



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

FOURTH SECTION

**CASE OF D.G. v. POLAND**

*(Application no. 45705/07)*

JUDGMENT

STRASBOURG

12 February 2013

**FINAL**

**12/05/2013**

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



**In the case of D.G. v. Poland,**

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

Ineta Ziemele, *President*,  
David Thór Björgvinsson,  
Päivi Hirvelä,  
George Nicolaou,  
Zdravka Kalaydjieva,  
Vincent A. De Gaetano,  
Krzysztof Wojtyczek, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 January 2013,

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

**PROCEDURE**

1. The case originated in an application (no. 45705/07) 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 D.G. (“the applicant”), on 20 September 2007. The President of the Section decided of her own motion not to have the applicant’s name disclosed (Rule 47 § 3 of the Rules of Court).

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

3. The applicant alleged, in particular, that the conditions of his detention had been incompatible with his disability (paraplegia).

4. On 23 January 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). In addition, third-party comments were received jointly from the Helsinki Foundation for Human Rights (Warsaw, Poland), the European Disability Forum (Brussels, Belgium) and the International Disability Alliance (Geneva, Switzerland), which had been given leave by the President of the Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2). The parties have not responded to those comments (Rule 44 § 5).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in Siedlce.

6. In 2000 he was diagnosed with paraplegia. He is in a wheelchair and suffers from serious malfunctions of the urethral and anal sphincters and other ailments.

#### **A. The applicant's detention before September 2005**

7. The applicant was tried in a number of criminal proceedings and sentenced to a total of eight years' imprisonment.

##### *1. The applicant's first arrest and release*

8. The applicant was arrested on 7 January 2001 and was initially committed to Siedlce Prison.

9. On 11 January 2001 he was transferred to the surgical and orthopaedic ward of the Warszawa-Mokotów Remand Centre hospital, where he underwent medical examinations and treatment.

10. From 15 January to 28 February 2001 he was detained in the general wing of Warszawa-Mokotów Remand Centre.

11. On 28 February 2001 the applicant was granted a six month period of leave in the enforcement of his sentence (*przerwa*). He was taken home by ambulance.

12. The licence for this temporary release was extended for a further six months in August 2001. It was subsequently extended on 3 August 2001 until 28 February 2002, after which date the applicant failed to return to prison. On 20 May 2002, however, he was granted a further extension until 28 August 2002.

13. In August 2002 the Siedlce Regional Court (*Sąd Okręgowy*) refused to extend the applicant's licence again, finding that he was fit for detention. An appeal lodged by the applicant was dismissed by the Warsaw Court of Appeal. Following the expiry of the licence, the applicant again chose not to return to prison.

14. On 15 April 2003 the applicant was granted another extension until 15 June 2003. Again, he failed to return to prison after that date.

##### *2. The applicant's second arrest and release*

15. On 1 September 2003 the applicant was arrested, taken to Siedlce Prison by prison bus and placed in a single-occupancy cell (a so-called

“infirmary cell”). During the transfer to the prison, the applicant was seated in his immobilised wheelchair, leaning against the back of the bus.

16. The applicant was not offered any fresh incontinence pads on his arrival in Siedlce Prison, and had to use the ones which he had managed to take with him at the time of his arrest. The prison did not provide him with fresh catheters.

17. On 3 September 2003 the applicant was transferred by prison bus to Warszawa-Mokotów Remand Centre. During the transfer he was seated in an immobilised wheelchair, but according to his submissions he had to hold on to the handrails for stability throughout the transfer. During the journey, the catheter which he had been using since his arrest broke and began to leak.

18. Upon his arrival at the remand centre hospital, the applicant was placed alone in a cell measuring about 7.5 square metres with two double bunk beds. In the applicant’s submission, which was not contested by the Government, the cell walls and ceiling were dirty and the toilet was not separated from the rest of the cell.

19. On 5 September 2003 the applicant was placed in another, cleaner cell where the toilet had been separated from the rest of the cell by a narrow partition. The applicant had to rely on the help of his fellow inmates, who heaved him onto the toilet so that he could change his incontinence pad and helped him to access the washbasin for daily hygiene. When taking a shower in the remand centre’s bathhouse, the applicant sat on a stool placed under the showerhead. He submitted that, on one occasion, he had fallen off the stool and had had to continue taking the shower while lying on the floor, unassisted by anyone.

20. On an unspecified date in September 2003, the applicant noticed that he had developed a bedsore. On 11 September 2003 he was taken to the remand centre hospital ward in order to treat the bedsore. The bedsore was stitched up but, in the applicant’s submission, the stitches did not last a long time and the wound soon opened up again.

21. From 15 September 2003 onwards the applicant was detained in a general wing of Warszawa-Mokotów Remand Centre.

22. The Government submitted that the general wing of Warszawa-Mokotów Remand Centre had been adjusted to the needs of disabled persons. In particular, the remand centre was equipped with special lifts, wide doors and driveways for wheelchairs. All toilets were easily accessible to a person in a wheelchair.

23. On several occasions the applicant was taken by prison bus to attend hearings in courts in Siedlce and Warsaw. During each of those transfers he was seated in his wheelchair.

24. In December 2003 the applicant developed foot dermatomycosis. He was given an anti-mycosis cream. The applicant submitted that he had preferred to use the cream given to him by a fellow inmate.

25. On 7 or 12 January 2004 the applicant was transferred by prison bus back to Siedlce Prison, where he was placed in a large cell designed to hold twelve detainees. It was a smoking cell and the applicant was one of only two non-smoking detainees. He was allocated one of the lowest-level bunk beds. He was assisted by his fellow inmates in caring for his daily hygiene, but was often forced to remain in a soaked incontinence pad, in particular during the night.

26. The Government made a general submission in that respect, stating that Siedlce Prison had not been adapted to the special needs of disabled prisoners.

27. The Government also submitted that, on an unspecified date, a neurosurgeon who had examined the applicant had insisted that the patient needed daily physiotherapy. A medical certificate dated 16 January 2004 stated that such therapy was not available in prison. On the same day the Deputy Governor of Siedlce Prison applied for the applicant's release.

28. On an unspecified date in April 2004 the applicant was transferred by prison bus to the hospital wing of Warszawa-Mokotów Remand Centre, where he underwent a short medical examination in order to assess the state of his health with a view to being granted another licence for temporary release. On the same day he was taken back to Siedlce Prison, again by prison bus.

29. On 26 May 2004 the applicant was granted a further six months' temporary release. He was taken home from prison by his mother.

30. A medical report issued on 27 May 2004 by the regional hospital in Siedlce confirmed the presence of a bedsore measuring 2 cm by 3 cm on the applicant's buttock.

31. From 15 November to 6 December 2004, the applicant received medicinal treatment and physiotherapy in the Siedlce Regional Specialist Hospital (*Wojewódzki Szpital Specjalistyczny*). The discharge certificate stated that the applicant's overall health had been improved ("*wzmocnienie kondycji ogólnej*") and that he was to continue his physiotherapy under the hospital scheme, remain under medical supervision and undergo periodic rehabilitation therapy. The applicant also received the following recommendations from the hospital nurse: to change the catheter bag at least once every twenty-four hours; to rinse the urethra with an antiseptic solution after each change of catheter tube; to self-monitor the urethra; and to see a doctor in the event of inflammation.

