreed to undergo only three of them. In April 2004 surgery on the contracted fingers was recommended.

24. On 9 July 2004 the applicant was granted release from prison for eighteen months in order to seek medical treatment outside the penitentiary health-care system.

3. *The applicant's actions concerning the conditions of his first detention and his medical care in prison*

(a) **Actions concerning the conditions of the applicant's detention**

(i) *Penitentiary and administrative complaints*

25. The applicant lodged numerous complaints about different aspects of his detention with the administration of the detention establishments concerned and with the State and penitentiary authorities.

26. In a letter of 14 November 2001 the Director of the Central Board of the Prison Service (*Centralny Zarząd Służby Więziennej*) stated, *inter alia*, that between 22 May and 28 August 2001 the applicant had been held in cell no. 84 of wing no. II ward 1B of Wrocław Prison No. 1. His cell had been shared by four prisoners, including the applicant. Later on, he had been transferred to cell no. 84 of wing no. I ward 3A. The size of the cells in question was not indicated.

(ii) *Criminal proceedings against the prison staff and administration*

27. On 26 June 2003 the Wołów District Prosecutor discontinued the investigation into the applicant's allegations that in February 2003 the Governor of Wołów Prison (*Dyrektor Zakładu Karnego*) had exceeded his authority (*przekroczenie uprawnień*) and neglected his duties (*niedopełnienie obowiązków*) in that he had authorised the admission of new prisoners causing severe overcrowding and inadequate living conditions in that establishment. The investigation was closed because it could not be established that the offence in question had been committed (*niestwierdzenie popełnienia czynu zabronionego*). It was found that, at the relevant time, the applicant had been held with six other prisoners in a cell designed for five persons. Despite that, it was considered that the sanitary and living conditions were adequate. Prisoners had individual beds, access to TV-sets and they benefited from extended periods of outdoor exercise.

28. Similarly, on 16 September 2003 the Wołów District Prosecutor discontinued the investigation into the applicant's allegations of mismanagement in Wołów Prison since 13 September 2003. The applicant asserted that the Governor of Wołów Prison had exceeded his authority and neglected his duties in that he had authorised the admission of new prisoners despite the existing overcrowding. In the course of the investigation it was established that the applicant had been held in eight different cells (in wings A and B) which measured from 16 to 16.3 square metres. The cells in question had been designed for five persons but, in fact, they were shared by up to eight prisoners. It was stressed that, despite the existing overcrowding in Wołów Prison, the rights of prisoners were respected. The cells were sufficiently ventilated and heated. The sanitary conditions were adequate. Prisoners had individual beds and access to

TV-sets, as well as to other technical equipment. Because of the overcrowding, prisoners were allowed to have longer periods of outdoor exercise and to use the prison gymnasium and library. It was concluded that the case of Wołów Prison was not unique since overcrowding was a systemic problem in the country. The administration of Wołów Prison could not be blamed for aggravating the situation by admitting new prisoners. The Governor was acting in accordance with the law. His decisions to reduce the size of cells to less than three square metres per prisoner were taken every three months and they were regularly conveyed to the penitentiary judge (*sędzia penitencjarny*). Finally, it was stressed that a decision to admit a convicted person to prison did not lie within the discretion of a prison governor since it was a domestic court which ordered where a convicted person was to serve his sentence.

29. On 22 January 2004 the Wołów District Court (*Sąd Rejonowy*) dismissed an interlocutory appeal against the above decision. The court held that the investigation into the matter had been conducted thoroughly and diligently, while the prosecutor's conclusions had been accurate. Irrespective of that finding, the court acknowledged that overcrowding and inadequate living conditions were a general problem in numerous detention establishments in the country, including Wołów Prison. Consequently, the situation in Wołów Prison did not result from bad management or negligence on the part of the prison administration.

(iii) *Civil proceedings against Wrocław Prison and the State Treasury*

30. On 21 March 2004 the applicant brought a civil action for infringement of his personal rights against Wrocław Prison.

31. On 1 February 2005 the Wrocław Regional Court refused to appoint a legal-aid lawyer as requested by the applicant. The applicant submitted that he had not been aware of that fact.

32. On an unspecified date the applicant was heard by the Wołów District Court under the court-cooperation scheme (*pomoc sądowa*). The applicant was notified about the subsequent court hearings in Wrocław but he did not attend.

33. It appears that on 31 August 2005 the Wrocław Regional Court dismissed the applicant's claim for compensation. No appeal was lodged against that judgment.

34. The applicant submitted that he had not been informed about the decisions or the first-instance judgment until he had consulted the case file at the court on 9 March 2006. He further submitted that the judgment itself had never been served on him.

(b) Actions concerning the applicant's medical care in prison

(i) Penitentiary appeals

35. It appears that between 2001 and 2003 the applicant applied a number of times for a short period of leave from the enforcement of his sentence (*przerwa w wykonaniu kary pozbawienia wolności*) on medical grounds. The applicant was examined by many medical commissions but the penitentiary court rejected all his requests.

36. By letter of 3 October 2001 the Governor of Wrocław Prison informed the applicant that as a result of an internal inquiry, it had been found that the applicant had been examined by a plastic surgeon who had recommended a third operation on the applicant's arm in the specialist orthopaedic centre of Warsaw Remand Centre.

