



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

FOURTH SECTION

CASE OF GRZYWACZEWSKI v. POLAND

(Application no. 18364/06)

JUDGMENT

STRASBOURG

31 May 2012

FINAL

31/08/2012

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

In the case of Grzywaczewski v. Poland,

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

David Thór Björgvinsson, *President*,

Lech Garlicki,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 18364/06) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Zbigniew Grzywaczewski (“the applicant”), on 24 April 2006.

2. The applicant, who had been granted legal aid, was represented by Mr P. Sendeki, a lawyer practising in Lublin. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged that the medical care and treatment offered to him during his detention in Lublin Remand Centre and Zamość Prison had been inadequate in view of his diabetes. He also complained of overcrowding and poor living and sanitary conditions in the above-mentioned detention facilities.

4. On 30 November 2006 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Zbigniew Grzywaczewski, is a Polish national who was born in 1957. He suffers from insulin-dependent diabetes, prostate cancer and mild cardiac disorders. He has been classified by the social security authorities as a person with a “mild-degree disability” (*umiarkowany stopień inwalidztwa*) making him fit to do only light physical work.

A. The period of the applicant’s detention

6. On 25 January 2006 the applicant turned himself in to serve an outstanding sentence of imprisonment. From that day until 11 December 2008 he was in detention, except for the period from 24 to 27 December 2007 when he was at liberty on a short leave from prison (*przepustka*). During the relevant period the applicant was detained in a number of different facilities, namely Lublin Remand Centre, Zamość Prison and Hrubieszów and Rzeszów Prisons.

B. The description of the conditions of the applicant’s detention

7. The parties’ statements relating to the conditions of the applicant’s detention are, to a large extent, contradictory. However, the Government’s submissions on the case are limited to the applicant’s detention prior to his transfer from Zamość Prison on 6 February 2007. The Government did not make any comments in relation to the period after that date.

1. First term in Lublin Remand Centre

(a) Uncontested facts

8. From 25 January until 3 March 2006 the applicant was detained in Lublin Remand Centre. He was initially held in cell no. 22 in wing IV. Two weeks later he was transferred to cell no. 22 in wing III.

9. The official statistics published by the Prison Service (*Służba Więzienna*) reveal that at the relevant time the overcrowding (the degree by which the number of prisoners exceeds the maximum allowed capacity of a particular detention facility, which, in turn, is calculated on the basis of the standard of 3 square metres (m²) of cell floor space per prisoner provided for in Polish law) in Lublin Remand Centre peaked at 22.5 %.

(b) Facts in dispute*(i) The Government*

10. The Government submitted that the applicant's cell in wing IV measured 32 m² and could hold from 18 to 29 persons (from 1.7 to 1.1 m² of cell space per person). His cell in wing III measured over 21 m² and could hold from 7 to 10 people (from 3 to 2.1 m² of cell space per person). The Government did not specify, however, the actual occupancy rate because, as they submitted, Lublin Remand Centre had not kept any register of detainees' allocation.

11. The Government submitted that the applicant's cells in Lublin Remand Centre had been equipped in compliance with the internal regulations and had been adequately lit and ventilated. They also noted that the applicant had had an unlimited access to cold water and that he had been allowed to have one hot shower per week. The toilet annex inside each cell offered sufficient intimacy. Finally, the applicant was allowed to spend several hours outside his cell, either participating in social and cultural activities or staying in a chapel.

(ii) The applicant

12. The applicant submitted that cell no. 22 in wing IV had originally been designed for 14 persons but, in fact, it had been shared by 28 prisoners (1.1 m² of cell space per person). His cell in wing III measured 15 m² and was shared by 10 persons (1.5 m² of cell space per person).

13. The applicant claimed that Lublin Remand Centre had been so severely overcrowded that he had had no room to sleep or to have his meals. For example, in cell 22 in wing IV there were 18 beds and an unspecified number of mattresses spread on the floor. There was no private space. Consequently, the applicant had no choice but to administer his insulin injections in front of his fellow inmates. The applicant had limited access to the toilet inside the cell because it was continuously occupied by other cellmates. The cells were not ventilated and there was a constant foul odour. The conditions of hygiene maintenance were insufficient. The applicant did not specify how many times per week he could have a bath or a shower. He submitted, however, that the shower-room had measured 12 m² and that it had been used by 20 persons at a time. Detainees were allowed to stay there for no longer than five minutes. There was no hot water. The applicant maintained that in Lublin Remand Centre he had been entitled only to a one-hour period of outdoor exercise.