32. The applicant's temporary release from prison was subsequently extended on 19 November 2004, and again on 14 February 2005 for another six-month period. The applicant failed to return to prison after the expiration of the latter period.

## **B. The applicant's detention after September 2005**

### *1. The applicant's arrest*

33. On 6 June 2005 the Siedlce Regional Court refused to grant the applicant a further extension of the licence for temporary release. The applicant unsuccessfully appealed against that decision.

34. On 2 September 2005 the applicant was arrested.

### *2. First detention in Siedlce Prison from 2 September 2005 to 28 August 2006*

35. On 2 September 2005 the applicant was taken by police car to Siedlce Prison, which is a standard prison that has not been adapted for persons with disabilities.

36. He was placed in the prison infirmary.

37. He was not given any fresh incontinence pads or catheters and had to use the ones which he had taken with him at the time of his arrest.

38. On 8 September 2005 the applicant was seen by a doctor for the first time since his arrest.

39. The applicant submitted that he was then given an unspecified number of fresh incontinence pads, but no catheters. As revealed by the Ombudsman's inquiry (see paragraph 96 below), the applicant was supplied with four pads every twenty-four hours. The applicant claimed that because he had been unable to change his catheters and pads often enough during his detention in Siedlce Prison, he had developed a skin rash in the genitals area. He had also had to ration his pads. In order to do so, he limited his food and drink intake at weekends and sometimes also on weekdays. The Government did not contest that submission.

40. It appears that throughout his detention in Siedlce Prison, the applicant received regular supportive treatment (*leczenie zachowacze*) for the bedsore he had developed in 2003, which was considered a non-healing wound.

41. On an unspecified date, the applicant was transferred from the infirmary cell.

42. At first he was placed in a cell with smokers.

43. The passageway to the toilet in that cell was too narrow for his wheelchair and he was unable to reach the washbasin without soliciting help from his cellmates.

44. In this initial period of his detention in Siedlce Prison, the applicant did not have daily access to a shower room, which was situated on a different floor from his cell.

45. The applicant submitted that that was either because no recommendation to that effect had been issued by the prison doctor or because nobody had been found to carry him up and down the stairs to the

shower room. Eventually, the applicant had been allowed to take a shower on a daily basis and his fellow inmates, who he claimed were “alcoholics who could barely stand on their own feet”, had been designated to carry him up and down the stairs. During his “baths”, the applicant had been seated on an ordinary chair placed directly under the showerhead. No hand rails had been installed in the shower cabin. Those submissions were not contested by the Government.

46. Towards the end of September 2005, the applicant was transferred to a cell measuring about 8 square metres. It appears that the cell was for both smoking and non-smoking prisoners.

47. As submitted by the applicant and expressly acknowledged by the Government, the cell in question had been inadequately furnished and had not been adapted for special-needs prisoners. In particular, in order to reach his bunk, the applicant had had to heave himself up from his wheelchair onto his bed without the aid of any handles or special bars. Nor could he access the cell’s toilet annex because the passageway was too narrow.

48. On 3 October 2005 the applicant asked the Siedlce Regional Court to grant him another period of temporary release.

49. On 20 November 2005 the applicant fell painfully after an attempt to heave himself up from his wheelchair onto his prison bunk. An ambulance was called and the applicant was administered anaesthetics and sedatives. He claimed that he had continued to suffer back pains from the fall for a period of two weeks.

50. The Government submitted, without providing any supporting documents, that on 25 November 2005 the head of healthcare at Siedlce Prison had stated that the applicant could receive adequate treatment in prison.

51. On 19 December 2005 the Siedlce Regional Court ordered the applicant to undergo a medical examination in order to assess the state of his health with a view to granting him another licence for temporary release. The examination was carried out on 21 December 2005.

52. The Government submitted that the medical examination had revealed that the applicant’s continued detention would not pose any danger to his health or life. The medical experts had also been of the opinion that the fact that the applicant had had trouble reaching the toilet had not caused him any inconvenience because he had been using incontinence pads and a catheter. No documents were presented to the Court in support of those submissions.

53. On an unspecified date in January 2006, the applicant had a high fever and experienced problems urinating. On 15 January 2006 he was taken by ambulance to the regional hospital in Siedlce, where he was diagnosed with a massive infection of the urethra and the presence of the bacteria *enterococcus faecalis*.



54. The applicant was not admitted to the civilian hospital but was offered admission to the Warszawa-Mokotów Remand Centre hospital instead. He refused, stating that his condition was serious enough to warrant his immediate hospitalisation in Siedlce and pointing out that the remand centre hospital did not have a urological ward. The regional hospital staff then gave the applicant anti-fever medication and a new catheter. They also carried out blood and urine tests, following which the applicant was taken back to Siedlce Prison by ambulance. On 19 January 2006 he was administered intravenous antibiotics and had another urine test. He continued to be treated on an outpatient basis until 26 January 2006.

55. On 8 February 2006 the Siedlce Regional Court refused to grant the applicant a licence for temporary release (file no. III Kow 399/05). The court found, on the basis of medical opinions prepared by an expert traumatologist and a neurologist, that the applicant's health had been stable and that he could receive adequate medical care in detention, provided that: (1) two to three times a year he underwent physiotherapy at the hospital; (2) he was free to do a range of rehabilitation exercises on his own and to move around in his wheelchair; (3) he had the opportunity to lie on his stomach for long periods; (4) he was administered the prescribed medicines; (5) his bedsore was regularly checked by a doctor, and if necessary, treated; (6) he was placed in a single-occupancy cell; and (7) he had unrestricted access to a shower. The court noted that the applicant had refused a transfer to undergo a medical examination in the hospital wing of the Warsaw-Mokotów Remand Centre and considered that his refusal had been unjustified.

56. On 23 February 2006 the Siedlce District Court (*Sąd Rejonowy*) refused to suspend the applicant's sentence (*odroczenie wykonania kary; zawieszenie postępowania wykonawczego*) (file nos. II K 11/00, II K 1070/02, II 1Ko 488/05). The court observed that two medical opinions prepared by an expert neurologist and an expert orthopaedist had confirmed that the applicant's health problems could be properly treated in prison (see paragraph 55 above). The domestic court also took note of two other medical opinions (issued on unspecified dates) by experts in neurology and traumatology who had reached the conclusion that the applicant was not fit for detention for a period of at least one year, until his urological infection and his bedsore had been cured. These experts also stated that if the conditions of the applicant's care and treatment enumerated in the preceding paragraph were not met, his life and health would be in danger.

The domestic court concluded that Siedlce Prison had so far been able to provide the applicant with adequate conditions of detention. Consequently, the applicant's request was not granted. An appeal lodged by the applicant with the Siedlce Regional Court was later dismissed on similar grounds.

57. On 10 May 2006 the Lublin Court of Appeal dismissed an appeal lodged by the applicant against the Siedlce Regional Court's ruling of

8 February 2006, adding to the reasoning invoked by the lower court the argument that the applicant belonged to the prison subculture as he had committed another crime while on temporary release from prison (file no. II AKzw 259/06).

58. In the applicant's own submission, on the night of 10 May 2006 he had attempted to commit suicide by slashing his left wrist, but had been rescued and had his veins stitched during the morning roll call. He did not provide any evidence in support of that submission.