37. On 22 January 2002 the Governor of Wołów Prison informed the applicant that he had been diagnosed with third-degree Dupuytren's contracture and, in addition, with nerve damage in his right elbow. It was also stated that the applicant qualified for reconstructive surgery of his right hand, but that such surgery could not be performed within the penitentiary system. Lastly, the applicant was informed that prison hospitals could not offer him any further diagnostic care or surgical treatment.

(ii) Court proceedings

38. On one occasion the court initiated proceedings of its own motion because of discrepancies between the medical reports issued by prison doctors and the doctors of the Wrocław Forensic Medicine Institute (*Zakład Medycyny Sądowej*). The court heard evidence from one of the expert doctors. On 18 February 2002 the court obtained a new medical report which stated that the applicant required surgery, but not urgently, and that his condition could be improved by physiotherapy available in prison. On 8 July 2002 the Wrocław Regional Court rejected the applicant's request for a short period of leave from the enforcement of the sentence.

(iii) Criminal investigations

39. In the meantime, on 13 April 2001 the applicant complained to the prosecution service about alleged medical malpractice committed by the medical staff of the Wrocław Prison during and after his surgery.

40. On 25 June 2001 the Wrocław Police discontinued the inquiry due to the lack of statutory features of a criminal offence (*brak znamion czynu zabronionego*). It was established that the Wrocław Prison hospital doctors and staff had provided the applicant with adequate surgical treatment and post-surgery medical care. On the other hand, it was established that the applicant himself had worsened his condition by soaking his hand in an unspecified disinfectant and putting needles in his healing wound.

41. On 24 October 2001 the investigation into the above-mentioned allegations was discontinued by the Wrocław District Prosecutor, who found no statutory features of a criminal offence. The Prosecutor relied on two expert reports and the testimony of the chief surgeon of one of the prison hospitals. It was concluded that the surgery at the Warsaw Prison hospital had been conducted correctly. The need to operate again arose because of the natural progress of the applicant's disease and his own negligence in post-surgery therapy rather than any malpractice during the first surgery.

42. It appears that on an unspecified date the decision was quashed by a domestic court and that the investigation was reopened.

43. Nevertheless, on 29 April 2002 the Wrocław District Prosecutor once more discontinued the investigation, reiterating the grounds mentioned above. The investigation, in which the report of an expert in forensic medicine was obtained on 25 March 2002, revealed that the medical treatment and care provided to the applicant during and after his surgery had been adequate. On the other hand, it was found that the applicant himself had impeded the process of his post-surgery rehabilitation. A number of witnesses gave evidence that the applicant used to soak his hand in an unspecified disinfectant and that he put needles in his wound. The latter caused infection and difficulties in recovery.

44. The applicant, who at that point was represented by an attorney, appealed against the prosecutor's decision.

45. On 4 April 2003 the Wrocław District Court dismissed the appeal.

4. The applicant's second detention

46. From 10 July 2006 until 25 May 2007 the applicant was committed to Wołów Prison. From 26 May until 26 October 2007 he was detained in Wrocław Prison No. 1. From 26 October 2007 until 2 February 2009 he was held again in Wołów Prison.

(a) The conditions of the applicant's detention

47. The applicant submitted that he had been detained in overcrowded and insanitary cells. He had a one-hour outdoor exercise per day and one shower per week.

48. The Government did not submit any information as to the number of prisoners sharing the applicant's cells in Wołów Prison between July 2006 and May 2007.

As to Wrocław Prison, they submitted that in 2007 the prison's designated capacity had been exceeded by 340 persons.

Lastly, the applicant's more recent Wołów Prison records indicate that from October 2007 until February 2009 he was held in cells in which the space per person ranged from 2.3 up to 8 square metres.

(b) The applicant's medical care in prison

49. The applicant made a general statement that during his second detention he had not been afforded adequate medical care.

The Government submitted that on 2 June 2006 the applicant had informed the prison authorities in writing that he did not agree to undergo a medical examination or to receive any direct medical treatment in the orthopaedic centre of Wrocław Prison.

50. In September 2006 the applicant had been examined by a neurologist and in October 2006 he had refused to have an EMG scan of his muscles.

51. In March 2007 the applicant refused to undergo an orthopaedic check-up. Eventually, in July 2007 he was examined by an orthopaedist at Warszawa-Mokotów Remand Centre. At that time, the applicant was considered not to qualify for surgery in that healthcare establishment.

52. On 28 August 2007 the applicant was examined at the orthopaedic clinic in Wrocław and he was scheduled to undergo surgery on his contracted right hand three months later.

On 10 October 2007, however, he withdrew his consent for the operation.

It appears that soon afterwards the prison authorities renewed their request for the applicant's surgery but no date was set by the clinic.

5. The applicant's actions concerning the conditions of his second detention and his medical care in prison

(a) Actions concerning the conditions of the applicant's detention

53. It appears that the applicant did not lodge any complaints concerning the living conditions with the penitentiary authorities or prison administration. He complained about the quality of his medical care to the Wołów Prison administration. He did not bring, however, a civil action for compensation for the infringement of personal rights on account of overcrowding, inadequate living conditions and medical care in prison during his second detention.