14. In the applicant's submission the conditions in Lublin Remand Centre as described above, had been aggravated by the fact that he had been mocked and laughed at by the guards, while his complaints to the remand

centre's administration had been ignored or had not brought the desired effect.

2. Zamość Prison

(a) Uncontested facts

15. From 8 August 2006 until 6 February 2007 the applicant was detained in Zamość Prison which is listed as a semi-open detention facility.

16. According to the official statistics published by the Prison Service the overcrowding in Zamość Prison was at the lowest at 30% in August and September 2006, increased to 38 and 39% in November and December 2006 respectively, peaked at 45% in January 2007 and dropped to 38% in February 2007.

(b) Facts in dispute

(i) The Government

17. The Government submitted that the applicant had been consecutively detained in cells no. 11, 5, 22 and 15. The first two cells measured over 30 m² and were shared by 12 to 14 persons (from 2.5 to 2.1 m² of cell space per person). Cell no. 22 was located in the special-care wing. It measured over 12 m² and was occupied by 4 prisoners (3 m² of cell space per person). Cell no. 15 was in the prison's hospital wing. It measured over 14 m² and was occupied by 3 persons (4.6 m² of cell space per person). In the Government's submission, the cells in question were sufficiently lit and ventilated. They were adequately furnished and equipped. The toilets and shower rooms were accessible from the corridor.

18. The Government also submitted that Zamość Prison offered to all prisoners a wide variety of social and sports activities, as well as language courses and workshops. The applicant followed individual rehabilitation programme for alcoholics and, together with his wife, a family therapy.

(ii) The applicant

19. The applicant did not provide any details regarding the occupancy rate or the size of his cells in Zamość Prison. He submitted, however, that all his cells, except cell no. 15, had been overcrowded. He also claimed that on 2 February 2007 a mentally unstable prisoner had been assigned to his cell. That had caused a lot of stress to the applicant and posed a real danger to his life and health.

20. The applicant noted that during the day the prisoners in Zamość Prison had been free to walk around the prison building. They had also had daily access to the prison shop and the shower room. The applicant's meetings with his wife took place in a spacious room.

3. First term in Hrubieszów Prison

21. From 6 February 2007 until 3 January 2008 the applicant was detained in Hrubieszów Prison. From 24 until 27 December 2007, however, he was at liberty as he had been granted a short leave from prison.

22. Hrubieszów Prison was listed at the relevant time as a semi-open detention facility suitable for incarceration of diabetics.

23. According to the official Prison Service's statistics the overcrowding in Hrubieszów Prison ranged at the relevant time from 23 to 27%.

24. The applicant submitted that he was initially placed in cell no. 203 in wing II. The cell in question measured 13 m² and was shared by 6 prisoners, including the applicant (2.1 m² of cell space per person).

25. On 21 March 2007 the applicant was assigned to cell no. 110 or 111 in wing I. That cell also measured 13 m². It was shared by 6 prisoners, including the applicant, another diabetic and four healthy persons (2.1 m² of cell space per person). The applicant submitted detailed calculations of the size of all equipment and furniture inside his cell and concluded that the actual living space of his cell was no more than 5 m².

26. In the applicant's submission the living and sanitary conditions in Hrubieszów Prison were appalling. The prison was seriously overcrowded and the building was devastated. The applicant claimed that, during an unspecified period, prisoners had been confined to their cells 23 hours per day. Subsequently, as of April 2007, the prison cells were left open from 10 a.m. until noon and then, from 2 to 5 p.m. However, on 5 November 2007 renovation works started in prison and the cells were opened only from 3 to 5 p.m. The prisoners were allowed to walk around the prison building and stay outside their cells; however, the corridors and the room where prisoners met with their relatives were cramped and noisy. Because of the existing overcrowding queues to the prison pay phone were long, which made it difficult for the applicant to maintain regular contact with his family.