59. On 15 May 2006 ultrasound imaging revealed a blockage of the applicant's urethra and calculi (stones) in his bladder (*złogi w pęcherzu moczowym*).

60. On 22 May 2006 the applicant lodged a further request for temporary release with the Siedlce Regional Court. There is no information in the file as to the outcome of his request.

61. On 2 June 2006 the applicant was examined by an expert urologist, who prescribed the surgical removal of his bladder stones and further urgent specialist treatment.

62. On 21 June 2006 the Governor (*Dyrektor*) of Siedlce Prison asked the Łódź Regional Court to allow the applicant's request for temporary release. The Governor relied on a medical report issued by the head of the Health Establishment (*Zakład Opieki Zdrowotnej*) at Siedlce Prison on 20 June 2006 and submitted that, despite the fact that the applicant had been doing some rehabilitation exercises on his own, muscular dystrophy, contractures in the hips and knees, and a general deterioration in his health had been observed. The applicant therefore required advanced physiotherapy, which could not be provided within the prison system. Although Łódź Prison would be prepared to offer the applicant basic physiotherapy, it could not do so before September 2006. It was also noted that after a number of recurring urological infections, the applicant required surgery for bladder stones. Moreover, according to the medical report, the applicant had developed a bedsore measuring 3 cm by 3 cm and his general state of health had been deteriorating. The report's conclusion was that the applicant could not be properly treated in prison.

63. On 2 August 2006 a medical certificate prepared by an expert orthopaedist confirmed that the applicant should undergo further physiotherapy. A medical report prepared on 16 August 2006 stated that it was possible for the applicant to remain in detention provided that he could also be treated in the urological ward of the regional hospital in Siedlce.

### 3. *First detention in Łódź Prison from 28 August to 30 or 31 October 2006*

64. On 28 August 2006 the applicant was transferred by prison bus to Łódź Prison, a modern detention facility adapted for the disabled. During the transfer he was seated in his wheelchair facing the front of the bus. In

his submission, which was not contested by the Government, even though the wheelchair had been immobilised, the applicant himself had bounced around during the ride as he had had nothing to hold on to.

65. In the Government's submission, which was not contested by the applicant, his cell in the general wing had been adapted for special-needs prisoners. It had been spacious enough for a wheelchair and the toilet had been easily accessible. The applicant did not need the assistance of a third person at the material time but was, nevertheless, under the constant supervision of nurses and paramedics.

66. The applicant was afforded basic physiotherapy. He was initially trained to use a Parapodium orthotic device, but his training was discontinued after he developed severe back pain, which had to be treated with an anaesthetic. He was also afforded supportive treatment for his bedsore in Łódź Prison and he remained under the constant supervision of the prison's medical staff.

A medical report issued on 5 October 2006 by a physiotherapist from Łódź Prison stated that the applicant's ailments could be adequately treated within the prison system and that the surgery for his gallbladder stones would be scheduled once his bedsore had healed.

67. On 23 October 2006 the Łódź Regional Court refused to agree to the Siedlce Prison Governor's request to grant the applicant another licence for temporary release (file no. VI Kow 1499/06/Pr). The court observed that on 28 August 2006 the applicant had been transferred to Łódź Prison and held that he had been receiving adequate physiotherapy there. The court referred to the medical report issued on 5 October 2006 by Łódź Prison's medical staff confirming that the applicant could be afforded adequate treatment in the prison system. The court also noted that the applicant had abused its trust by failing to return to prison on time after the previously granted period of temporary release.

*4. Second detention in Siedlce Prison from 30 or 31 October 2006 to 21 March 2007*

68. On 30 or 31 October 2006 the applicant was transferred back to Siedlce Prison by prison ambulance.

69. On 28 November 2006 the applicant underwent a short medical examination in the hospital in Konstancin, after which he was taken back to Siedlce Prison by prison bus.

70. On 29 November 2006 the Siedlce District Disability Evaluation Board (*Powiatowy Zespół do Spraw Orzekania o Niepełnosprawności*) declared the level of the applicant's disability as "significant" (*znaczny*) and confirmed that he required the constant care of another person owing to his limited capacity to deal with his handicap.

71. On 20 December 2006 the Łódź Court of Appeal dismissed an appeal lodged by the applicant against the Łódź Regional Court's decision

of 23 October 2006, finding the ruling to be justified (file no. II AKZw 872/06).

72. On 1 March 2007 the applicant had an X-ray which revealed the presence of three large bladder stones measuring 2 to 3 cm.

*5. Detention in Warszawa-Mokotów Remand Centre from 21 March to 24 April 2007*

73. On 21 March 2007 the applicant was transferred by prison bus to the surgical ward of the Warszawa-Mokotów Remand Centre hospital. He was offered reconstructive surgery for his bedsore. The applicant refused for an unknown reason and continued to be administered only supportive treatment to the wound.

74. The applicant was subsequently committed to the remand centre's general wing and given further outpatient treatment for his bedsore. Several blood and urine tests were also performed.

75. In the applicant's submission, which was not contested by the Government, he had been supplied with two incontinence pads every twenty-four hours and with one single-use catheter every two to four weeks.

As a result, the applicant considered it necessary to reduce his intake of food and fluids, and developed a rash in the genitals area. When he complained about the catheter problem, the remand centre doctor told him that all colleagues whom she had consulted were in agreement that catheters such as those used by the applicant were to be changed only every few weeks.

76. The applicant claimed that the above-mentioned treatment had been intentional. It constituted a form of punishment for his written complaints about the authorities and staff of the remand centre and prisons in question. It was also meant to serve as a deterrent to other prisoners.

*6. Second detention in Łódź Prison from 24 April to 28 May 2007*

77. On 24 April 2007 the applicant was transferred to the urology ward of Łódź Prison hospital, where he was given laser treatment for his bedsore and afforded further medical care. On 30 April 2007 he had his bladder stones surgically removed. The applicant also had a special Foley catheter put in place.

78. In between the medical procedures, the applicant was detained in the prison's general wing, in a cell adapted for disabled prisoners in wheelchairs.

79. According to a report of 28 May 2007, the applicant was discharged from the hospital in overall good health. It was recommended that his Foley catheter be changed every two weeks and that his bedsore be disinfected and treated in the prison infirmary.

*7. Third detention in Siedlce Prison from 28 May 2007 to 18 June 2008*

80. On 28 May 2007 the applicant was transferred back to Siedlce Prison by ambulance.

81. On 19 June 2007 he was placed in a non-smoking cell.

82. In order to access the toilet in that cell, he had to heave himself from his wheelchair onto a stool, and from the stool onto the toilet seat.

83. On 27 June 2007 another request for temporary release from prison submitted by the applicant was dismissed by the Siedlce Regional Court (file no. III Kow 218/07/pr). The court observed that, according to the most recent medical reports available, the applicant could be properly treated within the prison system. It was further observed that the applicant had abused his previous release from prison by failing to return to prison after the expiry of the period granted. Lastly, the court pointed out that, despite having been confined to a wheelchair, the applicant had still managed to commit a theft.

84. An appeal lodged by the applicant against the above-mentioned decision was rejected by the President (*Prezes*) of the Siedlce Regional Court for being lodged out of time. On 30 October 2007 the Lublin Court of Appeal dismissed an interlocutory appeal lodged by the applicant against the rejection ruling (file no. II AKzw 759/07).