(b) Actions concerning the applicant's medical care in prison

54. The applicant made a number of complaints about the quality of medical care provided to him in Wołów Prison.

55. In a letter of 15 November 2006 the Governor of Wołów Prison acknowledged that on 24 and 31 October 2006 the applicant had not been taken to see a doctor despite his prior appointment. It was explained that the number of prisoners who claimed to have a medical emergency on those dates was so high that some of the routine check-ups, such as the applicant's, had to be cancelled. The fact that the applicant had not been seen by the doctor had not caused any deterioration of his health. The Governor stressed that, with the above exception, the applicant had received

medical attention on a regular basis. On 23 October 2006 he had been examined by the in-house doctor and in the months of October and November 2006 he had been taken six times to the prison infirmary.

56. By letter of 15 November 2006 the Governor of Wołów Prison acknowledged that on 24 and 31 October 2006 the applicant could not be examined by an in-house doctor because of the significant number of new admissions. On the other hand, it was stressed that the applicant had not required urgent medical attention and the fact that he had missed two appointments had not affected his health.

6. Acts of alleged persecution during the applicant's detention and applications for parole

57. The applicant submitted that he had been persecuted by the staff and administration of Wrocław and Wołów Prisons. To that effect the applicant relied on the following events and procedures.

58. On 19 April 2001 the applicant's cell no. 211 in Wrocław Prison was searched by the prison staff. It was discovered that the applicant kept files of documents in a quantity exceeding the number allowed. The documents were stored in the prison storage room. In addition, the applicant's tape player was temporarily seized in the course of the search. After verifying that the tape player did not conceal any forbidden material inside it, the prison administration returned it to the applicant on the following day.

59. On 28 August 2001 the Penitentiary Commission (*Komisja Penitencjarna*) of Wrocław Prison decided to change the applicant's sub-category from 'first-time offender detained in a semi-open prison with resocialisation programme' (*P-2/p*) to 'first-time offender detained in a closed prison with resocialisation programme' (*P-1/p*). The Penitentiary Commission relied on the gravity of the offence of which the applicant had been convicted, his negative psychological assessment, his vexatious character and the fact that he had incited other prisoners to complain about prison conditions.

60. By letter of 3 October 2001 the Governor of Wrocław Prison (*Dyrektor Zakładu Karnego*) informed the applicant that as a result of an internal inquiry, it had been found that the applicant received writing paper, envelopes and stamps in an amount which allowed him to engage in extensive correspondence with various State authorities. The applicant's out-going letters were dispatched without any delay.

61. In a letter of 9 October 2001 the Governor of Wrocław Prison informed the applicant that his allegations that the prison administration had forged his signature in the mail register and that he had been receiving inadequate health-care had been considered ill-founded.

62. In a letter of 14 November 2001 the Director of the Central Board of the Prison Service (*Centralny Zarząd Służby Więziennej*) apologised for the fact that one of the letters sent to the applicant from the Central Board of the

Prison Service had been opened by mistake before it was handed over to the applicant.

63. On 2 April and 2 May 2002 the Wrocław District Prosecutor (*Prokurator Rejonowy*) discontinued two investigations into the applicant's allegations that his out-going and in-coming mail was opened by the staff of the Wrocław Prison. Both decisions were justified by the absence of the features of a criminal offence. They were upheld by the Wrocław District Court on 4 November and 15 October 2002 respectively.

64. On 8 May 2002 the Wrocław District Prosecutor discontinued the investigation into the applicant's allegations that the staff of Wrocław Prison had forged his signatures in the register of prisoners' mail. The preliminary investigation revealed that the alleged offence had not taken place. On 14 October 2002 the Wrocław District Court upheld that decision.

65. On 10 June 2002 the Wrocław District Prosecutor discontinued an investigation into the applicant's allegations that the Penitentiary Commission of Wrocław Prison had breached their duties in that they had changed his prisoner's classification. The investigation was discontinued on the ground of the absence of the features of a criminal offence (*brak znamion czynu niedozwolonego*). On 5 December 2002 the Wrocław District Court upheld that decision.

66. On 10 November 2003, the Wołów District Police Station (*Komenda Powiatowa Policji*) discontinued the investigation into the applicant's allegations that the staff of Wołów Prison did not allow him to have adequate access to the prison radio, library, doctor or cultural and social activities, and did not provide the applicant with an adequate number of cupboards inside his cell or sufficient lighting. In addition, the investigators looked into the applicant's allegations that on 20 September 2001 the staff of Wołów Prison had withheld a letter to the Committee for the Prevention of Torture in Strasbourg. The applicant's allegations were ruled to be ill-founded and the investigation was discontinued. On 14 November 2003 that decision was upheld by the Wołów District Prosecutor and on 1 April 2004 by the Wołów District Court.

67. By letter of 26 November 2003 the Deputy Governor of Wołów Prison (*Zastępca Dyrektora*) informed the applicant about the results of the internal inquiry into the allegations that on 13 November 2003 the warder searching the applicant's cell no. 41 had stolen his tape player, a number of telephone cards and stamps. The inquiry had revealed that the applicant's tape player had been seized by the warder because, contrary to the prison's internal security rules, the applicant had removed special security seals from it. Moreover, it had been established that the warder had not stolen any telephone cards or stamps.