27. The wash room, which was in a very poor condition, was located in a separate building at a distance from the applicant's wing. The prisoners had to walk in the open to and from the shower room in all weather conditions. The prisoners had little time to dry themselves and to get properly dressed after taking a shower. Because of that they were particularly exposed to catching a cold while walking back to their quarters.

4. Second term in Lublin Remand Centre

28. From 8 until 10 January 2008 the applicant was committed to Lublin Remand Centre and assigned to cell no. 17 in wing IV. He was allowed to have a one-hour period of outdoor exercise per day. In the applicant's submission, the living and sanitary conditions in the remand centre had not changed since his previous stay there.

29. According to the official Prison Service's statistics the overcrowding in Lublin Remand Centre was at 11%.

5. Rzeszów Prison

30. From 10 until 31 January 2008 the applicant was detained in Rzeszów Prison. He was detained in cell no. 132 in wing I. The applicant submitted that he had slept on a mattress spread on the floor and that he had had no access to a doctor. He was allowed to make one phone call every eight days. The applicant went on hunger strike because, as he claimed, all his requests to be transferred closer to his home had been dismissed or ignored.

31. According to the official Prison Service's statistics the overcrowding in Rzeszów Prison was at the relevant time at 18%.

6. Second term in Hrubieszów Prison

32. From 31 January until 11 December 2008 the applicant was detained in Hrubieszów Prison. He was released home on the latter date.

33. It appears that the applicant was assigned to cell no. 527 wing V. In his submission, the living and sanitary conditions in prison had not changed since his last stay there. The applicant's cell was overcrowded and shabby. He was confined inside the cell 23 hours per day. He was entitled to one five-minute phone call every eight days.

34. According to the official Prison Service's statistics the overcrowding in Hrubieszów Prison ranged from 20 to 26% between January and May, was at the lowest 8% in June and October, oscillated around 9-11% from July to September and increased to 15% in December 2008.

C. The applicant's medical treatment in detention

35. The applicant suffers from diabetes, prostate cancer and some cardiac disorders. In addition, during his imprisonment, he had been infected with dermatophytosis. He submitted that the medical care available within the penitentiary system had been insufficient.

36. On his detention in Lublin Remand Centre he informed the authorities of his diabetes; however, as the Government submitted, he had initially refused to go on a special diet. Only after experiencing some health problems the applicant agreed to be put on a diet for diabetics. The Government submitted that in the initial phase of his detention in Lublin Remand Centre the applicant had been examined by a doctor and had undergone a series of necessary medical tests. On the other hand, he had never expressed a wish to have his sugar level tested on a regular basis and had never asked for a glucometer.

37. In Zamość Prison the applicant was provided with medicine for diabetes. Between 7 August 2006 and 6 February 2007 he went 36 times to the doctor, including a general practitioner, a neurologist and an ophthalmologist. In this regard, the applicant submitted that the doctor practising in Zamość Prison had been a retired ophthalmologist without any general practice experience or any knowledge of the applicant's particular disorders. Furthermore, the applicant maintained that he had not been supplied with a glucometer and that his sugar level had never been tested.

38. The applicant claimed that during his detention in Rzeszów Prison in January 2008 he had had no access to a doctor whatsoever.

39. With respect to Hrubieszów Prison the applicant submitted that even though the prison was listed as a facility suitable for incarceration of diabetics, the medical attention he had received there had been much worse than in the other detention establishments. He stressed that virtually no medical care had been provided to him there. His sugar level was never tested during his first detention in Hrubieszów Prison. It was tested twice during his second detention there. In addition, the applicant claimed that he had not received any medication or diet for diabetics.

40. Lastly, the applicant made a general statement that the medical assistance provided to him in detention had not been sufficient. Despite his serious health condition he had been treated by the medical staff as if he suffered from a common ailment, such as a cold. Throughout the entire period of his detention the applicant administered his insulin injections without the assistance of a third person. He did so inside the cell where he lacked privacy and adequate sanitary conditions. That placed him in an awkward position *vis-à-vis* his fellow inmates. Due to the rapid changes of his sugar level he lived with the constant stress and fear of losing consciousness whenever he ran out of snacks. His medical condition worsened during each move to a new detention facility.