85. On 15 October 2007 an expert neurologist prescribed a magnetic resonance imaging (MRI) test on the applicant's spine.

86. On 21 October 2007 the applicant had a high fever. An ambulance was called and he was administered anti-fever medication and a sedative.

87. On 19 November 2007 the applicant experienced sudden pain in the spine. He was examined by the prison doctor and administered painkillers.

88. On 2 January 2008 the applicant's spine was examined by means of an MRI test in the regional hospital in Siedlce .

89. On 10 January 2008 the applicant was taken by prison bus to the hospital in Konstancin, where a neuro-orthopaedic examination was performed and surgery of the spine was prescribed. The applicant was subsequently taken back to Siedlce Prison by prison bus.

90. On 6 February 2008 the applicant was moved to wing IX of Siedlce Prison.

91. He was later moved to wing IV and placed in a dirty cell with smokers, which in the applicant's submission, had not been adapted to the needs of a disabled person. The Government did not contest that submission.

*8. The applicant's release*

92. On 18 June 2008 the applicant was granted a licence for temporary release until 28 December 2008. The court considered that he required

urgent surgery followed by physiotherapy. Following that date, the court extended the licence three more times – on 1 December 2008, 18 June 2009 and 7 December 2009 – in order to allow the applicant to undergo further operations and urological treatment. It was also held that the applicant's behaviour outside the prison had been correct. The applicant's temporary release from prison continued until 18 June 2010.

93. On 19 June 2010 the Siedlce District Court, on the basis of an expert surgeons' opinion, suspended the applicant's sentence until his health problems requiring surgery had been resolved (case no. II K 538/05, II 2 Ko 1250/10).

94. Since his release, the applicant has been under medical treatment, including physiotherapy, and has periodically been admitted to hospital.

### **C. The applicant's actions concerning the conditions of his detention**

#### *1. Complaints to the Ombudsman and the prison authorities*

95. On 12 May 2006 the applicant complained to the Ombudsman (*Rzecznik Praw Obywatelskich*) about the quality of the medical care afforded to him while in prison.

96. On 10 October 2006 the Ombudsman informed the applicant of the results of his inquiries: during the applicant's detention in Siedlce Prison, he had been entitled to take a daily bath and had been given four incontinence pads per day; and he had been examined many times by surgeons, orthopaedists and neurologists. The Ombudsman also made a concise summary of the medical care afforded to the applicant, in particular the physiotherapy in Łódź Prison, and concluded that it had been adequate for the applicant's needs.

97. Following a further complaint from the applicant lodged on 29 May 2007, on 27 September 2007 the Ombudsman asked the Regional Inspectorate of the Prison Service (*Okręgowy Inspektorat Służby Więziennej*) to provide him with details concerning the conditions of the applicant's detention.

98. On 9 November 2007 the Inspectorate informed the Ombudsman that, according to the information in its possession, from the beginning of his detention in Siedlce Prison on 2 September 2005, the applicant had been provided with adequate medical care. The Inspectorate observed that the applicant had continued to suffer from an old bedsore, which had been slow to heal, but that he had had the dressing changed every day. The Inspectorate further observed that the applicant had once refused to have his bedsore removed by surgery. It pointed out that the applicant had had his bladder stones surgically removed and that, in the course of his detention, he had been treated many times on an outpatient basis. Lastly, the Inspectorate explained that Siedlce Prison had been built in 1844 and acknowledged that

its cells had not been adapted to the needs of disabled detainees or to the use of wheelchairs. Any conversion or modification of the prison buildings would require the prior authorisation of the Regional Inspector of Historic Monuments (*Wojewódzki Konserwator Zabytków*). The Inspectorate did not indicate whether any request to that end had been submitted.

*2. Criminal proceedings against the authorities of Siedlce Prison  
(file nos. I Ds 1261/06 and II Kp 481/06)*

99. On 29 June 2006 the Siedlce district prosecutor refused to investigate the issue of the conditions of the applicant's medical care in detention. The prosecutor held that the medical care afforded to the applicant had been adequate and that the applicant himself had at times refused to undergo the surgery offered to him. The prosecutor also observed that the Siedlce Prison authorities had requested the applicant's transfer to Łódź Prison in order that he could receive physiotherapy.

100. An appeal lodged by the applicant against that decision was dismissed by the Siedlce District Court on 11 December 2006. The court restated the prosecutor's arguments and observed that in the meantime the applicant had been transferred to Łódź Prison, where he had been given specialist rehabilitation treatment.

**D. Relevant domestic law and practice**

101. The relevant provisions of domestic law and practice concerning medical care and conditions of detention in prisons and remand centres are set out in the Court's judgments handed down in the cases of *Kaprykowski v. Poland* (no. 23052/05, §§ 36-39, 3 February 2009); *Sławomir Musiał v. Poland* (no. 28300/06, §§ 48-61, 20 January 2009); and *Orchowski v. Poland* (no. 17885/04, §§ 75-85, 13 October 2009). More recent developments are described in the Court's decision in the case of *Latak v. Poland* (dec. no. 52070/08, §§ 25-54, 12 October 2010).

102. As for the rules on detaining persons with disabilities, Article 96 of the Code of Enforcement of Criminal Sentences ("the Code") establishes a "therapeutic regime" under which convicted persons with mental or physical disabilities who require specialist treatment, in particular psychological or medical care, or rehabilitation, can serve their prison sentences.

103. Furthermore, Article 97 § 1 of the Code provides that, with regard to prisoners serving their penalty under a therapeutic regime, the authorities should be guided, *inter alia*, by the need to prepare those prisoners for a self-sufficient life. Paragraph 2 provides that the execution of the prison sentence must be adapted to the prisoner's needs in terms of medical treatment, hygiene and sanitation. Lastly, paragraph 3 provides that

convicted persons who no longer require specialist treatment should be transferred to another appropriate prison regime.

104. On the basis of Article 249 of the Code, on 25 August 2003 the Minister of Justice issued the Ordinance on the code of practice for the organisation and arrangement of pre-trial detention (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania tymczasowego aresztowania*) (“the 2003 Ordinance on Pre-Trial Detention”) and the Ordinance on the code of practice for the organisation and arrangement of imprisonment (*Rozporządzenie Ministra Sprawiedliwości w sprawie regulaminu organizacyjno-porządkowego wykonywania kary pozbawienia wolności*) (“the 2003 Ordinance on Imprisonment”). Both ordinances entered into force on 1 September 2003.

105. The 2003 Ordinance on Pre-Trial Detention and the 2003 Ordinance on Imprisonment both state that pre-trial detention and detention after conviction must take place in remand centres and prisons respectively. However, both ordinances provide for exceptions to the standard regime of detention.

106. Paragraph 28 of the 2003 Ordinance on Pre-Trial Detention and paragraph 26 of the 2003 Ordinance on Imprisonment provide that the governor of a remand centre or a prison may, at the request of or after consultation with a doctor, make necessary exceptions to the arrangements for pre-trial detention or imprisonment as laid down in the relevant code of practice, in so far as this is justified by the state of health of the detainee concerned. The provisions apply to detainees with a physical disability.