68. On 15 January 2004 the Wołów District Police Station refused to open an inquiry into the applicant's allegations that on 13 November 2003 one of the Wołów Prison warders had stolen his radio, stamps and calling cards. On 29 January 2004 the Wołów District Prosecutor (*Prokurator*

Rejonowy) upheld that decision, however, the date of the final court's ruling in that matter has not been disclosed to the Registry.

69. On 1 April 2004 the Wołów District Prosecutor discontinued an investigation regarding a certain R.A., a warder in Wołów Prison who on 28 October 2002 had allegedly forged the applicant's signature in the prison mail register. The investigation revealed that the suspected person had indeed committed the offence in question. However, due to the minimal social danger of the offence (*znikoma społeczna szkodliwość czynu*), and the fact that the warder had admitted his fault and shown repentance, the investigation had to be closed. On 13 January 2005 the Wołów District Court upheld that decision.

70. The applicant lodged numerous requests for parole (*warunkowe zwolnienie*) but all of them were rejected by the penitentiary court on the ground of his negative criminological prognosis.

71. On 9 July 2004 the applicant was granted release from prison to seek medical treatment outside the penitentiary health-care system.

72. A letter of 17 August 2006 from the Deputy Governor of Wołów Prison contained a detailed account of the number of sheets of paper, envelopes and stamps furnished to the applicant by the prison free of charge. It was also stated that the applicant had received a pair of shoes from the prison stock. Consequently, the applicant's complaints about insufficient paper supplies and the lack of social aid were found to be ill-founded.

7. Civil proceedings concerning a fight in prison

73. On 28 April 2003 the applicant filed a civil action for compensation for mental distress he had allegedly suffered because he had witnessed a fight among his cellmates in Wołów Prison.

74. In the initial phase of the trial the applicant was present at the court hearings and he represented himself. On 9 July 2004 he was released from prison on health grounds and for nineteen months he remained at liberty. From that date onwards the applicant did not participate in the court's hearings in person since the distance between the court venue and his home was too great for him to commute. On 23 July or August 2004 the Wołów District Court appointed a legal-aid lawyer to represent the applicant.

75. On 1 March 2005 the Wołów District Court dismissed the applicant's claim. The applicant's lawyer advised him that the appeal in that case had no prospects of success.

8. Civil proceedings against domestic courts

76. It appears that in 2005 the applicant brought an action for damages against the Wrocław Regional Court and Court of Appeal. The applicant did not inform the court about the course of the proceedings. In the light of the

material at the Court's disposal, the proceedings in question are currently pending.

9. Criminal proceedings against the applicant

77. On 28 June 2002 the applicant was indicted on the charge of committing perjury in connection *inter alia* with the fact that on 20 June 2001 he had informed the Wrocław District Prosecutor that for several months in 2001 his signatures in the mail register of Wrocław Prison had been forged by the prison staff.

78. On 25 March 2004 the Wołów District Court (*Sąd Rejonowy*) acquitted the applicant.

79. On 29 June 2004 the Wrocław Regional Court (*Sąd Okręgowy*) upheld that judgment.

10. Voting in referendum

80. On 2 September 1996 the Jelenia Góra Regional Court convicted the applicant of murder and sentenced him to fifteen years' imprisonment and seven years' deprivation of his civic rights, including the right to vote.

81. In June 2003 the applicant wished to cast his vote in the referendum on Poland's accession to the European Union. The staff of Wołów Prison did not allow him to do so.

82. The applicant complained about that fact to the Wołów Prison administration and the domestic courts. He asserted that if the deprivation of his civic rights was enforceable immediately after the relevant judgment had become effective, but the running of time for that purpose was then suspended until the end of his imprisonment, that would make the period of deprivation of his civic rights much longer than the seven years imposed by the court.

83. By a letter of 26 February 2007 the Deputy Governor of Wołów Prison explained that the applicant could not vote in the referendum because he had been deprived of his civic rights by a court decision. It was explained that in the light of the applicable law, the deprivation in question became effective as soon as the judgment had become final, but that the disqualification period, in the applicant's case of seven years, did not begin to run until after the end of the term of imprisonment.

84. By a decision of 31 January 2007 the Jelenia Góra Regional Court refused to resolve doubts (*odmówić rozstrzygnięcia wątpliwości*) as to the enforcement of the deprivation of the right to vote as imposed by the relevant judgment. The court held that there was no basis for resolving the issue. Nevertheless, the court went on to explain that the suspension of the term of the deprivation of civic rights had been envisaged by the legislature in order to ensure that the punishment which a punitive measure (*środek karny*) was meant to carry did not become a fiction.

11. Education outside prison

85. Throughout his incarceration the applicant made requests to be allowed to study at a university outside the prison system.

86. On 18 December 2002 the Penitentiary Commission of Wołów Prison decided not to grant the applicant's request because of his negative criminological prognosis.

87. On 24 February 2003 the Wrocław Regional Court upheld that decision.

B. The second applicant

1. The period of the applicant's detention

88. On 8 November 2000 the applicant was remanded in custody in connection with criminal proceedings against him.

89. He was committed to Wołów Prison where he was held until an unspecified date. It appears that he is currently detained in Zaręba Górna Prison.