D. The applicant's actions concerning the living conditions and medical care provided to him in detention

41. The applicant filed numerous complaints with the administration of Lublin Remand Centre, Zamość Prison, the penitentiary authorities and the relevant prosecutors in connection with the conditions of his imprisonment and the medical care provided. He submitted that many of his complaints had remained without a reply.

42. On 29 January, 12 and 15 February 2006 the applicant filed complaints about the inadequate medical care in Lublin Remand Centre. The Government, without providing any details, submitted that those complaints had been thoroughly examined and that one of them (concerning the sleeping area) had been considered justified and the applicant had been instructed about a possibility to file a civil action for compensation.

43. On 17 February 2006 the Governor of Lublin Remand Centre (*Dyrektor*) responded to the applicant's complaint about the insufficient medical care. He established that the applicant had had a medical check-up by an in-house doctor on the day of his arrival. It was further stated that the applicant himself had refused, in writing, to be put on a special diet and had never expressed a wish to have his sugar level tested.

44. In a letter of 5 May 2006 the Governor of Lublin Remand Centre found the applicant's new complaint about medical care to be manifestly ill-founded. He stated that the applicant had been put on a diet for diabetics as soon as he had asked for it. Moreover, the applicant was examined by an in-house doctor and prescribed new medicines. The applicant was also informed that a medical consultation by a doctor of his choice outside the penitentiary system could be arranged at his own expense.

45. On 26 March 2007 the Governor of Zamość Prison informed the applicant that his complaint about different aspects of his detention in that establishment had been considered ill-founded. It was noted that the applicant had been assigned to cell no.15 with a bathroom and a toilet. He had constant access to hot water and he shared the cell with one and, at times, with two inmates. It was also stressed that the applicant was supplied on a regular basis with insulin, syringes and needles. He had been seen on many occasions by an internist, a neurologist, a psychiatrist and an ophthalmologist. During the relevant time, the applicant did not raise any objection as to the adequacy of the medical care and treatment provided to him. He was administered the necessary medicines and he administered insulin injections himself whenever he considered it necessary. That was a typical course of treatment for diabetes. Moreover, the Governor pointed to the fact that the applicant had himself requested to be transferred to Zamość Prison because he had wished to complete a therapy for alcoholics there. Both Zamość and Hrubieszów Prisons were semi-open facilities and the same restrictions applied to the applicant.

46. The applicant made numerous requests to the penitentiary court to be granted a short leave from prison. He was released once in 2007 for three days. He also complained about his frequent transfers between different cells or different detention facilities and, lately, of the conditions of his detention in Hrubieszów Prison. The applicant claimed that the authorities had found his complaints concerning Hrubieszów Prison ill-founded in the light of the fact that that prison was listed as a facility suitable for the incarceration of diabetics.

47. The applicant did not bring a civil action in tort to seek compensation for the alleged infringement of his personal rights on account of overcrowding and inadequate conditions and the inadequate medical care provided to him during his detention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Conditions of detention

48. A detailed description of the relevant domestic law and practice concerning general rules governing the 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).

B. Medical care in prison and detention of ill prisoners

49. The relevant domestic law and practice concerning medical care in detention facilities are set out in the Court's judgment in the case of *Kaprykowski v. Poland*, no. 23052/05, §§ 36 -39, 3 February 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicant complained under Article 3 of the Convention that the medical care provided to him within the penitentiary system had been inadequate and that the conditions of his detention had been very poor and had failed in particular to meet the standard required for persons in his state of health.

Article 3 of the Convention reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

51. The Government raised a preliminary objection, arguing that the applicant had not exhausted the domestic remedies available to him.

52. In their initial observations the Government formulated this objection in the same way as they did in the cases of *Śławomir Musiał*

v. Poland (no. 28300/06, §§ 67-69, 20 January 2009) and *Orchowski v. Poland* (no. 17885/04, §§ 95-98, 22 October 2009).