107. The detention of disabled persons is not regulated any further by Polish domestic law.

## **E. International law and practice**

### *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules (adopted on 11 January 2006)*

108. The Recommendation reads as follows:

“The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the European Convention on Human Rights and the case law of the European Court of Human Rights;

...

Stressing that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer



meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society;

...

Recommends that governments of member states:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation No. R (87) 3 of the Committee of Ministers on the European Prison Rules;

...”

## Appendix to Recommendation Rec(2006)2

“Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

...

39. Prison authorities shall safeguard the health of all prisoners in their care.

...

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

...

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

41.3 Where prisons do not have a full-time medical practitioner, a part-time medical practitioner shall visit regularly.

41.4 Every prison shall have personnel suitably trained in health care.

...

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent

with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

44. The medical practitioner or other competent authority shall regularly inspect, collect information by other means if appropriate, and advise the director upon:

...  
b. the hygiene and cleanliness of the institution and prisoners;  
c. the sanitation, heating, lighting and ventilation of the institution; and  
d. the suitability and cleanliness of the prisoners' clothing and bedding.

45.1 The director shall consider the reports and advice that the medical practitioner or other competent authority submits according to Rules 43 and 44 and, when in agreement with the recommendations made, shall take immediate steps to implement them.

45.2 If the recommendations of the medical practitioner are not within the director's competence or if the director does not agree with them, the director shall immediately submit the advice of the medical practitioner and a personal report to higher authority.

#### *Health care provision*

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment.

... ”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

109. The applicant complained that, contrary to Article 3 of the Convention, the care and conditions of his detention from 7 January 2001 to 28 February 2001, from 1 September 2003 to 26 May 2004 and from 2 September 2005 to 18 June 2008 had been incompatible with his special needs, in view of his paraplegia. That provision reads as follows:

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

#### A. Admissibility

##### *1. Government's preliminary objections*

110. The Government raised two preliminary objections, arguing that the applicant had not exhausted the domestic remedies available to him and that the part of his application which concerned his detention before September 2005 was inadmissible for non-compliance with the six-month rule within the meaning of Article 35 § 1 of the Convention.

##### **(a) Exhaustion of domestic remedies**

###### *(i) The Government*

111. The Government acknowledged that before lodging an application with the Court, the applicant had lodged a number of complaints with various State authorities about the quality of medical care provided to him in prison. They argued, however, that the applicant should also have brought a related 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.

112. Referring to the Court's inadmissibility decisions in the cases of *Łatak v. Poland* (dec., no. 52070/08, 12 October 2010), and *Nocha v. Poland* (dec., no. 21116/09, 27 September 2011), the Government noted that after the applicant's release from prison on 18 June 2008 – when the situation giving rise to the alleged breach of Article 3 of the Convention had no longer existed – the above-mentioned civil action would have constituted an effective remedy so long as it had been lodged within the three-year statute of limitation.

113. Consequently, the Government invited the Court to reject the application for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention.

(ii) *The applicant*

114. The applicant did not comment on the Government's preliminary objection.

(iii) *The Court*

115. The rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness.

In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

In addition, Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see, among other authorities, *Akdivar and Others v. Turkey*, cited above, §§ 66-69; *Orchowski*, cited above, §§ 105-106; and *Norbert Sikorski*, cited above, § 110).

116. 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 on many occasions, that 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).

117. Two pilot judgments on the merits concerning the issue of the living conditions in Polish detention facilities were adopted on 13 October 2009 in the cases of *Orchowski* (cited above) and *Norbert Sikorski* (*Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009). The Court held in these judgments that overcrowding in Polish detention facilities had been, at the relevant time, of a structural nature what undermined the effectiveness of any domestic remedies available, making them theoretical and illusory and incapable of providing redress in respect of the applicant's complaint (ibid. § 111). The Court, nevertheless, indicated that where the alleged violation no longer continued and could not, therefore, be eliminated with retrospective effect, the only means of redress was pecuniary compensation. In such situations, regard being had to the principle of subsidiarity, it could not be excluded that applicants who complained of degrading treatment because of the conditions of their detention, might be required to first avail themselves of the civil action relied on by the Government (ibid. § 109).

118. More recently, in its inadmissibility decisions in the cases of *Latak* (cited above) and *Nocha* (cited above), which were relied on by the Government, the Court has expressly confirmed that in the subsequent applications concerning conditions of detention filed with the Court which have not yet been declared admissible it is appropriate to assess the adequacy of the remedy relied on by the Government in the light of the current situation, namely at the time of the Court's examination of the case.

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

119. 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 three-year limitation period for bringing 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 were required to bring a civil action for the infringement of their personal rights and for compensation (ibid. § 85).

120. The Court affirms that in the specific context of applications following the *Orchowski* pilot judgment and arising from the problem of overcrowding in Polish prisons and remand centres, considered by the Court to have been of a structural nature from 2000 until at least mid-2008 (see *Orchowski*, cited above, § 147), an applicant who lodged his application with the Court at the time when a civil action under Article 24 taken in conjunction with Article 448 of the Civil Code could not be considered an “effective remedy” for the purpose of Article 35 of the Convention, that is prior to 17 March 2010 (see *Łatak*, cited above, § 85 and paragraph 118 above), cannot, in principle, be required to avail himself of this remedy if, at the time when the Court was deciding his case, the civil action in question is time-barred (see *Grzywaczewski v. Poland*, no. 18364/06, § 66, 31 May 2012; *Musiałek and Baczyński v. Poland*, no. 32798/02, §§ 113-14, 26 July 2011; and *Mirosław Zieliński v. Poland*, no. 3390/05, § 46, 20 September 2011; and, conversely, *Nocha* inadmissibility decision, cited above and *Pustelnik v. Poland* (dec.), no. 37775/09, 23 October 2012).

121. In addition, the Court has also ruled on the merits in two cases against Poland in which the applicants were prisoners diagnosed with serious health disorders who, like the applicant in the instant case, complained that the inadequate medical care combined with prison overcrowding and poor living conditions had caused them pain and suffering during their detention (see *Grzywaczewski*, cited above, and *Musiałek*, cited above, § 111-12). It was held in those judgments that only a remedy capable of redressing the applicant’s complaint in its entirety, and not merely its selected aspects, could realistically redress his situation (see *Grzywaczewski*, cited above, §§ 63-69, and *Musiałek*, cited above, § 111-12; compare with *Sławomir Musiał v. Poland*, no. 28300/06, § 80, 20 January 2009).

122. Against this background, the Court will address the preliminary objection in the present case as formulated by the Government and will examine whether the applicant, in addition to the remedies he had used, should have also availed himself of the civil remedy in question before lodging his application with the Court, or at a later stage.

123. It must be observed at the outset that the Article 3 complaint in the present case is twofold. The applicant, who is a paraplegic confined to a wheelchair and suffering from serious malfunctions of the urethral and annals sphincters, complained that the medical and nursing care which had been provided to him during his detention had been inadequate. In parallel, he complained about overcrowding and the resultant poor living and sanitary conditions in prison, which failed in particular to meet the standard required for persons in his state of health. The applicant claimed that this situation had caused him pain and suffering during his detention.

124. The applicant was deprived of liberty on three separate occasions, namely from 7 January to 28 February 2001, 1 September 2003 to 26 May

2004 and from 2 September 2005 to 18 June 2008 (see paragraphs 8-11, 15-29 and 33-68 above). He lodged his application with the Court on 20 September 2007, having already spent two years serving the third period of his detention, and nearly a year before he was eventually released.