2. The conditions of the applicant's detention

90. The applicant submitted that he had been detained in inadequate living and sanitary conditions. In particular, he complained about severe overcrowding.

91. During an unspecified period the applicant was held in cell no. 76 ward IV A. The total size of the cell in question was sixteen square metres but, in fact, the habitable area was reduced to thirteen square metres because of the toilet annex and other equipment placed inside. The cell was shared by six to eight persons at a time. Detainees had no access to hot water inside the cell. There was no loudspeaker to allow them to listen to the prison radio. The cell in question was insufficiently ventilated and lit. Two small windows were permanently covered by the bunk beds and the artificial lighting was inadequate.

92. The Government submitted that on an unspecified date, presumably in November 2009, the applicant had been placed in Zaręba Górna Prison, in a cell in which the statutory minimum standard of 3 m² per person was respected. The applicant did not contest this submission.

3. The applicant's actions concerning the conditions of his detention

93. The applicant did not lodge any complaints in that connection with the penitentiary authorities or prison administration. Nor did he bring a related civil action for compensation for the infringement of personal rights on account of overcrowding and inadequate living conditions.

II. RELEVANT DOMESTIC LAW AND PRACTICE

94. A detailed description of the relevant domestic law and practice concerning general rules governing conditions of detention in Poland and domestic remedies available to detainees alleging that the conditions of their detention were inadequate are set out in the Court's pilot judgments given in the cases of *Orchowski v. Poland* (no. 17885/04) and *Norbert Sikorski v. Poland* (no. 17599/05) on 22 October 2009 (see §§ 75-85 and §§ 45-88 respectively). More recent developments are described in the Court's decision in the case of *Łatak v. Poland* (no. 52070/08) on 12 October 2010 (see §§ 25-54).

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

95. In their letter of 16 March 2009 the Government asked that the application be struck out of the Court's list of cases on the basis of Article 37 of the Convention, which, in its relevant part, reads as follows:

"1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application..."

96. The Government maintained that the applicants had failed to pursue their application in that they had not submitted their observations on the admissibility and the merits of the case.

97. The Court notes that the applicants acted without legal representation. The first applicant, who pursued the case on his and the second applicant's behalf, maintained extensive correspondence with the Court throughout the entire proceedings. In all of his letters, including the last letter which was sent to the Court before the expiration of the time-limit for observations, the first applicant stated that he confirmed his and the second applicant's original pleadings and wished to pursue the application. He explained that he could not respond to the Government's observations in detail because he did not speak either of the Court's official languages.

In such circumstances and having regard to the fact that the first applicant expressed clearly, on his and on the second applicant's behalf,

their intention to pursue the application, the Court must continue the examination of the case.

98. This being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

II. THE ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF OVERCROWDING AND INADEQUATE CONDITIONS OF THE APPLICANTS' DETENTION AND OF INADEQUATE MEDICAL CARE AFFORDED TO THE FIRST APPLICANT DURING HIS DETENTION

99. The first applicant complained under Article 3 of the Convention about the overcrowding, inadequate conditions and medical care in Wołów and Wrocław Prisons.

100. The second applicant complained of the inadequate conditions of his detention in Wołów Prison.

A. Admissibility

1. *The Government's objection on exhaustion of domestic remedies*

101. The Government raised a preliminary objection, arguing that the applicants had not exhausted the domestic remedies available to them.

(a) The Government

102. The Government submitted that the first applicant had been released from prison on 2 February 2009 and that the second applicant had been moved to a prison in which he had been secured at least the statutory minimum standard space of 3 square metres per person shortly after the delivery of the *Orchowski* and *Norbert Sikorski* pilot judgments. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed and the applicants should bring a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code in order to seek compensation for the past violation.

103. In that regard they relied, in particular, on the *Orchowski* judgment, reiterating that the Court, having regard to the principle of subsidiarity, had held that in cases where the alleged violation of Article 3 no longer continued and could not be eliminated with retrospective effect, the only means of redress for the applicant was pecuniary compensation.

104. In view of the foregoing, the Government invited the Court to reject the application for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

(b) The applicants

105. The applicants did not submit any comments.

(c) The Court

(i) Recently established principles

106. The Court already examined a similar objection on exhaustion of domestic remedies raised by the Government in the above-mentioned cases of *Latak v. Poland* and *Łomiński v. Poland* and considered their arguments not only in the context of those two particular applicants but also in respect of other actual or potential applicants with similar cases (see *Latak v. Poland* no. 52070/08 and *Łomiński v. Poland* no. 33502/09 (dec.), 12 October 2010, §§ 71-85 and §§ 62-76 respectively).

107. In so doing, the Court had regard to the fact that on the date of the adoption of its decisions there were 271 cases pending before it where the applicants had raised complaints similar in substance, alleging a violation of Article 3 in that at various times and for various periods they had been adversely affected by the same structural problem, having been detained in overcrowded, insanitary cells (*ibid.* § 84 and § 75 respectively).