53. In particular, they stressed that before lodging his Article 3 application with the Court the applicant should have: (1) made an application to the Constitutional Court under Article 191, read in conjunction with Article 79 of the Constitution, asking for the 2006 Ordinance to be declared unconstitutional; (2) brought a civil action seeking compensation for the infringement of his personal rights, namely his dignity and health, under Articles 23 and 24 of the Civil Code, read in conjunction with Article 448 of that Code; and (3) used remedies provided by the Code of Execution of Criminal Sentences, such as an appeal against any unlawful decision issued by the prison administration or a complaint to the relevant penitentiary judge about being placed in a particular cell in prison, or a complaint about prison conditions to the authorities responsible for the execution of criminal sentences or to the Ombudsman.

54. In their subsequent submissions, the Government noted that on 11 December 2008 the applicant had been released from prison. In these circumstances, the situation giving rise to the alleged breach of Article 3 of the Convention no longer existed and the applicant 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.

55. In that regard the Government 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.

56. 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.

57. The applicant in general disagreed with the above arguments and maintained that the remedies suggested by the Government could not be considered “effective” for the purposes of Article 35 § 1 of the Convention. He also submitted that he had lodged formal complaints with the penitentiary authorities on the basis of the Code of Execution of Criminal Sentences which had been either rejected or left without examination.

58. The Court observes that, in principle, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see *Orchowski* cited above, § 109, and *Demopoulos and Others v. Turkey* [GC], (dec.) no. 46113/99, ECHR 2010-..., § 87). However, as the Court has held in its leading decision in the *Latak* case (cited above, § 79) and on many other occasions prior to that decision, this rule is subject to exceptions which may be justified by the particular circumstances of each case (see *Demopoulos and Others*, *ibid.*, with further references). Among such

exceptions there are certainly situations where, following a pilot judgment on the merits in which the Court has found a systemic violation of the Convention, the respondent State makes available a remedy to redress at domestic level grievances of similarly situated persons (see *Demopoulos and Others*, cited above, §§ 87-88; *Broniowski v. Poland (merits)* [GC], no. 31443/96, §§ 191-93, ECHR 2004-V; and *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, §§ 25-26 and 33-44, 23 September 2010).

59. To that effect, in the lead inadmissibility decision in the case of *Latak v. Poland* (cited above), the Court has expressly held that the above-mentioned exception applies to subsequent applications concerning conditions of detention filed with the Court which have not yet been declared admissible and that it is appropriate to assess the adequacy of the remedy relied on by the Government in the light of the present-day situation.

60. In so doing, the Court had regard to the fact that on the date of the adoption of its decision 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).

61. 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).

62. In the present case the applicant was deprived of liberty from 25 January 2006 until 11 December 2008, with a three-day interruption, between 24 and 27 December 2007, when he was at liberty on a short leave from prison (see paragraph 6 above).

63. The Court notes that the applicant’s complaint under Article 3 of the Convention is two-fold. The applicant, who suffers from insulin-dependent diabetes, prostate cancer and various cardiac disorders, complained that the medical care provided to him within the penitentiary system had been inadequate. In parallel, he complained about overcrowding and the resultant poor living and sanitary conditions of his detention, failing in particular to meet the standard required for persons in his state of health.

64. The Court has already held, in a case which was brought by a mentally ill detainee who, like the applicant in the instant case, complained

of inadequate medical care combined with prison overcrowding and inadequate living conditions, that only a remedy able to address the applicant's complaint in its entirety and not merely its selected aspects, could realistically redress his situation (see *Sławomir Musiał v. Poland*, no. 28300/06, § 80, ECHR 2009-... (extracts)).

65. In any event, it must be noted that the applicant in the present case filed numerous complaints with the penitentiary authorities in connection with the conditions of his imprisonment and the medical care provided. He also applied a number of times to be released from prison on health grounds (see paragraphs 42-47 above). By taking those actions the applicant had 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.

66. Moreover, the situation giving rise to the alleged violation of Article 3 ended on 11 December 2008 when the applicant was released from Hrubieszów Prison. The Court considers that, since the relevant civil action under Articles 24 and 448 of the Civil Code by which, as the Government claimed, the applicant could seek compensation for the infringement of his personal rights, including his dignity and health, is barred by a three-year statute of limitation, the applicant cannot presently be required to avail himself of the civil remedy in question.