125. It follows that the facts of his case differ in two important details from the facts of the application which was relied on by the Government in support of their non-exhaustion objection (see *Nocha*, cited above).

In the *Nocha* case, the applicant, an epileptic detainee, based his Article 3 complaint not only on the allegation that the overall detention conditions and the inadequate treatment of his illness had caused him suffering during his detention, but also on his assertion that those factors had resulted in material and long-lasting damage to his health. The Court considered that it was neither mandated nor in a position to obtain and examine evidence necessary to rule on the existence of a causal link between the applicant's treatment in prison and his state of health after his release. In addition, it was also significant that the applicant had lodged his application with the Court in early 2009, seven months after his detention had begun and less than three months after it ended. Most importantly, at the time when the case was being decided by the Court, the applicant had still had time to bring a civil action under Article 23, taken in conjunction with Article 417 or Article 448 of the Civil Code, in order to seek compensation for the alleged violation. In those particular circumstances, the Court considered that the civil-law remedies indeed appeared suitable in the applicant's case (see *Nocha*, cited above).

126. Conversely, the Court considers that the conclusion which it reached in its pilot judgments in the cases of *Orchowski* and *Norbert Sikorski* (see paragraph 117 above) that the structural nature of overcrowding undermined the effectiveness of any domestic remedy available at that time, equally applies to the present case in so far as it concerns the applicant's detention, which lasted intermittently from January 2001 until June 2008, especially given that the Government and the prison authorities explicitly acknowledged the existence and systemic nature of the problem of overcrowding in Polish detention facilities at the relevant time (see, *Orchowski*, cited above, § 146 and *Norbert Sikorski*, cited above, § 148).

127. It must be stressed that the applicant in the present case lodged a number of complaints with the prison authorities, the Ombudsman and the prosecutor in connection with the conditions of his imprisonment and the medical care provided. He also applied many times to be released from prison on health grounds (see paragraphs 32, 35, 42, 43, 44, 47, 49, 52, 56, 61 and 83-88 above). The Court considers that by taking those actions, the applicant had sufficiently drawn the attention of the prison authorities to the question of the compatibility of his living conditions and medical care in prison with the state of his health.

128. Lastly, in the present case, the situation giving rise to the alleged violation of Article 3 ended on 18 June 2008 when the applicant was released from Siedlce 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 that remedy (see paragraph 120 above with further references).

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

**(b) Non-compliance with the six-month rule**

*(i) The Government*

130. The Government also submitted that the applicant had been detained on three separate occasions, with long periods in between which he had spent at liberty (from 7 January to 28 February 2001, 1 September 2003 to 26 May 2004, and 2 September 2005 to 18 June 2008). The conditions of his detention should not, therefore, be treated as a continuous situation.

131. Consequently, the Government asked the Court to consider as inadmissible the part of the application relating to the first and second periods of the applicant's detention (from 7 January to 28 February 2001 and 1 September 2003 to 26 May 2004) as it was lodged out of time, and to reject it in accordance with Article 35 §§ 1 and 4 of the Convention.

*(ii) The applicant*

132. The applicant did not comment on the Government's preliminary objection.

*(iii) The Court*

133. The Court reiterates that the object of the six-month time-limit under Article 35 is to promote legal certainty by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. In cases where there is a continuing situation, the six-month period runs from the cessation of the situation. The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities or omissions by or on the part of the State to render the applicant a victim. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of (see *I.D. v. Moldova*, no. 47203/06, § 27,



30 November 2010, and *Koval v. Ukraine*, no. 65550/01, (dec.) 30 March 2004, with further references).

134. The present case concerns the detention which was imposed on the applicant on identifiable dates: from 7 January to 28 February 2001, 1 September 2003 to 26 May 2004 and 2 September 2005 to 18 June 2008. It follows that the applicant's detention cannot be construed as a "continuing situation" (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 71-79, 10 January 2012 and *G.R. v. the United Kingdom* (dec.), no. 24860/94, 30 November 1994).

Having regard to the date on which the present application was lodged, namely 20 September 2007, the complaint in so far as it refers to the events during the first and the second periods of the applicant's detention was lodged more than six months after the alleged breach took place and must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention, and can be taken into consideration only as factual background to the case (see *Kulikowski v. Poland* (no. 2), no. 16831/07, § 55, 9 October 2012).

## 2. Conclusion on admissibility

135. The Court notes that the complaint, in so far as it relates to the third period of the applicant's detention (from 2 September 2005 to 18 June 2008) is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### 1. The parties' submissions

#### (a) The applicant

136. The applicant complained that the care and conditions which had been afforded to him during the three terms of his detention had been incompatible with his special needs, in view of his paraplegia, serious malfunctions of the urethral and anal sphincters, and other ailments.

In connection with his detention from 2 September 2005 to 18 June 2008, the applicant submitted that: the prison facilities had not been adapted to the use of a wheelchair, which had resulted in constant problems with accessing and using the toilet annex in his cell; he had not received a sufficient supply of incontinence pads and catheters, nor any worthwhile and regular physiotherapy adapted to his disability; and he had developed serious health problems, such as bedsores, repeated inflammations of the urethra, acute bacterial infections, and bladder stones. He also alleged that those problems had not met with an adequate medical response and that he had been

detained in generally deplorable material conditions. In particular, his cells had been overcrowded and dirty and he had had to share them with smokers. Lastly, the applicant complained that, despite his disability and frail health, he had been regularly transported between prisons and hospitals by prison bus, without being properly fastened to his seat, and only rarely by ambulance.

**(b) The Government**

137. The Government refrained from taking a position in respect of the merits of the application.

**(c) The third-party interveners**

138. The written comments submitted on 2 July 2012 jointly by the Helsinki Foundation for Human Rights (*Helsinki Fundacja Praw Człowieka*) (“the Foundation”), the European Disability Forum and the International Disability Alliance contain an extensive overview of the domestic law and practice concerning the detention of persons with disabilities and of the international standards for the protection of the rights of the disabled, in particular the standards of “accessibility” and “reasonable accommodation”.

139. The third-party interveners argued that in Poland, prisoners with disabilities were notoriously subjected to greater distress and hardship than those which arose in the natural course of imprisonment. It was common that prisoners with disabilities had serious difficulties in accessing basic facilities, such as toilets and showers. They were also unable to move around the premises of their detention facilities without the aid of third persons. Lastly, the medical care within the prison system, in particular, physiotherapy, if provided to disabled prisoners at all, was of such a low standard that it often failed to prevent the further deterioration of prisoners’ health or to relieve their pain and mental suffering.

140. It was concluded that in Poland, the treatment of prisoners with disabilities failed to meet the basic international standards and raised a serious issue under Article 3 of the Convention. In the view of the third-party interveners, the source of the problem did not lie so much in inadequate legal regulations as in the lack of budgetary resources and political will to implement the law, as well as in the general constraints of the prison infrastructure.

*2. The Court’s assessment*

141. 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* (cited above, §§ 119-229).

142. The present case raises the issue of the compatibility of the applicant's state of health with the conditions of his detention in Siedlce and Łódź Prisons and in the Warsaw-Mokotów Remand Centre between 2 September 2005 and 18 June 2008, and the adequacy of the medical care provided to him during that period. The Court must also decide whether the applicant's situation attained the required minimum level of severity to fall within the ambit of Article 3 of the Convention.