108. Having found that a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code could be considered an “effective remedy” for the purposes of Article 35 § 1 of the Convention as from 17 March 2010 and having regard to the 3-year limitation period for lodging such an action, the Court held that essentially in all cases in which in June 2008 the alleged violation had either been remedied by placing the applicant in Convention-compliant conditions or had ended *ipso facto* because the applicant had been released, the applicants concerned should bring a civil action for the infringement of personal rights and compensation (*ibid.* § 85 and § 76 respectively).

(ii) The Court’s conclusion concerning the first applicant

109. In the present case the first applicant was deprived of liberty in two separate periods (see paragraphs 7 and 8 above).

(α) The applicant’s first detention

110. The applicant’s first detention lasted in total from 26 September 1995 until 9 July 2004. It effectively ended on the latter date because the applicant was released on an eighteen-month long break to seek medical treatment outside prison.

111. The Court notes that the applicant’s complaint under Article 3 of the Convention is not limited to the overcrowding and resultant poor living and sanitary conditions of his detention. The applicant, who suffers from a particular orthopaedic disorder, complained, in parallel, that the medical

care provided to him within the penitentiary system had been inadequate and that his health had deteriorated as a result.

The Court has already held in a similar case that only a remedy able to address the applicant's complaint in its integrity and not merely its selected aspects, could realistically redress his situation (see *Śławomir Musiał v. Poland*, no. 28300/06, § 80, ECHR 2009-... (extracts)).

112. In any event, between 2001 and 2003 the applicant applied a number of times to be released from prison on health grounds. He also instituted criminal investigations against the medical staff of Wrocław Remand Centre. By taking those actions the applicant has sufficiently drawn the attention of the penitentiary authorities to the question of the compatibility of his living conditions and medical care in prison with the state of his health (see paragraphs 35-45 above).

Moreover, the applicant took steps to complain specifically of his detention conditions and the overcrowding. He lodged penitentiary complaints, instituted criminal proceedings against the staff and administration of Wołów Prison and civil proceedings against Wrocław Prison (see paragraphs 25-34 above).

113. Bearing in mind that the applicant's Article 3 complaint is two-fold, the Court will, nevertheless, examine the Government's objection as it has been formulated, that is, in relation to the overcrowding and resultant poor living and sanitary conditions of the applicant's detention.

The Court reiterates that in its pilot judgments in the cases of *Orchowski* and *Norbert Sikorski* (see *Orchowski*, cited above, § 96 and *Norbert Sikorski*, cited above, §§ 100-101) it held that the findings made by the Constitutional Court and by this Court that overcrowding in Polish detention facilities was of a structural nature, "undermined the effectiveness of any domestic remedy available, making them theoretical and illusory and incapable of providing redress in respect of the applicant's complaint" (*ibid.* § 111 and § 121 respectively). This conclusion equally applies to the present case in so far as it concerns the applicant's first detention which ended in 2004, especially given that the Government explicitly acknowledged the existence and the systemic nature of the problem of overcrowding in Polish detention facilities at the relevant time (*ibid.* § 146 and § 148 respectively) and that the applicant's civil actions and penitentiary complaints, which he had lodged against Wołów and Wrocław Prisons between 2001 and 2004, were to no avail (see paragraphs 18-27 above).

Moreover, noting that the applicant's first detention ended in 2004 and that a relevant civil action under Articles 24 and 448 of the Civil Code is barred by the three-year statute of limitation, the Court considers that the applicant cannot presently be required to avail himself of the civil remedy in question.

114. Accordingly, the Court dismisses the Government's preliminary objection as to the non-exhaustion of domestic remedies in so far as the applicant's first detention is concerned.

115. The Court also considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(β) The applicant's second detention

116. The applicant's second detention lasted from 26 January 2006 until 2 February 2009. During that time, the applicant made a number of complaints about the quality of medical care provided to him in Wołów Prison but he did not lodge any such complaints concerning the overcrowding and overall living conditions. Nor did he bring a civil action for compensation for the infringement of personal rights.

That being so, the Court will examine the admissibility of the applicant's Article 3 complaint in each of its aspects.

117. In so far as the applicant complained of the overcrowding and resultant poor living and sanitary conditions of his detention, the Court observes that he is now at liberty and that he still has adequate time to prepare and lodge with the Polish civil courts an action under Article 24 taken in conjunction with Article 448 of the Civil Code. It follows that, he should, before having his complaint concerning the conditions of his second detention examined by the Court, be required to seek redress at domestic level.

118. It follows that the applicant's complaint in so far as it concerns the conditions of his detention from 26 January 2006 until 2 February 2009 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

119. In so far as the applicant complained that he had not been afforded adequate medical care during his second detention, the Court takes note of the following elements.

The parties did not submit any medical certificates or reports on the applicant's health during or after his second detention. Six months into his detention, the applicant informed the prison authorities that he did not consent to any medical examinations or medical treatment in the orthopaedic centre of Wrocław Prison (see paragraph 49 above) and in October 2007 he withdrew his consent for a scheduled surgery (see paragraph 52 above). Lastly, the authorities made considerate efforts to monitor the applicant's health and offer him specialist treatment despite his unwillingness to cooperate, arranging his medical check-ups in establishments other than Wrocław Prison (see paragraph 51 above).