67. In addition, 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 has already 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" at the time when he lodged the present application with the Court (*ibid.* § 111 and § 121 respectively). This conclusion equally applies to the present case in so far as it concerns the applicant's detention which lasted from January 2006 until December 2008, especially given that the Government and the penitentiary authorities 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).

68. Accordingly, the Court dismisses the Government's preliminary objection as to the non-exhaustion of domestic remedies.

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

B. Merits

1. The parties' submissions

70. The applicant complained that he had not received adequate medical treatment and care during his detention. He also alleged that the living and sanitary conditions in each detention facility in which he had been held from 25 January 2006 until his release on 11 December 2008 had been inadequate for a healthy person and even more so for someone like him, who suffered from diabetes and other serious health ailments. In particular, the applicant complained that his diabetes had not been monitored because he had had no access to specialised medical care and his sugar level had hardly ever been tested. Moreover, the applicant complained that he had not had any privacy or adequate sanitary conditions when he wished to administer his daily insulin injections. Lastly, the applicant alleged that because of the overcrowding and poor sanitary conditions in his detention facilities, his frequent transfers between different cells or prisons and limitations on his contact with his wife he had been exposed to situations which had added to his stress and the deterioration of his health.

71. The Government argued that during his detention the applicant had not suffered inhuman or degrading treatment which had attained the minimum level of severity within the meaning of Article 3 of the Convention.

72. The applicant's health and life were not in danger as he received regular specialised medical care and treatment. In particular, throughout his detention the applicant was administered all necessary drugs for diabetes and between August 2006 and February 2007 he had seen a general practitioner, a neurologist and an ophthalmologist on thirty-six occasions.

73. Moreover, the Government submitted that despite the overcrowding the prison authorities, taking into account the applicant's special needs, had made efforts to secure to him the best possible conditions of detention. As a result, the applicant had been detained in a slightly smaller cell than prescribed by the domestic law only for a transitional period. The Government stressed, however, that Zamość Prison was a semi-open detention facility and the applicant had been free to leave his cell to use the toilets and showers which were located outside.

2. The Court's assessment

74. The case raises the issue of the compatibility of the applicant's state of health with the conditions of his detention in Lublin Remand Centre and Zamość, Hrubieszów and Rzeszów Prisons and the adequacy of the medical care provided to him. The Court must also answer the question whether the applicant's situation attained the required minimum level of severity to fall within the ambit of Article 3 of the Convention.

75. 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 *Ślawomir Musiał v. Poland* (no. 28300/06, §§ 85-88, ECHR 2009-...(extracts)) and *Orchowski v. Poland* (cited above, §§ 119-229).

76. The Court notes that the parties have disputed certain circumstances pertaining to the general conditions of the applicant's detention at Lublin Remand Centre and Zamość Prison in the period from 25 January 2006 until 6 February 2007. The Government did not make any comments as regards the remaining period of the applicant's detention, namely from the date on which notice of the application had been given to the parties until the applicant's release on 11 December 2008.

77. The Court considers, nevertheless, that it can make its assessment of the case relying on the parties' submissions, the official statistics published by the Prison Service and on the recent findings made by the Polish Constitutional Court and by this Court.

78. The Court has already found in its two pilot judgments in the cases 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).

79. This finding is confirmed in the instant case by the official statistics of the Prison Service, which show that each of the applicant's detention facilities was at the relevant time overcrowded with the occupancy rates ranging from 108 to 145% (see paragraphs 9, 16, 23, 29, 31 and 34 above).

80. As to whether the applicant himself was affected by the problem of overcrowding, the Court makes the following observations.

81. The Government did not contest the applicant's submission that during a two-week period in the course of his first detention in Lublin Remand Centre, his cell in wing IV, measuring 32 m², had been occupied by 28 prisoners. That resulted in a little over 1 m² of floor space per person (see paragraphs 10 and 12 above).

82. In the subsequent three weeks' period, the applicant was detained with 9 other prisoners in a cell in wing III which measured 21 m², according to the Government, or 15 m², according to the applicant. Even relying on the Government's submissions, the space per person in that cell was 2.1 m² (see paragraphs 10 and 12 above).