143. The applicant's medical condition is undisputed. He is a paraplegic who is confined to a wheelchair and suffers from serious malfunctions of the urethral and anal sphincters (see paragraph 6 above).

144. It is also clear that for a total of over eighteen months, the applicant was detained in Siedlce Prison, which is a regular detention facility not adapted for persons in wheelchairs (see paragraphs 35 and 98 above). The only time when it could not be disputed that the material conditions of the applicant's detention complied with his special needs was during his three months' detention in Łódź Prison (see paragraph 64 above).

145. The Court observes that a variety of conditions in Siedlce Prison interfered with the applicant's ability to be independent, at least in some of his daily routines, placing him in a position of absolute dependence on his fellow inmates and causing him both mental and physical suffering.

146. It is clear that no special arrangements were made to alleviate the hardships of the applicant's detention in that facility. His complaints included the inappropriate sanitary conditions, especially for a person in his state of health, the inaccessibility of the toilet and shower room, the hazardous access to his bunk bed, and his periodic exposure to cigarette smoke (see paragraphs 42-47 above).

147. For an unspecified period after his placement in Siedlce Prison, the applicant, who suffers from incontinence, was not authorised to have daily baths or showers (see paragraphs 44 and 45 above), although some time later an authorisation to that effect was issued. That adjustment, however, had adverse consequences because the shower room was situated on a different floor from the applicant's cell and he could access it only if carried up and down the stairs by his fellow inmates (see paragraph 45 above). Whether because of their personal characteristics, as described by the applicant (see paragraph 45 above) or simply, because they were not trained to care for people with disabilities, the applicant's cellmates did not provide him with suitable and sufficient assistance. The Court has already criticised schemes whereby a prisoner with a physical disability is provided routine assistance by his fellow inmates, and considered that that must have given rise to considerable anxiety on the applicant's part and placed him in a position of inferiority *vis-à-vis* the other prisoners (see, among many other authorities, *Farbtuhs v. Latvia*, no. 4672/02, § 60, 2 December 2004).

148. The Court also takes note of the fact that the shower cabin was not equipped with any hand rails which the applicant could hold on to in order to lift himself up or make other necessary movements (see paragraph 45 above).

149. Moreover, the cells in which the applicant was placed during his entire detention in Siedlce Prison had not been adapted for special-needs prisoners (see paragraphs 35, 47 and 91 above).

150. As the passageway was too narrow for his wheelchair, the applicant, who needed to change his incontinence pads and catheters regularly, could not access the toilet annex to his cell without asking for help from his cellmates (see paragraphs 43, 47 and 82 above).

151. The applicant also had to undertake a dangerous manoeuvre in order to access his bunk, heaving himself up from his wheelchair. On one such occasion in November 2005, he fell painfully and an ambulance had to be called (see paragraphs 47 and 49 above).

152. It is even more striking, that the applicant was detained in these conditions contrary to the doctors' explicit recommendations that he be placed in a single-occupancy cell, have unrestricted access to a shower, the opportunity to do a range of rehabilitation exercises on his own, and the ability to move around in his wheelchair and lie on his stomach for long periods (see paragraph 55 above). As to the former requirement, the Court notes that the applicant was detained in multi-occupancy cells, although it is not clear whether the cells were overcrowded, as claimed by the applicant in general terms. It is not contested, however, that the cells (with the exception of Łódź Prison) were too small or cramped for a detainee in a wheelchair (see paragraphs 35, 43, 47, 49, 82 and 91 above) or that the applicant did not have unrestricted access to a shower (see paragraphs 44 and 45 above).

153. Moreover, it is clear, in the light of the facts described above, that the existence of ordinary architectural or technical barriers in Siedlce Prison greatly affected the applicant and caused him physical and psychological pain and suffering (see *Arutyunyan v. Russia*, no. 48977/09, §§ 77 and 81, 10 January 2012, and *Cara-Damiani v. Italy*, no. 2447/05, § 70, 7 February 2012).

154. Lastly, it cannot be overlooked that during the first and a part of the third period of his detention in Siedlce Prison, the applicant had to share cells with smokers (see paragraphs 42, 46 and 91 above).

155. The Court has already held that detaining persons suffering from a serious physical disability in conditions inappropriate to their state of health, or leaving such persons in the hands of their cellmates for help with relieving themselves, bathing and getting dressed or undressed, amounted to degrading treatment (see *Price v. the United Kingdom*, no. 33394/96, § 30, ECHR 2001-VII; *Engel v. Hungary*, no. 46857/06, §§ 27-30, 20 May 2010; and *Vincent v. France*, no. 6253/03, §§ 94-103, 24 October 2006).

156. The applicant also submitted in the wider context of his living conditions that he had not received a sufficient supply of incontinence pads and catheters (or drainage bags), which had resulted in a further deterioration of his health and new ailments, such as bedsores, repeated inflammations of the urethra and acute bacterial infections.

157. The Court observes that the facts of the case reveal that out of the two years and ten months of his detention, the applicant was placed in a special infirmary or hospital cell, or was otherwise under the supervision and care of a nurse, for only an unspecified but very short period of time in Siedlce Prison (see paragraph 36 and 41 above) and for a total of three months during both of his stays in Łódź Prison (see paragraphs 64, 65, 77 and 78 above).

158. It is most important in the Court's view, however, that throughout his detention, the applicant was supplied with a limited number of incontinence pads (either two or four every twenty-four hours) and catheters or drainage bags (see paragraphs 37, 39 and 75 above), and that at times he was not supplied with those items at all. It is obvious that the applicant, who is completely incontinent, was heavily reliant on those articles and achieved nothing by complaining to the medical staff and the authorities.

159. It was not established that the health problems which the applicant had started developing some months into his detention were a direct result of poor hygiene and the infrequent changing of his catheters. However, the Court finds it significant that the applicant who regularly complained of an insufficient supply of pads and catheters and a rash in the genitals area, had to receive emergency treatment on 15 January 2006 for a massive infection of the urethra and the presence of faecal bacteria (see paragraphs 53 above).

160. Moreover, the Court notes that the applicant's statements about the conditions of his transport by prison bus were not refuted by the Government (see paragraphs 64 and 73 above). The Court finds particularly regrettable the practice of leaving the applicant unfastened in a moving vehicle, even if his wheelchair was immobilised, as happened on 28 August 2006 (see *Engel v. Hungary*, no. 46857/06, § 28, 20 May 2010).

161. Lastly, in so far as the present Article 3 complaint concerns the applicant's general fitness for detention and the adequacy of the medical care offered to him between 2 September 2005 and 18 June 2008 the Court makes the following observations.

162. The applicant submitted that he had not been offered worthwhile and regular physiotherapy adapted to his disability and adequate medical treatment of his bladder stones and other, successively developing, ailments.

163. The case file reveals that at the relevant time, the applicant was examined by various medical specialists on many occasions, either in relation to his requests for release or when he was taken to hospital with urgent health problems (see paragraphs 38, 49, 50, 52, 53, 55, 59, 61, 62, 63, 66, 67, 69, 72, 74, 86, 87 and 96 above).