In the light of all the material in its possession, the Court finds that the authorities complied with their obligation under Article 3 of the Convention to provide the applicant with medical care and treatment adequate to his health requirements at the relevant time.

120. It follows that this part of the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(iii) The Court's conclusion concerning the second applicant

121. The second applicant has been detained since 8 November 2000. On an unspecified date, presumably in November 2009, he was placed in a prison cell in which the statutory minimum size requirement of 3 square metres per person was respected. He is currently held in Zaręba Górna Prison and he is not complaining with regard to this penitentiary establishment.

That being so, and having regard to the fact that the applicant still has adequate time to prepare and lodge with the Polish civil courts an action under Article 24 taken in conjunction with Article 448 of the Civil Code, he should, before having his Convention claim examined by the Court, be required to seek redress at domestic level.

In any event, as from 6 December 2009, the date on which Article 110 § 2 (f) of the Code of Execution of Criminal Sentences entered into force, a detainee placed in conditions where the area per person is less than the statutory minimum may lodge a complaint with the court and contest a decision of the prison administration to reduce his cell space (see *Latak* and *Łomiński* cited above, §§ 42-43 and 86-87 and §§ 34-35 and 77-78 respectively).

122. It follows that the application of the second applicant must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

1. The first applicant

123. The first applicant submitted that from 2001 until 2004 the conditions of his detention in Wołów and Wrocław Prisons had fallen short of standards compatible with Article 3 of the Convention. In particular, he complained that he had been detained in overcrowded cells with less than 3 square metres of space per person and allowed to spend a very limited time outside the cell, i.e. he had only a one-hour long outdoor exercise per day and a right to take only one shower per week.

The applicant also complained that he had been afforded inadequate medical care during his first detention.

2. The Government

124. The Government argued that during his first detention the applicant had not suffered inhuman or degrading treatment which attained the

minimum level of severity within the meaning of Article 3 of the Convention. The applicant's health and life were not in danger as he received regular specialised medical care and treatment.

3. *The Court's assessment*

125. The case raises the issue of the compatibility of the applicant's state of health with his detention in the conditions of Wołów and Wrocław Prisons. The Court must also answer the question of whether that situation attained the minimum level of severity to fall within the ambit of Article 3 of the Convention.

126. A summary of the general principles concerning the examination of medical care and conditions of detention under Article 3 may be found in the Court's recent judgments in *Sławomir Musiał v. Poland* (no. 28300/06, §§ 85-88, ECHR 2009-...(extracts)) and *Orchowski v. Poland* (cited above, §§ 119-229).

127. The Court notes that the applicant limited his complaint to the period from an unspecified date at the beginning of 2001 until 9 July 2004, that is, a period of approximately three years and six months (see paragraphs 12 and 123 above).

He submitted that during all that time he had been held in severely overcrowded cells and that he had a one-hour period of outdoor exercise per day and one shower per week.

128. The Government did not submit any information as to the number of inmates sharing the applicant's cell or the total number of detainees held in Wrocław Prison in 2001 and in Wołów Prison from September 2001 until July 2004 (see paragraph 13 above).

Various domestic proceedings which had been instituted by the applicant revealed, however, that Wołów Prison faced, at the relevant time, the problem of overcrowding and that the applicant himself had been affected by it. It was confirmed that eight of the applicant's cells in Wołów Prison measured approximately 16 square metres and they were shared by up to eight prisoners (see paragraphs 28 and 29 above).

129. The Court has already found in its two pilot judgments of *Orchowski v. Poland* and *Norbert Sikorski v. Poland* that, for many years, namely from 2000 until at least mid-2008, the overcrowding in Polish prisons and remand centres had revealed a structural problem consisting of "a practice that [was] incompatible with the Convention" (see *Orchowski*, cited above § 151 and *Norbert Sikorski*, cited above, §§ 155-156).

130. Taking all these elements into consideration, the Court finds it established that during approximately three years and six months the applicant was detained in overcrowded cells with less than 3 square metres of personal space and with the possibility of having only a one-hour outdoor exercise per day and one shower per week.

131. Moreover, the Court notes that during his detention the applicant undeniably suffered from Dupuytren's contracture, a disorder that, if

untreated, prevents the fingers and toes from straightening (see paragraph 14 above).

132. It appears that in the early stages of his detention prior to 2001, the applicant underwent two operations on his right hand and right foot (see paragraphs 15 and 16 above). A number of expert reports and testimonies of witnesses which had been produced in the course of criminal investigations instituted by the applicant revealed that shortly after the second surgery the applicant had soaked his hand in an unspecified disinfectant and put needles in his healing wound, which had impeded the recovery process (see paragraph 17 above).

133. Furthermore, the material in the Court's possession shows that the applicant's condition was monitored by specialised doctors (see paragraphs 18-23 above), despite the fact that the applicant was not always cooperative. Several expert reports were obtained to verify whether or not the applicant's evolving disorder could effectively be treated within the penitentiary system (see paragraphs 20; 22 and 23 above).