83. The Court notes that such severe overcrowding must have resulted in further hardship for the applicant, such as reduced accessibility to the toilet, poor air circulation and, most importantly, inconvenient sleeping arrangements.

84. In connection with the latter element, the Court is struck by the fact that in cell no. 22, nearly one third of the inmates had to sleep on mattresses

spread on the floor, impeding movement in the cell (see paragraph 13 above). Irrespective of whether or not the applicant himself had to sleep on the floor, this arrangement was clearly a source of aggravated nuisance to him and the other inmates.

85. In view of the parties' partly conflicting submissions and the vagueness of the remainder of the Government's comments regarding the uncontested high overcrowding rates in Lublin Remand Centre, the Court is not convinced that the applicant had access to activities offering social interaction and stimulation outside his cell. Conversely, the Court considers established that the applicant had a one-hour period of outdoor exercise per day and one cold or hot shower per week, possibly lasting a very short time and in a cramped shower room (see paragraphs 11 and 13 above).

86. As regards Zamość Prison, where the applicant was held for six months, the Court takes note of the Government and the applicant's own submissions that the ventilation, lighting, conditions of hygiene, opportunities for social interaction and a break from prison routine were good (see paragraphs 18 and 20 above). The Court observes, nonetheless, that even in that facility, with the exception of the hospital cell no. 15, the domestic minimum standard of cell space per prisoner was either not met or barely met (see paragraph 17 above).

87. The Court will now examine the conditions of the applicant's subsequent detention. It must be noted that the Government did not make any submissions in this connection.

88. For eleven months, from 6 February 2007 until 3 January 2008 and for an additional ten and a half months, from 31 January until 11 December 2008, the applicant was detained in Hrubieszów Prison.

89. In the applicant's submission, during his first and second detention there the floor space of his cells was 2.1 m² per person. Moreover, the toilet annex, equipment and furniture inside the cells significantly reduced the actual living space in the cells (see paragraphs 25 and 33 above).

90. The official statistics of the Prison Service reveal that the average rate of overcrowding in Hrubieszów Prison ranged between 23 and 27%, during the applicant's first detention and between 8 and 26%, during his second stay there (see paragraphs 23 and 34 above).

91. The applicant also complained of other hardships during his detention in Hrubieszów Prison, namely the dreadful technical condition of the prison, the cramped and noisy visiting-rooms, queues to the pay-phone and the fact that he had to walk in the open to and from the shower-room in all weather conditions (see paragraphs 26 and 27 above).

92. The Court observes that the nuisance resulting from overcrowding, which undoubtedly existed in Hrubieszów Prison, and the prison's poor infrastructure were alleviated to some extent by the degree of freedom of movement enjoyed by the applicant during his first detention in the semi-open wing. The applicant submitted that during an unspecified period

he had been allowed to remain outside his cell for five hours a day. On the other hand, during certain periods his cells were opened only for two hours in the afternoon or locked for 23 hours a day (see paragraph 26 above). It also appears that during his second detention in Hrubieszów, the applicant did not enjoy any freedom of movement outside his cell and was allowed to have only a one-hour period of outdoor exercise per day (see paragraph 33 above).

93. In this regard the Court considers that the overcrowding, the prison's infrastructure and the degree of the applicant's freedom of movement in Hrubieszów Prison were substantially worse than those established by the Court in the *Valašinas* case (*Valašinas v. Lithuania*, no. 44558/98, ECHR 2001-VIII), where no violation of Article 3 was found *inter alia* in view of the fact that the applicant was allocated at different times approximately 5, 3.2 and 2.7 m² of space in the dormitory and enjoyed considerable freedom of movement from wake-up time at 6.30 a.m. to lock-in at 10.30 p.m. within the whole prison area, consisting of a separate dormitory, a leisure room, a kitchen, sanitation areas and an open courtyard (*Valašinas*, cited above, § 103).

94. Lastly, the Court notes that during his second detention in Lublin Remand Centre overcrowding reached 11% and the applicant was confined to his cell for 23 hours a day (see paragraphs 28 and 29 above). The Government did not provide any information with respect to this period of the applicant's detention. Nor did they contest the applicant's submission that when he had been detained for 20 days in Rzeszów Prison he had slept on a mattress spread on the floor. The official statistics reveal that overcrowding in Rzeszów Prison was at the relevant time at 18% (see paragraphs 30 and 31 above).