164. During his previous term of detention – in 2003 – the applicant developed a bedsore measuring 2 by 3 cm (see paragraphs 20 and 30 above), which was causing increased problems in the period which is the subject of the Court's examination (see paragraph 62 above). This medical condition had been considered incurable and therefore, the treatment offered to the applicant in Siedlce and later, in Łódź Prison, was only of a supportive nature and providing only for superficial relief (see paragraphs 40 and 66 above).

In March 2007, however, the applicant had an opportunity to undergo reconstructive surgery for his bedsore at the hospital of Warszawa-Mokotów Remand Centre but he did not agree for the procedure. In view of the lack of the applicant's consent the authorities continued with supportive treatment to the wound (see paragraph 73 above). It appears from the case file that the dressing was changed every day and the wound was kept clean (see paragraph 98 above).

165. Eventually, on 24 April 2007 a laser procedure was performed on the bedsore at the hospital of Łódź Prison (see paragraph 77 above).

166. In the meantime, for the whole month of January 2006 the applicant received an intravenous antibiotic treatment for his urinary infection (see paragraph 53 and 54 above).

167. On 15 May 2006 he was diagnosed for the first time with blockage of the urethra and gallbladder stones (see paragraph 59 above). On 2 June 2006 he was prescribed surgery to remove the bladder stones and further urgent urological treatment (see paragraph 61 above). It was indicated, however, that surgery could not be performed before the bedsore had healed (see the report of 5 October 2006, paragraph 66 above). The actual surgery took place on 30 April 2007, that is, as late as eleven months after it had been prescribed but only six days after the applicant became eventually fit for it because of his bedsore condition (see paragraph 77 above).

168. Lastly, in October 2007 the applicant was diagnosed for the first time with an unspecified spinal disorder, for which surgery was prescribed in January 2008 (see paragraphs 83, 85, 86 and 87 above).

169. It was in relation to this medical condition that, on 18 June 2008 the domestic court decided that the applicant should be granted a licence for temporary release in order to undergo surgery and subsequent rehabilitation, as well as further urological treatment (see paragraph 92 above).

170. It is true that prior to that date, the domestic courts had repeatedly rejected the applicant's requests for release on health grounds, holding that he had been fit for detention because adequate care and treatment could and indeed had been offered to him within the prison system (decisions of 8 and 23 February 2006, 10 May 2006 and 27 June 2007 (see paragraphs 55-57 and 83 above)).

171. The Court, however, cannot on the basis of the case materials, contest these conclusions of the domestic courts because it is clear that in reaching their initial decisions, they had regard to the opinions of the medical experts that the applicant had not been fit to be detained as long as his urological infection and bedsore had not been cured (see paragraph 56 above) but preferred the reports of other medical experts and the remaining evidence (see paragraphs 56, 57, 83 above).

172. When, in June 2006, it became clear that the applicant's general health had been deteriorating, that his bedsore had reached a diameter of 3 cm and that he had been unable to obtain advanced physiotherapy in prison (see paragraphs 62 and 63 above), the authorities took measures to transfer the applicant to Łódź Prison, which was equipped for prisoners with disabilities. The applicant received round-the-clock care from nurses and paramedics, and some treatment for his bedsore and some basic physiotherapy in that establishment (see paragraphs 65 and 66 above).

173. On 23 October 2006 the Łódź Regional Court rejected a request for the applicant's release, which had been made four months earlier by the governor of Siedlce Prison, on the ground that adequate treatment was being provided to the applicant in Łódź Prison (see paragraph 67 above).

174. It is true that, when, on 20 December 2006, the Łódź Court of Appeal upheld the above decision, the applicant's treatment had already ceased because he had been transferred back to Siedlce Prison (see paragraph 68 above). The available medical reports, however, do not imply that at that point the applicant faced major health risks. Moreover, it cannot be overlooked that, in the meantime, the authorities went to some lengths to provide the applicant with treatment for his developing ailments. On 28 November 2006 he even had a short medical check-up in the hospital in Konstancin (see paragraph 69).

175. In view of the above, the Court does not consider that it is in a position to establish whether or not the development of the applicant's multiple ailments could have been arrested or slowed down had he been at liberty and free to seek medical care with the professionals of his choice. It is apparent in this case, however, that the applicant's condition was regularly monitored by various specialists and that the authorities followed up the doctors' recommendations about the medical treatment of the applicant's successively developing disorders to the greatest extent possible. In the absence of any medical certificates in support of the applicant's claim that medical care secured to him in prison, had been inadequate or insufficient, the Court cannot reach the conclusion that in this context the authorities had acted in a way contrary to the requirements of the Convention.

176. Mindful of all the above considerations, the Court finds that while keeping the detention measure in place was not, in itself, incompatible with the applicant's state of health, detaining him for eighteen months in a prison

that was unsuitable for the incarceration of persons with physical disabilities and not making sufficient efforts to reasonably accommodate his special needs raises a serious issue under the Convention.

177. There is no evidence in this case of any positive intention to humiliate or debase the applicant. The Court holds, nevertheless, that to detain a person who is confined to a wheelchair and suffering from paraplegia and serious malfunctions of the urethral and anal sphincters in conditions where he does not have an unlimited and continuous supply of incontinence pads and catheters and unrestricted access to a shower, where he is left in the hands of his cellmates for the necessary assistance, and where he is unable to keep clean without the greatest of difficulty, reaches the threshold of severity required under Article 3 of the Convention and constitutes degrading and inhuman treatment contrary to that provision. The Court therefore finds a violation of this provision in the present case.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT BY A PRISON GUARD

178. The applicant also complained under Article 3 of the Convention that, on an unspecified date, he had been beaten up by a prison guard in Siedlce Prison.

179. However, pursuant to Article 35 of the Convention:

“ ...

3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is ... manifestly ill-founded ...

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.”

180. The applicant failed to provide any details or any *prima facie* evidence to substantiate the above complaint.

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



### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

181. 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

182. The applicant claimed 23,600 euros (EUR) in respect of pecuniary damage on account of overdue child support fees, lost income, unpaid rent and medical expenses. He also claimed 50,000 EUR in respect of non-pecuniary damage.

183. The Government submitted that the above claim in respect of pecuniary damage should be rejected as entirely irrelevant to the circumstances of the case. They also contested the applicant’s claim in respect of non-pecuniary damage as exorbitant.

184. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant suffered damage of a non-pecuniary nature as a result of his detention in inhuman and degrading conditions, inappropriate to his state of health (see paragraphs 173 and 174 above), which is not sufficiently redressed by the finding of a violation of his rights under the Convention.

185. For the above-mentioned reasons, having regard to the specific circumstances of the present case and its case-law in similar cases (see, *mutatis mutandis*, *Kupczak v. Poland*, no. 2627/09, § 83, 25 January 2011, and *Śławomir Musiał v. Poland*, no. 28300/06, §§ 111-12, 20 January 2009) and deciding on an equitable basis, the Court awards EUR 8,000 under this head, plus any tax that may be chargeable on that amount.

#### B. Costs and expenses

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

#### C. Default interest

187. The Court considers it appropriate that the default interest rate 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 complaint concerning the compatibility of the applicant's health with the material conditions of his detention and with the quality of care offered to him admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the material conditions of the applicant's detention in view of his special needs;
3. *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 8,000 (eight 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Ineta Ziemele  
President