134. The Court observes, however, that the expert reports were to a large extent contradictory. Whereas in 2001 it was considered that the applicant should undergo reconstructive surgery of his right hand at an orthopaedic clinic of Warsaw Remand Centre (see paragraph 18 above), in January 2002 such a procedure was no longer available and, moreover, the applicant was informed that prison hospitals could not offer him any further diagnostic care (see paragraph 19 above). One month later it was clarified that the applicant had indeed required reconstructive surgery, but not urgently, and that his condition could be improved by physiotherapy available in prison (see paragraph 20 above). It is unknown to the Court whether or not the prescribed physiotherapy was made available to the applicant in prison. The fact remains that reconstructive surgery was not performed so long as the applicant's remained in detention until July 2004.

135. In addition, the Court is struck by the fact that despite the monitoring and treatment which was to be afforded to the applicant in prison, his condition deteriorated to the extent that in March 2003 the contracture of his right-hand little finger was considered so advanced that the finger needed to be amputated (see paragraph 21 above).

In 2003 the applicant also qualified for an operation on his two contracted left-hand fingers but the procedure was not scheduled that year (see paragraph 22 above). In April 2004 it was still considered necessary, but the applicant could only seek to undergo such treatment after July 2004 when he was finally granted release from prison (see paragraphs 23 and 24 above).

The Court is not in a position to speculate whether or not the development of the applicant's disease could have been arrested or slowed down had he been at liberty and free to seek medical care with the professionals of his choice. Likewise, the accuracy of the medical diagnosis and therapy which was prescribed by prison doctors cannot be verified.

It is very apparent in this case, however, that the authorities did not follow up the doctors' recommendations that the applicant undergo two operations and that the delays in assessing his condition had serious and irreparable consequences on his health, e.g. the recommended amputation of the applicant's right-hand little finger.

Lastly, in the light of an important doubt as to whether the applicant's condition could effectively be treated within the prison healthcare system, which was raised for the first time as early as January 2002, the Court considers that the authorities did not act in due time in releasing the applicant from prison only in July 2004 and prolonged his suffering resulting from his deteriorating disease.

136. The Court accepts that the very nature of the applicant's condition made him more vulnerable than the average detainee. In consequence, his detention in the conditions described above coupled with the authorities' failure to provide him with adequate surgical treatment or to release him without undue delay to seek such treatment at liberty, must have resulted in stress, anxiety and even physical suffering, and has unnecessarily exposed him to a risk to his health.

137. Assessing the facts of the case as a whole, having regard in particular to the cumulative effects of the inadequate medical care and to the inappropriate living conditions during the applicant's incarceration, which had likely a detrimental effect on his health and well-being, the Court considers that the nature, duration and severity of the ill-treatment to which the applicant was subjected are sufficient to be qualified as inhuman and degrading (see *Egmez v. Cyprus*, no. 30873/96, § 77, ECHR 2000-XII; *Labzov v. Russia*, no. 62208/00, § 45, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 42, 20 January 2005).

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

III. THE REMAINING COMPLAINTS

A. Complaints under Article 6 of the Convention and under Articles 2 and 3 of Protocol No. 1 to the Convention

139. The first applicant complained under Article 6 of the Convention of the outcome of several sets of criminal proceedings instituted by him against third parties including doctors, warders and prison administration (see paragraphs 27-29; 39-45; 63-66; 68 and 69 above) and about his failure to obtain a different prisoner's category (see paragraph 59 above) and an early release from prison (see paragraph 70 above). He also complained of the alleged breach of his right to education in that the penitentiary authorities did not authorise him to study at a university outside the prison system (see paragraphs 85-87 above). In addition, the applicant complained

of the alleged breach of his right to vote in that in June 2003 in Wołów Prison he was not allowed to cast his vote in the referendum on Poland's accession to the European Union (see paragraphs 80-84 above).

140. These complaints are incompatible *ratione materiae* with the provisions of the Convention and Protocols within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Complaints about three sets of civil proceedings against the State Treasury

141. The first applicant also complained under Article 6 of the Convention about the alleged shortcomings and the outcome of three sets of civil proceedings for compensation brought by him against the State Treasury. The first set of impugned proceedings (for infringement of personal rights, see paragraphs 30-34 above) ended with the judgment of the Wrocław Regional Court of 31 August 2005, against which the applicant did not appeal. The second set of proceedings (action for damages against the Wrocław Regional Court and Court of Appeal, see paragraph 76 above) appears to be pending. And the third set of impugned proceedings (for compensation for mental distress after a fight in prison, see paragraphs 73-75 above) ended with the first-instance judgment of 1 March 2005 and it appears that the appeal against this judgment was without prospects of success.

142. It follows that the complaints concerning the first two sets of proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. The complaint concerning the third set of proceedings is manifestly ill-founded, being of a fourth-instance nature, and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Monitoring of the applicant's correspondence

143. Lastly, the applicant complained of the alleged monitoring of his correspondence and the alleged fact that the authorities had withheld letters from the Registry of the European Court of Human Rights.

However, the Court finds that the material in its possession does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

144. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

145. 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.”

146. The applicant did not make a claim for just satisfaction.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government’s request to strike the application out of the Court’s list of cases;
2. *Declares* admissible the first applicant’s complaint under Article 3 of the Convention in so far as it concerns his first detention and the remainder of the application, including the second applicant’s complaint, inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first applicant’s first detention.

Done in English, and notified in writing on 26 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President