95. As already noted in the *Orchowski* judgment, the Polish Constitutional Court found in its judgment of 26 May 2008 that a person could not be afforded humane treatment in a prison cell in which individual living space was less than 3 m² (Article 41 § 4 of the Constitution) and that such overcrowding as had existed in Polish prisons could in itself be qualified as inhuman and degrading treatment (Article 40 of the Constitution) (*Orchowski*, cited above, § 123).

The Court, mindful of the principle of subsidiarity, found that the above-mentioned ruling of the Constitutional Court could constitute a basic criterion in the Court's assessment of whether overcrowding in Polish detention facilities breached the requirements of Article 3 of the Convention. In consequence, all situations in which a detainee was deprived of a minimum of 3 m² of personal space inside his or her cell, would be regarded as creating a strong indication that Article 3 of the Convention had been violated.

96. The second limb of the applicant's Article 3 complaint relates to the adequacy of his medical care in prison.

97. The Court notes that during his detention the applicant undeniably suffered from insulin-dependent diabetes, prostate cancer and mild cardiac disorders. The case materials, however, reveal that the applicant's ailments, although chronic, were at no stage life threatening (see paragraph 5 above).

98. Moreover, it does not transpire from the documents submitted that the applicant's health deteriorated during his detention as a result of either the conditions of his detention or any negligence on the part of the prison medical services. Likewise, there is no indication that his state of health deteriorated as a result of the inadequacy of the available medical care.

99. It is clear that the applicant was provided, throughout the entire period of his detention, with insulin, needles and syringes (see paragraphs 13, 40 and 45 above). When it was considered necessary, he was administered additional medicine for diabetes (see paragraphs 37 and 44 above). A special diet for diabetics was made available to the applicant in Lublin Remand Centre (see paragraphs 36, 43 and 44 above) and, as it appears, despite the applicant's submission to the contrary, also in Zamość and Hrubieszów Prisons (see paragraphs 39, 45 and 46 above). The applicant's complaints about his poor health were followed-up by medical examinations and consultations. At the beginning of his detention in Lublin Remand Centre, he was examined by a doctor and underwent a series of medical tests (see paragraph 36 above). During a period of six months in the course of his detention in Zamość Prison he consulted different doctors on 36 occasions (see paragraph 37 above). For an unspecified period he was assigned to cells in a hospital and to a special-care wing in Zamość Prison (see paragraph 17 above).

100. It is a matter of regret that the prison medical services had failed to carry out routine tests of the applicant's sugar level and to provide him with a glucometer.

101. On the other hand, the Court accepts that diabetes patients are expected to administer their own insulin injections in their home environment without the assistance of a third person. The fact that the applicant had to administer his injections inside the cell where he lacked privacy and adequate sanitary conditions must have given rise to considerable anxiety on his part and must have placed him in a position of inferiority *vis-à-vis* other prisoners.

102. Assessing the facts of the case as a whole, having regard in particular to the cumulative effects of the overcrowding and inappropriate living conditions provided to the applicant during his detention and the fact that, because of his state of health, the applicant was in a vulnerable position *vis-à-vis* other prisoners, 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 treatment.

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

104. With regard to the issue of overcrowding seen from the standpoint of the applicant's right to respect for his physical and mental integrity or his right to privacy and the protection of his private space, the Court considered it appropriate to raise of its own motion the issue of Poland's compliance with the requirements of Article 8 of the Convention, which in its relevant part reads as follows:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

105. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

106. However, having found a violation of Article 3, the Court considers that no separate issue arises under Article 8 of the Convention with regard to the conditions of the applicant's detention and the medical treatment he received.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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.”

A. Damage

108. The applicant claimed 250,000 Polish zlotys (PLN) in respect of non-pecuniary damage. He did not allege any pecuniary damage.

109. The Government contested the applicant's claim as exorbitant.

110. Deciding on an equitable basis, the Court awards the applicant 6,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

111. The applicant claimed no costs and expenses, either for the Convention proceedings or for any proceedings before the domestic courts or authorities.

C. Default interest

112. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 8 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President²